
Fines and young people (or, all you need to know about the SDRO)

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1 Introduction

Fines – and the procedures for recovering them if they are not paid in time – have become a huge problem for young people in New South Wales.

The trouble starts with the alarming number of infringement notices that are issued against young people. With no means to pay and little understanding of their options, many young people are left to deal with a draconian enforcement system.

Enforcement of unpaid fines is governed by the *Fines Act 1996* (referred to in this paper as “the Act”). The Act commenced in January 1998 and was accompanied by the creation of the State Debt Recovery Office (SDRO), which has extensive powers to enforce fines.

Under the previous system, it was relatively easy for fine defaulters to turn their unpaid fines into community service or to “cut them out” in prison or detention. Under the current regime, which focuses on revenue collection, the situation is very different.

Young people are particularly affected by the SDRO's power to impose sanctions on driver licences. This happens at an early stage in the enforcement process and is difficult to reverse without paying the fines in full. It is common for our clients to feel they will never be able to pay off their fines (which often run to thousands of dollars), and to abandon all hope of getting a licence. In these circumstances they are often tempted to drive unlicensed, incurring further fines and lengthy disqualification periods.

Fortunately, there is some good news. The SDRO, formerly very inflexible, is now showing more sensitivity towards people suffering genuine hardship. It is making efforts to educate the public about their options and to establish dialogue with community organisations. There have also been some recent amendments to the Act. However, most young people still find the system virtually impossible to negotiate without competent advice and advocacy.

This paper provides a step-by-step guide to the fine enforcement system and some (hopefully useful) tips for negotiating on behalf of your client.

2 Recent developments

2.1 *Fines Act* review

The Office of State Revenue conducted a review of the Act in 2002. Submissions were received from, and consultations undertaken with, a range of people and agencies. The report was tabled in Parliament in November 2002. Copies may be obtained from the Office of State Revenue (as far as I know, it is not available on-line).

The review report does not make recommendations, although it does discuss (and implicitly endorse) various suggestions raised in submissions and consultations. These suggestions include

more flexibility in waiving fees and enforcement costs, an amendment of the provision concerning licence sanctions and under 18s, and a total prohibition on imprisonment for juvenile fines.

2.2 Amendments to *Fines Act*

The *Fines Amendment Act 2004* was passed through the Legislative Council on 22 June 2004 (with very little time for public consultation) and assented to on 6 July 2004.

Some amendments commenced on 1 September 2004, and further amendments have been proclaimed to commence on 1 January 2005.

In my view, most of the amendments are positive, but do not go far enough. Summaries of the amendments are attached as Appendices A and B.

3 The scope of the *Fines Act*

The Act applies to infringement notices and court-imposed fines. Court costs, victims compensation levies, court-ordered witness expenses, and amounts payable under costs orders are also deemed to be “fines” for the purposes of the Act (s4).

There are also provisions for recovery of forfeited bail money (Part 7). The Act does not apply to court-ordered compensation or other civil debts.

Fines that are not paid by the due date (or within such extra time as may be allowed) are referred to the State Debt Recovery Office for enforcement action. This may include:

- driver licence suspension/cancellation
- civil enforcement (including garnishee and property seizure orders)
- community service
- imprisonment (as a last resort).

The Act also provides for fines to be paid by instalments, deferred, annulled or remitted.

4 Infringement notices

4.1 Infringement notices and young people: the scope of the problem

No matter how user-friendly the fine enforcement system becomes, there is a fundamental problem with the number of infringement notices which are issued against young people. The fine amounts are often significantly higher than a court would impose and are beyond the means of most young people.

Figures from the NSW Bureau of Crime Statistics and Research show that almost 463,000 infringement notices were issued in 2002 – one fine for every 14 people in NSW. About 35% of these were issued to 14 - 24 year olds. This is a matter of concern, given that this age group represents only about 15% of the population (According to the Australian Bureau of Statistics, 15-24 year olds comprised 14.2% of Australia’s population in 2001).

The 14-24 age group was vastly over-represented when it came to public transport offences, bicycle offences, disobeying police directions, and possession of knives. Fines can range from \$49 for riding a bike without a helmet, to a whopping \$550 for carrying a knife or blade.

