



Children's Court of New South Wales

24 December 2010

The Hon. James Wood AO QC
Chairman
New South Wales Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001

Dear Judge,

Re: Penalty Notices

Thank you for the opportunity to respond to the *Penalty Notices* Consultation Paper. I apologise for the delay in providing you with my response.

Below are the Children's Court's views on penalty notices and in particular their effect on children and young people together with some suggestions for reform.

Question 6.1

- (1) Should penalty notices be issued to children and young people? If so, at what age should penalty notices apply and why?**
- (2) Are there offences where penalty notices should be issued notwithstanding the recipient is a child below the cut-off age?**

The Court notes that there is currently some disparity regarding the minimum age at which penalty notices can be issued to young persons across Australia. For instance, under the *Fines Act* 1996 (NSW) penalty notices cannot be issued to children who are aged 10 years or younger. While this law is in line with that of Victoria¹, the laws of other jurisdictions such as Northern Territory and South Australia provide that penalty notices cannot be issued to children aged younger than 14 or 16 respectively.² The Court is consequently of the view that the age at which penalty notices can be issued to young people should, as far as possible, be standardised across jurisdictions, so that young people in one jurisdiction are not treated more harshly than those in another. Further, the Court is of the view that so far as young people are concerned, the system of penalty notices should aim to strike a balance between deterrence of minor bad behaviour and excessive criminalisation of young people. Finally, in determining to whom penalty notices can be issued and the appropriate penalty amounts, consideration should be given to whether it is just and reasonable to impose a sanction on a person who is unlikely to have the capacity to meet that sanction.

For these reasons, the Court is of the view that the current laws should be amended so that penalty notices cannot be issued to any person under the age of 16, as the likelihood of those young persons having sufficient funds to satisfy penalty notices is minimal, and will therefore result in either the young person sliding into debt at a very young age or relying on their parents to pay the fine.

Question 6.2

Are there practical alternatives to penalty notices for children and young people?

Question 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?

Question 6.5

- (1) Should police officers dealing with children who have committed, or are alleged to have committed, penalty notice offences be given the option of issuing a caution or warning, or referring the matter to a specialist youth officer under *Young Offenders Act 1997 (NSW)* to determine whether a youth justice conference should be held?**
- (2) Should some of the diversionary options under *Young Offenders Act 1997 (NSW)* apply and, if so, which ones?**
- (3) For which penalty notice offences should these diversionary options apply?**

The Children's Court strongly supports the use of warnings, cautions and other sentencing options under the *Young Offenders Act 1997*. In the Court's view, sentencing options under this Act should be the first resort and should be utilised by both police officers and transit officers. Where particular behaviour is not sufficiently serious to warrant a caution, the issuing officers should deal with it by way of a warning. Further, the Court is of the view that the provisions of the *Young Offenders Act 1997* should be available concerning all offences for which a young person may be liable to a penalty notice.

Question 6.3

Should parents be made liable for the penalty notice amounts incurred by children and young people?

The Court is of the view that where the fine is paid by the young person's parents the deterrent effect of the fine is significantly reduced, as a consequence of which the Court does not support the proposal that parents should be made liable for the penalty notice amounts incurred by their children. Further, the Court agrees with the comments made at paragraph [6.10] of the Consultation Paper, that the payment of young persons' fines by their parents not only diminishes any deterrent effects of fines but can also place a strain on their relationship at a time when those relationships may already be strained.

Question 6.6

- (1) **Should a lower penalty notice amount apply to children and young people? If so, should this be achieved by providing that:**
 - (a) **penalty notice amounts are reduced by a set percentage when the offence is committed by a child or young person; or**
 - (b) **the penalty notice amount could be set at a fixed sum, regardless of the offence; or**
 - (c) **a maximum penalty notice amount is established for children and young people?**
- (2) **What would be an appropriate percentage reduction or an appropriate maximum amount?**

The Court is of the view that different penalty amounts should apply to young persons so as to recognise their income inequality and avoid disproportionate punishment. The Court notes that the *Rail Safety (Offences) Regulation 2008* (NSW) already imposes lower penalties for young persons travelling on trains without a valid ticket. In the Court's view this approach should be extended to all offences carrying a penalty notice, that is, all public transport, motor vehicle, and public order offences when they are committed by young persons. In particular, the Court is of the view that young people should (at most) be required to pay 50% of the fine issued to an adult for the same type of behaviour. Consideration should also be given to imposing even smaller fines for public transport offences in order to take into account young persons' specific vulnerability when it comes to attracting these fines.

Question 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 his or her inability to pay?

The Court supports an amendment which would allow young persons to seek internal review on the grounds of their inability to pay. For further comments on this issue please see "Other suggestions" section below.

Question 6.8

Should a cap be put on the number of penalty notices, or the total penalty notice amount, a child or young person can be given:

- (1) **for a single incident; and/or**
- (2) **in a given time period?**

While the Court appreciates the arguments in support of capping the penalty notices amount for young people made at paragraphs [6.33] –[6.34] of the Consultation Paper, the Court does not support capping the fine amount in relation to young persons. The Court is concerned that imposing a cap may completely obliterate any deterrent effects of the penalty notices system as the young person will be aware that offending conduct past a certain point will not be punished.

Question 6.9

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

Question 6.10

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

Question 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?

