Comments on specific questions raised in the consultation paper

1.1 Should there be a stand alone statute dealing with penalty notices?

Comment
To a large degree the existing Fines Act is the legislation providing the basis for penalty notice processing and enforcement. However having said that the specific basis for individual offences is contained in over 160 separate items of legislation administered across various government agencies.

This situation is not dissimilar to what exists in Victoria under it's Infringement Act.

A single statute would be considered ideal but it is suggested that this should also include court imposed fines in order to provide for consistent treatment of matters for clients. It should also be remembered that enforcement officers have a choice at the time of detecting an offence and that includes issue a penalty notice or record the details and issue a court attendance notice for the person to go to Court. The latter could also apply in the case of habitual offenders.

Experience has demonstrated that penalty notice recipients are often also subject to court imposed fines therefore a single statute covering both would assist in the holistic treatment of outstanding matters.

1.2 Should the term "penalty notice" be changed to "infringement notice"?

Comment
The terminology is not considered significant. Traditionally the term "infringement" was used in NSW, even in my opening comments I mention the Self Enforcing Infringement Notice Scheme as it is known. It was changed within recent years to "penalty notice" purely to be consistent with the terminology used in the existing legislation.

A better approach might be to reflect what is more meaningful to the recipients of such notices. Again experience has shown that people relate more to a penalty or fine as opposed to an infringement.

2.1 Should principles be formally adopted for the purpose of assessing which offences may be enforced by penalty notice?

Comment
In short, yes. SEINS was originally introduced to relieve an over burdened court system of a multitude of minor offences and at the same time to provide a simple opportunity for clients to satisfy minor penalties by way of payment without the need to attend Court.

History has shown a major increase in the number of offences for which a penalty notice can be issued. However at the same time there has not been any clear

attention given to the removal of unnecessary, unused or antiquated offences. In other words continual growth without adequate rationalisation.

Some might argue that there are too many offences created for penalty notices and that they are broken down to the "enth" degree in granularity. There are many examples of offence types quoted in the paper for which no penalty notices have been issued.

2.2 Should there be a central body in NSW to oversee and monitor the penalty notice regime as a whole?
If so, should it be:
(1) the Attorney General and the Department of Justice and Attorney General; or
(2) a stand-alone body; or
(3) a Parliamentary Committee?

Comment
The term "oversee and monitor" is a little unclear in respect of what is expected. If it is to mean determining what offences should be penalty notice offences and the quantum of the penalty then yes it is agreed that this should be a central responsibility. Whether it needs to be a "central body" or not is a totally separate question.

Currently the office of the Attorney General is the "guardian" of the laws of NSW. For all offences created in NSW the Judicial Commission provides the supporting law part codes and indictments. To a degree there is already some centralisation through the Department of Justice and Attorney General (DJAG) which could be expanded to include what offences should be dealt with by penalty notice, the value of such penalties and regular review of the offences included under statute.

This should be seen as totally separate to the actual processing.

I am advised that in Victoria the Department of Justice provides a centralised function for the authorisation of which offences can be penalty notice offences and secondly the quantum of those penalties. Beyond that the Department provides an advisory function to agencies utilising the Infringement Court.

2.3 What resourcing is required to effectively oversee the operation of the penalty notice regime?

Comment

This would depend upon the work brief provided. But if the above suggestion was adopted minimal resourcing would be anticipated.

2.4 Should there be a provision for annual reporting to Parliament on the number and type of infringement notices issued and any other relevant data? If so, who should be responsible for this?

Comment
SDRO is the central repository for such information and already includes statistics on penalty notices in it's annual report. Admittedly these statistics are limited to NSW Police Force and Camera detected offences, predominantly for traffic type offences. This could easily be expanded if required to deliver the information not just to Parliament but to the public on an on-going basis.

Currently SDRO has available on it's web site a range of statistical information which is updated monthly.

At the same time individual agencies include agency specific penalty notice statistics in their annual reports.

3.1 (1) Should penalty notices be used only for offences where it is easy and practical for issuing officers to apply the law and assess whether the offence has been committed?