In 2002, almost 27,000 infringement notices were issued to people aged 10-17. This compares to 9,263 police cautions, 1,103 youth justice conferences and 8,547 Children's Court appearances (NSW Bureau of Crime Statistics and Research, Recorded Crime Statistics 2002 and Criminal Court Statistics 2002).

Most children's advocates would agree that the heavy use of infringement notices undermines the diversionary philosophy of the *Young Offenders Act* and the rehabilitative focus of the juvenile justice system in general. Unfortunately, many infringement notices are issued by officials such as transit police and council rangers, who are not police and have no power to warn or caution under the *Young Offenders Act*.

4.2 Procedures for the issue and enforcement of infringement notices

Procedures for the issue and processing of penalty notices (infringement notices) are set out in ss 19-39 of the Act.

Section 53 of the Act provides that the penalty notice procedure does not apply to children who were less than 10 years old at the time of the alleged offence. This of course is consistent with the minimum age of criminal responsibility. In practice, the NSW Police Handbook directs officers not to issue infringement notices to children under 14.

Infringement notices are processed by the Infringement Processing Bureau (IPB), formerly a part of the NSW Police, but now a division of the Office of State Revenue.

If the fine remains unpaid after 21 days (and no court election has been made, as to which see below) the IPB will issue a Penalty Reminder Notice. This affords a further 28 days to pay the fine or to make a court election.

Apart from the extra time provided when a Penalty Reminder Notice is sent, the IPB does not grant extensions of time to pay and does not allow payment by instalments. Those who can't afford to pay are faced with the dilemma of waiting until the fine goes to the SDRO (and incurring a further \$50) or electing to go to court in the hope they can get time to pay and maybe a reduction in the fine.

If the fine is still not paid, the IPB refers the matter to the SDRO for the issue of a penalty notice enforcement order.

4.3 Contesting an infringement notice

There are several options for people who wish to contest an infringement notice:

- (a) Submit the court election form which is on the back of the infringement notice. We often advise clients to complete the court election even if the offence is admitted. In our experience, the court will usually reduce the fine considerably, or impose another option such as a caution (or, for adults, a section 10 dismissal). There are of course some risks associated with this strategy. Firstly, the fine may be increased (although this is unlikely for young and disadvantaged people). Secondly, older children and adults risk a conviction being recorded.

Thirdly, for some traffic offences (eg speeding more than 15 km/h over the limit, unlicensed driving) mandatory disqualifications apply if dealt with by a court.

- (b) It is also possible to make representations to the Infringement Processing Bureau for the withdrawal of the infringement notice. In our experience, these representations are rarely successful, as the IPB has very limited discretion. Representations are much more likely to succeed if submitted to prosecutors after making a court election.
- (c) For parking or camera-detected traffic fines, if the owner was not in control of the vehicle at the time, he or she may submit a statutory declaration nominating the driver.

All of these options must be exercised before the matter is referred to the SDRO. If a fine defaulter wishes to contest a fine that has already gone to the SDRO, an annulment application must be made (see below).

As of 1 September 2004, the time limit for commencement of court proceedings for penalty notice offences has been extended from 6 months to 12 months (s37A), unless there is specific legislation providing for a longer period (eg the *Rail Safety Act* provides for two years).

5 Court-imposed fines

When imposing a fine, the magistrate or judge must take into account the offender's capacity to pay (s6), but has no power to allow more than 28 days to pay (s7). Written notice of the fine is to be given to the offender (s9).

The offender may apply to the registrar of the court for further time to pay (ss 10, 11). In practice this means going to the court counter and filling in a form with details of the offender's financial circumstances. Most Local and Children's Courts will readily grant time to pay by instalments.

If the fine remains unpaid after time to pay has expired, the court refers the fine to the SDRO for the issue of a court fine enforcement order (ss 12-17).

6 SDRO referral and enforcement orders

6.1 Issue of enforcement orders

It can take about 3 months after the due date (sometimes even longer) for an unpaid fine to reach the SDRO. Once it arrives, an enforcement order is made and a further \$50 enforcement cost is added to each fine (or, if several fines are referred together, to each set of fines).

There are two types of enforcement order: court fine enforcement orders (which are covered by ss 12-17) and penalty notice enforcement orders (ss 40-52). The effect is substantially the same.