The Court is of the view that license and registration sanctions should only be imposed on young persons in relation to unpaid fines arising from motor vehicle and traffic offences. In particular, license and registration sanctions should not be imposed on young persons who have never held a driver's license as a punishment for unpaid fines. If these sanctions cannot be imposed on young persons who do hold a license and who accumulate fines for offences other than motor vehicle and traffic offences, then it appears discriminatory and contrary to public policy to impose such sanctions on young persons who have never held a license. The Court is of the view that there is a significant risk that those young persons who are prevented from obtaining a driver's license but who are dependent on driving in order to attend school, work or other commitments, will disobey those sanctions resulting in more serious offending and further criminalisation of young people.

The Court is also of the view that young people in receipt of penalty notices for both traffic and non-traffic offences should be issued with separate enforcement notices so as to avoid the possibility of license sanctions being imposed in relation to non-traffic offences.

Question 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?

In the Court's view young persons whose fines have been written off should be subject to a shorter "good behaviour" period (in the vicinity of two years).

Question 6.13

Should any of the measures proposed in the New Zealand Ministry of Justice's 2009 research paper titled *Young People and Infringement Fines: A Qualitative Study* be adopted in NSW?

The Court is of the view that the proposed measures may be beneficial for a small group of young offenders, however great care should be exercised in determining which measures should be made available to each young person, in order to avoid them in effect "cherry picking" a package.

Other suggestions

Review of penalty notice amounts - CAYPINS

The Court is of the view that one of the main flaws of the current penalty notices system is its failure to have regard to individual circumstances and in particular, a young person's ability to pay fines. While this issue applies to all people who attract fines, it has a far more negative effect on disadvantaged sections of our community including young people. For these reasons the Court is of the view that New South Wales should consider following the Victorian model of dealing with young persons who receive fines known as "*Children and Young Persons Infringement Notice System*" (CAYPINS).

The CAYPINS system ensures that children and young people are dealt with by the Children's Court which is the most suitable forum to deal with their unique needs and circumstances. According to Victoria's Attorney General Rob Hull

*"The system focuses on finding a balance between a child's financial capacity and the need to ensure accountability for unpaid infringement notices."*³

The system also involves greater discretion to take into account a child's individual circumstances, and recognizes the need for greater flexibility when dealing with children.

According to this model, if a young person does not pay their penalty infringement notice (PIN) within the required time, the PIN is registered in the Children's Court of Victoria which then advises the child of his or her options. Namely:

The child can choose to:

- *Pay the outstanding amount of the penalty*
- *Apply to the Children's Court Registrar for an order for time to pay the penalty, or to pay the penalty by instalments, or an order that the penalty not be enforced*
- *Provide written information for the consideration of a Children's Court Registrar. This information may include details about the child's employment, education or financial circumstances*
- *Appear before a Children's Court Registrar on a date specified in the letter*
- *Request that consideration of the matter be adjourned to a later date*
- *Decline to be dealt with by the Registrar and request that the infringement notice be dealt with in open court*
- *Do nothing, in which case the Registrar will consider the matter on the date stipulated in the letter.*⁴

A young person who applies to have their fine cancelled or reduced is required to fill out a "Statement of Financial and Personal Circumstances" form. This form elicits detailed information from the child about

- their personal circumstances – ie. who they live with or who they are supported by;
- their financial circumstances – details about any income the child receives including pocket money as well as details about their expenses.

The form also includes a blank section in which the child or young person can explain why they cannot afford to pay their fine.

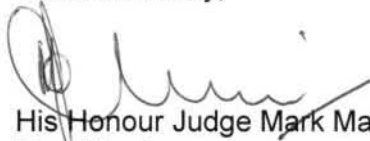
In the Court's view CAYPINS procedures thoroughly assess a young person's circumstances and can therefore produce fairer and more effective results. For example, a reduced fine will still act as a punishment and hopefully future deterrent for the young person without

financially overburdening them. On the other hand, if there are no prospects of the young person paying off their fine it seems futile to seek to enforce the penalty notice, and the Court can consider imposing other penalties such as a warning or a caution, or writing off the fine completely.

Empirical evidence from the Victorian Children's Court suggest that the CAYPINS system works very well especially for certain types of fines such as public transport fines. In fact, public transport fines accounted for the majority of fines dealt with through the CAYPINS system in 2008-2009. In particular, in 2008-2009 the Court processed 12,241 young people through CAYPINS of whom 6,172 received a penalty notice for not having a valid public transport ticket, 1,792 did not have a concession card and 1,213 were fined for placing their feet on seats.

The Court is of the view that the current penalty notices system would operate much better if New South Wales were to consider adopting a similar system to CAYPINS.

Yours sincerely,



His Honour Judge Mark Marien SC
President

¹ *Infringements Act 2006 (Vic)* s3(1).

² *Fines and Penalties (Recovery) Act (NT)* s 7, *Expiation of Offences Act 1996 (SA)* s4.

³ [Hansard-21/04/2005-p.651].

⁴ Department of Human Services, Juvenile Justice, Children and Young Persons Infringement Notice System – Factsheet (2005) accessed from

http://www.cyf.vic.gov.au/_data/assets/pdf_file/0007/16819/jj_factsheet_caypins.pdf on 11/11/10