Comment
This presently exists. In the absence of clear prima facie evidence of the offence penalty notices should not be issued. This is clear in the training material provided by SDRO to all enforcement officers.

(2) If so, should this principle mean that penalty notices should only apply to strict and absolute liability offences, or should they also apply to offences that contain a fault element and/or defences?

Comment
No as the litmus test of "strict and absolute liability" could severely impact the road safety initiatives around the use of cameras for the detection of speeding and red light offences, as an example, of where the vehicle owner is liable unless they nominate the actual driver at the time of the offence.

3.2 If penalty notices apply more broadly to offences with a fault element and/or defences, what additional conditions should apply? Should the conditions include any of those found in the Victorian Attorney-General's Guidelines to the Infringement Act 2006, for example:
(1) specially-trained enforcement officers;
(2) a requirement for operational guidelines; and
(3) a requirement to consider warnings or cautions?

Comment
Review Guidelines are published by SDRO on it's website as are the Attorney General's Caution Guidelines.

I am advised that the Victorian system includes the ability for a review to be conducted at the request of recipients of penalty notices similar to what exists in

NSW. However in Victoria this is predominantly undertaken by individual agencies. In NSW SDRO offers a centralised service in this regard to agencies on a fee for service basis.

Secondly that both the Magistrates Court and the Infringement Court in Victoria perform a role in respect of penalty notices, which can lead to confusion for clients. If a client elects to have a matter determined at Court this will be dealt with through the Magistrates Court. If the non payment of a subsequent fine, imposed by the Court, occurs the matter is then pursued by the Infringement Court.

3.5 Are there any circumstances under which an offence involving a victim of violence could be a penalty notice offence?

Comment
No. If it did there could be some impact upon victims compensation levies.

3.7 Should offences with imprisonment as a possible court imposed penalty be considered for treatment as penalty notice offences? If so, under what circumstances?

Comment
In NSW this already exists for a limited number of offences under Criminal Infringement Notices (CINS).

3.10 Is it appropriate to issue multiple penalty notices in relation to conduct that amounts to a continuing offence? If not, how should the penalty notice amount be determined for continuing offences?

Comment
The issue of continuing offences needs greater clarity to avoid misinterpretation by both enforcement officers and clients.

3.11 Are there principles other than those outlined in Questions 3.1-3.10 that should be adopted for the purpose of setting penalty notice amounts?

Comment
There is a definite need for rationalisation of penalty amounts across offences. For example it is suggested that there should be no difference in the penalty amount for an offence committed on one mode of public transport compared to the same offence on another mode of public transport. This is identified in the consultation paper.

Rationalisation of penalty amounts (and demerit points) for road safety offences versus traffic movement offences is also worthy of consideration.

4.1 Should principles be established to guide the setting of penalty notice amounts and their adjustment over time?

4.2 Should a maximum be set for penalty notice amounts? If so:
(1) What should the maximum be?
(2) Should the maximum be exceeded in some cases? If so:
(a) On what grounds (eg the need to deter offending)?
(b) Should the public interest be among the grounds? If so, how should it be defined or characterised?
(3) Should the maximum be different for individuals and corporations?
4.3 Should there be a principle that the penalty amount should be set at a level that would deter offending, but be considerably lower than the penalty a court would impose?
4.4 (1) Should there be a principle that a penalty notice amount should not exceed a certain percentage of the maximum fine for the offence? If so, what should be the percentage?
(2) Should a principle allow the fixing of penalty notice amounts beyond the recommended percentage in special cases? If so, what should the grounds be?
(3) Should there be an upper percentage limit in those special cases? If so, what should this percentage be?
4.5 Should there be a principle that a penalty notice amount should be lower than the average of any fines previously imposed by the courts for the same or a similar offence, if such information is available?
4.6 Should there be a principle that in setting penalty notice amounts, consideration should be given to the proportionality of the amount to the nature and seriousness of the offence, including the harms sought to be prevented?
4.7 Should there be a principle that in setting a penalty notice amount, consideration should be given to whether the amount is consistent with the amounts for other comparable penalty notice offences?
4.8 Should there be a principle that for offences that can be committed by both natural and corporate persons, higher penalty notice amounts should apply to corporations? If so, what should be the guidelines for setting such amounts?
4.9 Are there principles other than those outlined in Questions 4.1-4.8 that should be adopted for the purpose of setting penalty notice amounts?