The procedure for issue and service of enforcement orders is covered by ss 59-64. The SDRO will send out a notice advising the fine defaulter of:

- (a) the fact that an enforcement order has been made;

- (b) the amount now payable;
- (c) the due date for payment (generally 28 days after the issue of the enforcement order);
- (d) possible enforcement action (and further costs) that may ensue if payment is not made in time;
- (e) information about the review options including time to pay, annulment, withdrawal and write-off

6.2 Options for fine defaulters

There are various options available to a person who has received an enforcement order (see part 7 of this paper). Most of these options can be exercised even after the matter has progressed through several stages of enforcement action. However, it is in the fine defaulter's interests to take action as soon as possible to avoid the cost and inconvenience of enforcement action.

6.3 Enforcement action

If a fine defaulter ignores an enforcement order or fails to make regular payments under a time-to-pay arrangement, the SDRO proceeds to enforcement action. There are four stages (which are discussed in parts 8-11 of this paper).

7 Options for fine defaulters receiving enforcement orders

7.1 Time to pay

A fine defaulter may apply to the SDRO for time to pay at any time after a fine enforcement order is made and before a community service order is issued (s100).

The fine defaulter must fill in a form which includes an affidavit of financial circumstances and a proposal as to how much he or she wishes to pay each week, fortnight or month.

The SDRO will accept the fine defaulter's proposal if they think it is reasonable. This depends on the fine defaulter's financial situation and the number and value of fines outstanding. According to the SDRO, a reasonable period for paying off a fine might extend up to 18 months or 2 years (although some of our clients have been allowed to enter time-to-pay arrangements stretching over several years). The SDRO says that there is a minimum instalment amount they will accept, but they do not publicise this figure.

If a time-to-pay arrangement is made, the SDRO will send the fine defaulter a payment book and will expect payment to be made in regular instalments. Payments can be made by cheque or money order, by credit card, in person at the SDRO or at a post office. There is currently no facility for direct debit but we understand that fine defaulters will soon have the option to have fine payments deducted directly from their Centrelink benefits.

If the SDRO refuses a time-to-pay application, the fine defaulter may apply to the Hardship Review Board (HRB), which was introduced by the *Fines Amendment Act* on 1 September 2004. The HRB consists of representatives for the Office of State Revenue, the Treasury and the Attorney-General's Department (unfortunately there is no community representative). The

HRB may direct that enforcement action be suspended pending its review. Upon review the HRB may direct the SDRO to allow further time for the payment of the fine, or to write off any unpaid fine (ss 101A-101C).

7.2 Annulment of penalty notice enforcement orders

A person may wish to contest an enforcement order because they believe they are not guilty of the alleged offence or that the fine is otherwise unreasonable. In some cases a person may not even know that a fine has been imposed until they receive an enforcement order. In other cases, the person may have been aware of the fine but have not had the opportunity to do anything about it. We are usually successful in making annulment applications for young people who are homeless or who have a disability or mental illness.

A person may apply to the SDRO for annulment of a penalty notice enforcement order (this procedure is covered by ss 48-52). As of 1 September 2004, there is no longer a 12-month time limit. Annulment applications to the Minister have also been abolished and now all applications are made to the SDRO.

There is a prescribed form and a fee of \$50, which may be waived. We are usually able to get the fee waived for our clients on the grounds of financial hardship by submitting an affidavit of financial circumstances. Under recent amendments, if the applicant has paid the fee, the SDRO may (but is not required to) refund the fee if the annulment application is successful (section 49(7)).

The SDRO must annul the enforcement order if it is satisfied that:

- (a) the person was not aware that a penalty notice had been issued until the enforcement order was made,
- (b) the person was otherwise hindered by accident, illness, misadventure or other cause from taking action in relation to the penalty notice,
- (b1) a question or doubt has arisen as to the person's liability for the penalty, or
- (c) having regard to the circumstances of the case, there is other just cause why the application should be granted (section 49(2))

If a person making an annulment application raises a question of liability, the SDRO will refer the application back to the prosecuting authority for their consideration. This allows the prosecuting authority to consider whether they wish to proceed with a prosecution. If so, a court attendance notice will be issued; if not, the fine will be withdrawn (section 49A).