Comment
Combined comments in respect of 4.1 – 4.9:

The establishment of principles to guide the setting of penalty notice amounts is supported.

There are two administrative areas of penalty notice processing considered worthy of comment. Firstly the allocation of driver licence demerit points and secondly, the court election of a penalty notice. The recording of demerit points is through arrangements with the RTA. Demerit points are incurred, inter alia, when a penalty notice is paid or is not paid by a time specified for payment. If a vehicle is registered in a corporate name and the corporation pays the amount owing without nominating the driver of the vehicle, there is the potential that demerit points are not recorded.

SDRO considers this a public safety concern as drivers can escape liability for the consequences of unsafe driving. SDRO continually works with the RTA to close avenues for demerit point avoidance. A current proposal is to dramatically increase the penalty notice amount for camera detected offences where the vehicle is registered in a corporate name. When the corporation nominates the actual driver the penalty notice amount will decrease to that applicable for an individual. SDRO submit in the context of 'operator onus' offences there is merit in setting considerably higher penalty notice amounts for corporations as a financial incentive for the corporation to identify drivers.

As indicated in paragraph 4.37 of the Paper there is evidence to suggest that court fines imposed by Magistrates for court elected penalty notice are often around the same or sometimes less than the face value of the penalty notice amount. SDRO suspect some penalty notice recipients are using the delay between making a court election and the matter being determined to extend the 3 year demerit point cycle to avoid driver licence suspension and to delay payment. This course of action may be particularly attractive when the expected fine will likely be the same as the penalty notice amount.

The most recent legislative amendments in respect of Section 10 dismissals and demerit points are expected to result in an increase in court elections.

Further, SDRO analysis of local court statistics indicates a vast number of court elected penalty notices are being heard ex parte with court fines equivalent to the penalty notice amount. This suggests the court election process is somewhat wasteful as the penalty notice recipient ends up in the same position as if he or she paid the amount originally owing. It is submitted that there may be some justification in reviewing the option of a court election. One suggestion is to create a separate and limited 'penalty notice' jurisdiction so that court elected penalty notice matters are dealt with more expeditiously and without drawing on the resources of the Local Court.

Another suggestion is that the existing court election is too easy and open to misuse to achieve a delaying factor, as outlined above, without any additional penalty or cost. To counter this impact the removal of the onus from the issuing authority or SDRO to handle all the processes associated with court elections and require the recipient to undertake this action would differentiate between the client who is serious about defending their matter in Court as opposed to the client just seeking to use the process to their own advantage. In other words the client would need to initiate the court process with the Court.

5.1 Taking into account the recent reforms, is there sufficient guidance on:
(1) when to issue penalty notices; and
(2) the alternatives available?

Comment
The recent amendments to the Fines Act and the introduction of the Attorney General's Guidelines for the Review of penalty notices and Cautions do provide

guidance to agencies and their enforcement officers. Whether there is ever "sufficient" guidance is a moot point. But at the same time "guidance" should not be so definitive as to override or negate discretion available to the enforcement officer at the time of detecting an offence.

5.2 (1) Should government agencies (including statutory authorities) responsible for enforcing penalty notice offences be able to engage the services of private organisations to issue penalty notices? If so, what should be the requirements? (2) Is there any evidence of problems with the use of contractors for the purpose of enforcing penalty notice offences?

Comment
The contractual arrangements between SDRO and the various enforcement agencies require individual officers to be authorised to issue penalty notices under the agencies relevant legislation. SDRO does not perform a supervisory role to ensure such authorisation is in place. The list of the various classes of 'authorised officers' under the *Road Transport (General) Regulation* and 'enforcement officers' under the *Protection of the Environment Operations (General) Regulations* typically includes reference to a person who is "subject to the control and direction" or a "member of staff" of a particular enforcement agency.