If a penalty notice enforcement order is annulled, the matter will proceed as if the person has made a court election. For limitation purposes, proceedings are deemed to have been commenced when the IPB makes the application for the penalty notice enforcement order (s51). As of 1 September 2004, the limitation period for commencement of court proceedings for penalty notice offences has been extended from 6 months to 12 months, unless there is specific legislation providing for a longer period (s37A).

If the SDRO refuses an annulment application, the applicant may appeal to the Local Court. The Act has been amended to specify that the time limit for appeals is 28 days (section 50).

7.3 Withdrawal of court fine enforcement orders

There is no procedure allowing the SDRO or the Minister to annul a court fine enforcement order. However, the SDRO may withdraw a court fine enforcement order in certain circumstances (eg is satisfied it was made in error) and must do so if directed by the court (s17).

A person who wishes to contest a court-imposed fine (whether or not it has reached the SDRO) may:

- (a) apply for an annulment, if the fine was imposed in the defendant's absence by a Local or Children's Court within the preceding 2 years (*Crimes (Local Courts Appeal and Review) Act* s4);
- (b) if ineligible to apply for annulment under s4, and there is a question about liability for the fine, apply to the Attorney-General for annulment (*Crimes (Local Courts Appeal and Review) Act* s5); or
- (c) exercise the usual appeal rights, if still within time.

7.4 Deferral and cancellation (write off) of fines

The SDRO has powers to write off unpaid fines for people who do not have the means to pay and are unable to undertake community service work (s101). Although the Act uses the term "write off", the SDRO no longer uses this term due to confusion as to its meaning. Instead, the SDRO literature refers to "deferral and cancellation".

There is provision for the making of guidelines for writing off fines, but these do not have to be made public (s120). Although the SDRO does not publish its guidelines, there is an information sheet (available on their website) on how to apply for "deferral" and what sort of information must be provided.

Fines may be *deferred* for five years if the fine defaulter can demonstrate extreme financial hardship, usually combined with a serious illness or disability. During this period, no payments need to be made and enforcement action is stayed. As long as the person does not incur further enforcement orders, and their circumstances do not change significantly for the better, the fines will be *cancelled* (written off entirely) after 5 years.

It is not easy to obtain a 5-year deferral, but it is possible if the applicant's financial hardship is combined with a serious illness or disability. Applications must be in writing (there is no prescribed form) and should be accompanied by supporting documents such as psychiatric/medical reports, support letters and an affidavit of financial circumstances. When considering a deferral application, the SDRO does not take into account any issues about the person's liability for the fine.

As with time-to-pay applications, refusal of a "write-off" application may be appealed to the Hardship Review Board.

7.5 Stay of enforcement

For people who are in serious financial difficulty, but do not meet the criteria for a 5-year deferral, the SDRO may be prepared to stay enforcement for up to 12 months. The fine defaulter does not have to pay anything, and no enforcement action will be taken, during this

period. At the end of the period the fine defaulter will have to submit a further affidavit of financial circumstances and the SDRO will reconsider the situation.

The SDRO will readily grant stays to young people who are trying to get their lives in order and gain employment. Although it doesn't make the fines disappear, it gives the young person a bit of breathing space.

The SDRO routinely grants stays to people who are serving prison sentences – usually until three months after the inmate's release date.

7.6 Remission of fines

The Governor has power to remit fines under s123 of the Act. We have no recent experience of making such an application.

8 Enforcement action stage 1: referral to the Roads and Traffic Authority (ss 65-70)

If the fine is not paid by the due date (and the fine defaulter has not applied for time to pay or one of the other options discussed above) the fine is referred to the Roads and Traffic Authority. [This is a change from the pre-*Fines Act* system, when only traffic fines went to the RTA.]

Various "RTA sanctions" may be imposed, and a cost of \$40 is levied for each sanction imposed.

8.1 Suspension and cancellation of licences and registrations

If the RTA can match the fine defaulter's details against a licence or vehicle registration, it will suspend the licence or registration without notice. The suspension will be lifted if the fine defaulter pays the full amount or the SDRO so directs. However, the SDRO is becoming more flexible with people who are in real hardship and/or are making genuine efforts to pay off their fines.