That authorisation would not automatically include nor preclude private organisations such as the staff of a security firm or a contractor engaged by the respective agency.

The important aspect here is the terms of engagement of the external service provider by the authorised agency. Also that the ultimate responsibility rests with the agency not an external provider.

Government agencies and statutory authorities regularly contract services to external providers under detailed contractual arrangements. The issuing of penalty notices could occur in the same manner but the accountability for quality should remain with the responsible agency.

5.3 (1) Should a limit be placed on the number or value of penalty notices that can be issued in respect of one incident or on the one occasion of offending behaviour? (2) If so, should this be prescribed in legislation, either in the Fines Act 1996 (NSW) or in the parent statute under which the offence is created, or should it be framed as a guideline and ultimately left to the discretion of the issuing officer?

Comment
The question of limiting the number of penalty notices in respect of one incident becomes problematic for SDRO in its review process. A person may receive multiple penalty notices for instance where the person's vehicle remains parked at a location to which various restrictions may apply at various time of the day - metered parking which changes to no stopping then a transit lane at peak times. *Road Rules 2008* do not contemplate these types of scenarios. Each of these

offences, albeit resulting from the one action of parking the vehicle, have varying degrees of seriousness from both a road safety perspective and a traffic movement perspective.

But then in the instance of a traffic offence which results in penalty notices for drive unlicensed, unregistered and uninsured these are 3 separate offences but resulting from the single set of facts.

If a limit was to be imposed this could result in more matters being dealt with by Court appearance as opposed to penalty notice or alternatively offences being amalgamated.

5.4 Should the power to withdraw a penalty notice only be available in limited circumstances on specific policy grounds? What should those grounds be?

Comment
The term "withdraw" can mean different things to different people. Currently the process followed by SDRO and the 230 agencies for which it provides processing services, is to 'no action" a penalty notice where it has been issued in error or the offence is not substantiated by evidence. Penalty notices may also be "cautioned" where the offence is disclosed but the circumstances, subsequently outlined, justify leniency being approved.

SDRO publishes Review Guidelines on it's web site which are used to determine approaches in this regard. Whilst the Guidelines do not cover 100% of scenarios nor offences they do address the bulk. Outlying matters are dealt with on a case by case basis usually in consultation with the issuing agency.

5.5 Are current procedural provisions relating to how a penalty notice is to be served on an alleged offender, contained in each relevant parent statute, adequate?

Comment
Yes. SEINS operates on the basis of penalty notices being personally delivered, attached to a vehicle or via ordinary post.

SDRO issues all penalty reminder notices via ordinary post.

Past experience has proven registered post to be the most ineffective means of delivery of material from SDRO as it alerts clients to it's existence and enables avoidance.

5.6 Is it feasible to require the State Debt Recovery Office or the issuing agency to confirm service of the penalty notice or subsequent correspondence?

Comment
No, not unless greater use can be made of electronic delivery means via the web or email which unfortunately is currently limited by legislation.

If such a requirement was to be contemplated than it is suggested that additional, adequate and enforceable penalties be introduced for not maintaining up to date name and address information with the RTA, Electoral Commission and other agencies.

5.7 (1) Should the Fines Act 1996 (NSW) prescribe a period of time within which a penalty notice is to be served after the commission of the alleged offence? If so, what should the time limit be?
(2) If the penalty notice is served after this time has elapsed, should the Act provide that the penalty notice is invalid?
5.8 If it is inappropriate to prescribe a time limit in legislation, should agencies be required to formulate guidelines governing the time period in which a penalty notice should be served?

Comment
The educative function of penalty notices, from a behavioural change perspective is acknowledged and that the subject matter of the notice can become 'stale' if too longer period has lapsed between detection of the offence and service of a notice. However, it is suggested that there should not be a general prescribed time period for service. A significant number of offences require investigation before a decision to issue a notice is made. This is reflected in the statutory limitation period for the offence.

Further, SDRO has responsibility for re-issuing and transferring liability for certain offences such as 'operator onus' offences under the road transport legislation. This may require the issue of a fresh notice some time after an original notice has been issued. Experience has demonstrated that some people deliberately attempt to frustrate the process by continuous nominations for demerit points offences.

Prescribing a time would unnecessarily complicate this process and aid those seeking to frustrate it.

5.9 (1) What details should a penalty notice contain?
(2) Should these details be legislatively required? If so, should the Fines Act 1996 (NSW) be amended to outline the form that penalty notices should take, or is this more appropriately dealt with by the legislation under which the penalty notice offence is created?

Comment
The prescribed details for penalty notices should be kept to the current minimum, sufficient to detail the offence, when, where and by whom or what (in the case of a vehicle). It is suggested that penalty notices should be a case of substance over form.

Opportunities to "plain English" notices are continually examined but the need for the inclusion of legislative references and requirements hampers this approach.

5.10 Are the recent amendments to the Fines Act 1996 (NSW) relating to internal review of penalty notices working effectively?

Comment
Yes, the amendments referred to have basically provided the legislative basis for what SDRO has done since inception in terms of providing an administrative review mechanism.

During 2009/10 SDRO processed over 200 000 such reviews. Of those 53 000 resulted in leniency by way of "cautions" being issued.

5.11 (1) Should a period longer than 21 days from the time a penalty notice is first issued be allowed to pay the penalty amount?
(2) Can the time-to-pay system be improved?

Comment
Experience suggests the 21 days for payment from the date of service is sufficient. However it is noted that section 233 of the *Protection of the Environment Operations Act* allows 28 days to pay but this is considered an anomaly within the penalty notice legislation.

Currently 21 days is allowed on the initial notice and a further 28 days on the penalty reminder notice. One could argue that the initial period should be the longer period and the reminder the shorter period, which is the normal practice for overdue payments. However the cost of system, process and printing changes would not justify such a change when the overall period would remain the same.

Any system can be improved given resourcing and funding. The part payment and time to pay arrangements are working well but could be improved if these arrangements could be entered into by clients through Centrepay direct debit for all outstanding fines.

Two initiatives that might improve the time to pay arrangements are firstly, the court's consideration if a person is able to pay their fine at the time of sentence and secondly the ability for SDRO to refer the matters back to court for alternate sentencing if SDRO becomes aware that the person's ability to pay the imposed fines is insufficient. The latter would especially apply to serial offenders.

5.12 Could the operation of fines mitigation mechanisms, including the recent Work Development Order reforms, be improved?

Comment
Work Development Orders (WDOs) are only half way through the trial period but even in that short time some improvements have been implemented which have received favourable comment from DJAG and various advocacy agencies. It should be recognised that WDOs come more into play at the fine enforcement stage rather than the penalty notice stage. This includes Court imposed fines.

Whilst the fines mitigation mechanisms are constantly reviewed, within legislative constraints, a more important improvement could be the examination of alternative sentencing as opposed to the continued application of additional financial penalties.

5.13 Should information about penalty notice history be provided to courts for the purpose of determining sentence for any offence?

Comment
Maybe not for "any" or every offence but certainly where there is a history of recidivist behaviour. Secondly there needs to be an ability to cease penalty notices and place a client before the Court where penalty notices have not proven to be effective in achieving behavioural change nor compliance with the law.

Having said that there are some doubts on whether penalty notice histories could be considered a 'record of previous convictions' within s 21A of *the Crimes (Sentencing Procedure) Act.* Further, SDRO could not guarantee that paid penalty notices histories are complete, for example, an owner of a motor vehicle may have a number of matters recorded against his or her vehicle registration details but may not be personally liable for those offences as responsibility for the offences has been transferred to the actual offender under operator onus provisions.

5.14 Are there other issues relating to the consequences of payment of the penalty notice amount?

Comment
Issues in this regard are primarily limited to demerit points offences. In the absence of the nomination of an actual driver by the registered vehicle owner if a penalty notice is paid the demerit points apply to the registered owner. Instances do arise where a spouse, partner, relative, friend, employee etc incur a fine and pay it without the owner's knowledge and the points remain with the owner.

This may occur in good faith, by deceit because they don't want the vehicle owner to know about the penalty or vindictive intent which can happen in unsettled domestic situations.

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?

Comment
It is suggested that education and prevention are more effective measures than issuing penalty notices. However there must be a consequence for non compliance with the law. As mentioned earlier whilst the law dictates an offence there is an expectation that that will be pursued.

Penalty notices can apply for conduct regardless of whether the recipient was a child or adult. For instance a 12 year old can hold a boat or watercraft licence so it would seem appropriate the holder of such a licence be accountable for the licence in the same way as an adult licence holder.

Similarly young people can receive penalty notices for bicycle offences the same as adults due to the road safety implications. If the aim is reduce road trauma through enforcement it would appear logical to focus on the group probably most vulnerable to that trauma, ie; young people who do not wear bicycle helmets, in an attempt to change behaviour.

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?

Comment
This discretion currently exists.

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?

Comment

This currently is not the case in NSW nor other jurisdictions.

From a pure logistical perspective varying penalty amounts for the same offences would see double the number of offences purely to enable automation.

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?

Comment
The opportunity for a review exists in all cases but financial hardship alone is not considered adequate grounds for leniency. For example an offence of shoplifting – such a suggestion would equate to "I stole the goods because I couldn't pay for them, I am now seeking leniency because I still can't pay". In such a circumstance there appears to be a lack of incentive to change behaviour.

The utility of allowing an internal review of a penalty notice on the grounds of a child's inability to pay would raise a number of questions. How would such grounds be established? The child's income or the parent's or some other income stream? What evidence of an inability to pay would be accepted if the child or young person has no income nor bank account.

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?

Comment
Again how would a cap on the number of penalty notices or total penalty notice amount for a child be administered? How would an issuing officer have knowledge of these matters? Would this mean SDRO would be obliged to develop and maintain some sort of data tracking system across a person's childhood years? Or would this amount to a quasi criminal offence record having to be maintained ?

6.9 Should driver licence sanctions be used generally in relation to offenders below the age of 18 years?
6.10 Should driver licence and registration sanctions be applied to people under the age of 18 years for non-traffic offences?

Comment
Experience has demonstrated that driver licence and vehicle registration sanctions are the most effective enforcement tools. It is acknowledged that in some cases the effect of these sanctions may fall disproportionately across people under the age of 18. However, it is suggested that holding a driver licence is a privilege coveted by most young people so the threat of losing that privilege, through sanctions, provides a high incentive to maintain safe driving practices and a law abiding ethic.

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?

Comment
Penalty notices are dealt with by SDRO as individual matters. When penalty notices remain outstanding and progress to enforcement stage they become client centric and multiple outstanding fines can be combined into a single enforcement

order (EO). However for instance a single penalty notice may progress to a single EO 12 months ago and now another penalty notice has similarly progressed to enforcement. In that case yes a separate EO will issue for the latter outstanding matter.

Separation of treatment of the different types of enforced fines could lead to confusion and a duplication of effort and interactions between a client and SDRO. Similarly this could result in a further imposition and inconvenience to the client and advocacy agencies acting on their behalf.

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?

Comment
Fines written off by SDRO can be re-activated should the client re-offend or come under notice within a 5 year period. Any such matters are considered on a case by case basis and there does not appear to be any justification for reducing that period.

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?

Comment
This research paper was actually submitted in 2005 and lead to a Government review of the Infringement system in NZ.

The sentiments expressed in the New Zealand Ministry of Justice paper whilst admirable do present difficulties in the administration of the proposals. SDRO relies on automation through the application of computer technology to continually improve its processing outcomes. The objectives of an interventionalist approach suggested in the New Zealand model could not be achieved by SDRO without a directional shift away from technology toward individual case management and the attendant staffing and resources which would be required. Or alternatively this case management type approach could more appropriately fall within the ambit of one of the "welfare" agencies.

I am advised that the full interventionalist approach was not adopted in NZ.

The changes resulting from the government review lead to the introduction of time to pay arrangements for outstanding fines, new enforcement powers and the maintenance of same level fines for both young people and adults. Amongst the new powers were the introduction of the "Pay or Stay" requirement where people are prevented from leaving the country if they have outstanding fines until those fines are settled, increased information sharing between NZ agencies and the introduction of driver licence stop orders, which equate to driver licence sanctions here in NSW.

In addition wheel clamping of vehicles is utilised in NZ for outstanding fines as well as confiscation and disposal of motor vehicles.

Currently further legislative amendments are before the NZ Parliament to allow for seizure and disposal of third party owned vehicles used in the continued non compliance of the law, credit rating reporting for fines and priority recoupment of fines ahead of other outstanding debts.

These are all initiatives that may warrant consideration for introduction in NSW following the NZ experience.

7.1 Should penalty notices be issued at all to people with mental illness or cognitive impairment? If not, how should such people be identified?
7.2 (1) Should alternative action be taken in response to a penalty notice offence committed by a person with mental illness or cognitive impairment? If so, what is an appropriate alternative?
(2) Do the official caution provisions of the Fines Act 1996 (NSW) provide a suitable and sufficient alternative?
7.3 Should a list be maintained of people who are eligible for automatic annulment of penalty notices on the basis of mental health or cognitive impairment? If so:
(1) What should the criteria for inclusion on the list be?
(2) How should privacy issues be managed?
(3) Are there any other risks, and how should these be managed?

Comment
The Attorney General's Guidelines address these issues to a degree. SDRO would welcome alternatives for dealing with outstanding debts for the vulnerable members of the community but this will require legislative support.

7.4 (1) Should fines and penalty notice debts of correction centre inmates with a cognitive impairment or mental illness be written off? If so, what procedure should apply, and should a conditional good behaviour period apply following the person's release from a correctional centre?

Comment
The *Crimes (Administration of Sentences) Act* was amended to permit SDRO and the Department of Corrective Services to share information so that debt obligations could be more properly assessed and managed including time to pay arrangements and writing off fine debt for inmates. These are dealt with on a case by case basis.

7.5 Should pro-rata reduction of the penalty notice debt (and/or outstanding fines) of offenders in custody be introduced?
7.6 Should some other strategy be adopted in relation to offenders who have incurred penalty - or fine - debt? If so:
(1) In relation to which groups should any such strategy be adopted, and

(2) What strategy or strategies would be appropriate?

Comment
Imprisonment for fine default ceased in NSW many years ago. To allow inmates who have received a sentence for specific crimes to also "cut out" outstanding fines could be interpreted as "double dipping". The use of imprisonment in other Australian jurisdictions for outstanding fines is considered by them as a deterrent for non compliance when all other options have not proven successful in achieving changed behaviour.

7.7 How should victims' compensation be dealt with in any proposed scheme?

Comment
The amount levied for victims compensation is taken to be a fine imposed by a court where a person liable to pay the levy was convicted. The sensitivity surrounding victim's compensation suggests it should remain an amount to be regarded as a primary debt obligation.

7.8 (1) Should a concession rate apply to penalty notices issued to people on low incomes? If so, how should "low income" be defined?
(2) Should a person in receipt of certain Centrelink benefits automatically qualify for a concessional penalty amount? If so, which benefits?
7.9 If a concession rate were applied to people on low incomes, should the penalty amount be reduced by a fixed percentage or determined by some other formula?
7.10 How could such a system be administered simply and fairly?

Comment
Unfortunately there is a fundamental issue here in that the suggestion of concession rates for penalties implies that "I can't afford to pay but I can offend at a reduced rate". Conversely the wealthy can take the view "I can afford to pay so I can offend more".

There are quite significant difficulties in the administration of a reduced rate scheme. As previously mentioned, processing penalty notices is a high volume operation within strict statutory timeframes. In order to ascertain whether a person was eligible for a concession rate of penalty it would require access to Centrelink and/or Australian Taxation Office records or alternatively sight some evidence of eligibility.

Herein lies a significant stumbling block to any such scheme due to the unavailability of access to the information held by those Commonwealth agencies.

Further, sighting evidence of eligibility would require contact with SDRO which, as noted in the Paper, may itself be beyond the capabilities of some vulnerable people.

The ability of SDRO to access information held by Centrelink would greatly assist SDRO in being able to tailor communications and settlement options to suit those clients.

7.11 (1) Are the write-off provisions of the Fines Act 1996 (NSW) effective in assisting vulnerable individuals deal with penalty notice debts?
(2) What improvement, if any, could be made to the write-off procedures under the Fines Act 1996 (NSW)?

Comment
The biggest issue confronting SDRO is that we can only act on what we know. It can be quite sometime after fines are incurred before SDRO is alerted to the fact that a client is in fact a vulnerable individual and this is usually as a result of some intervention by a relative, support / advocacy agency or medical practitioner. This is not something that SDRO is alerted to by either the issuing agencies nor the Courts, again probably because they are not aware.

Therefore the fines are already old and are within the realms of enforcement.

Once SDRO does have the facts then appropriate action can be taken and that may include the writing off of fines.

7.13 How effective are the review provisions for people with a mental health or cognitive impairment?
7.14 Given that it may be difficult for some vulnerable people to make a request in writing for review of a decision to issue a penalty notice, what practical alternatives could be introduced either to divert vulnerable people from the system or to support review in appropriate cases?

Comment
SDRO has established a network of over 70 advocacy agencies which can make direct contact to resolve issues on behalf of their clients.

7.15 Should the requirement to withdraw a penalty notice following an internal review where a person has been found to have an intellectual disability, a mental illness, a cognitive impairment, or is homeless, be extended to apply specifically to:
(1) Persons with a serious substance addiction?
(2) In "exceptional circumstances" more generally?

Comment
Approaches from clients are considered on a case by case basis. There would not appear to be any justification for general extensions as suggested.

7.16 (1) Is the State Debt Recovery Office's Centrepay Program helping people receiving government benefits deal with their outstanding fines and penalty notice amounts?
(2) Are there any ways of improving this program?

Comment
Yes the program is proving to be effective and has received widespread support from advocacy agencies. The program could be improved through the ability of Centrelink centres to be able to sign clients up and also increased effort through Court Registrars to promote this option for Court imposed fines.

Increased information access between Centrelink and SDRO would certainly enhance the operation of this program.

8.1 Should there be formal principles for determining whether a particular criminal offence is suitable to be dealt with by way of Criminal Infringement Notice? If so, what should those principles be? Should they be different from the principles that apply to penalty notice offences generally?
8.2 Are there any views about the recommendations in the 2009 Ombudsman's Review of the impact of Criminal Infringement Notices on Aboriginal communities and their implementation?
8.3 (1) Are Criminal Infringement Notices having a net-widening effect, in particular in relation to the offences of offensive language and offensive behaviour? If so, what measures should be adopted to prevent or minimise this effect?
(2) Should official cautions (governed by police guidelines) be available as part of the Criminal Infringement Notice regime, as recommended by the Ombudsman?
(3) Should the offences of offensive language and offensive conduct continue to be among the offences for which Criminal Infringement Notices may be issued?
8.4 (1) What steps should be taken to address the issue of under-payment of criminal infringement notices issued to Aboriginal persons?
(2) Should recipients of criminal infringement notices be able to apply for an extension of the prescribed time to elect to have the matter dealt with by a court? If so, under what circumstances?
8.5 Should Criminal Infringement Notices be issued at all to persons with a cognitive impairment or mental illness? If so, should police have the discretion to issue a Criminal Infringement Notice, even after an arrest has been made, if satisfied that the offender has a support person who has understood the offence and consequences of the Criminal Infringement Notice as recommended by the Ombudsman?
8.6 Should police have the power to withdraw a Criminal Infringement Notice if subsequently satisfied of the vulnerability of the person to whom the Criminal Infringement Notice was issued?

Comment
SDRO provided a detailed response to the Ombudsman's report on the operation of the CINS program. That input along with input from other agencies is the subject of consideration by a Joint Working Party established by Cabinet and chaired by DJAG. It is considered duplicative to again canvas those same issues under this review.