If the fine remains unpaid for 6 months, the RTA will cancel the licence or registration. The cancellation remains until the fine is paid or the SDRO directs that it should be lifted.

The RTA may also refuse to deal with the fine defaulter regarding such things as issuing or renewing licences or registrations, transferring registrations, issuing number plates and licence testing (but *not* proof of age cards). This "customer business restriction" will apply to fine defaulters even if the RTA does not hold a licence or vehicle registration in the name of the fine defaulter.

8.2 Special provisions for under 18s

The Act provides that "enforcement action with respect to a fine defaulter's driver licence is not to be taken" if the fine defaulter was under 18 and had never had a licence when the fine was imposed (s65(3)).

The SDRO interprets this to mean that if the fine defaulter has obtained a licence *after* incurring the fine, but *before* the fine is referred to the SDRO, cannot suspend, cancel or refuse to renew it. However, the RTA can still refuse to issue a *new* licence for a young person who has not

obtained one in the interim period between incurring the fine and referral to the SDRO. [We have been informed that this interpretation is based on Crown Solicitors' advice, but given the privileged nature of the advice we have been unable to obtain any further details.]

An amendment to s65 is due to take effect on 1 January 2005. From this date, the SDRO will no longer be able to take "enforcement action with respect to a fine defaulter's driver licence" in relation to non-traffic fines incurred by under-18s. However, this does not really improve the position for young people. Although the RTA will not be able to suspend, cancel or refuse to renew a licence for a non-traffic offence, the RTA will still be able to cancel registration, refuse to issue a new licence, etc.

8.3 Lifting of RTA sanctions

Although the "official line" is that fines must be paid in full before RTA sanctions can be lifted, the SDRO is now prepared to lift sanctions if:

- (a) a person has made a number of regular payments (usually 6 or more);
- (b) can demonstrate a compelling need for a licence (eg employment or domestic circumstances); or
- (c) needs to sell their car to pay off the fines.

We have succeeded in having RTA sanctions lifted for many of our clients. We write a letter to the SDRO outlining the client's circumstances and need for a licence, accompanied by an affidavit of financial circumstances and (if possible) a support letter from a youth service, employer or employment agency.

If the SDRO grants a stay or deferral (discussed above), they are usually prepared to lift licence sanctions if asked to do so.

Legislative amendments proclaimed to commence on 1 January 2005 provide that licence sanctions will automatically be lifted after 6 regular payments on a time-to-pay agreement.

If the SDRO agrees to lift the sanctions, suspended licences and registrations will be restored automatically (unless they have expired in the interim). If the licence or registration has been cancelled, the person will have to re-apply at the RTA.

Even if the SDRO has advised that sanctions have been lifted, a person should not attempt to drive until they have checked with the RTA to make sure everything is in order.

If the lifting of sanctions is linked to a time-to-pay agreement, the sanctions will be swiftly re-imposed if the fine defaulter falls behind with payments.

9 Enforcement action stage 2: civil enforcement (ss 71-77)

If the fine remains unpaid after licence/registration cancellation, or the RTA was unable to match the fine to a licence or registration, the next stage is civil enforcement.

There are several types of civil sanctions, which are outlined below. A \$50 cost is added to the fine at each stage of civil enforcement. Sheriff's costs may also be added if applicable.

It is rare to see civil enforcement being pursued against children, but it is not beyond the realm of possibility.

9.1 Property seizure order

A property seizure order allows the Sheriff to repossess assets such furniture, electronic equipment or vehicles within certain guidelines.

The Sheriff, or another person executing the order, may require a person whom they reasonably suspect to be the fine defaulter to give their name and address, and to produce identification. Failure to do so without reasonable excuse is an offence (maximum penalty: \$1,100). The Sheriff must first warn the person that failure to give details is an offence.

9.2 Garnishee order

A fine defaulter's wages or bank account may be garnisheed. A certain amount of money must be left to cover the person's living expenses (this amount changes from time to time).

Centrelink benefits generally cannot be garnisheed. However, if a Centrelink payment is left untouched in the person's account for more than 4 weeks, it is considered "savings". If a payment is withdrawn from the account and then re-deposited, it is considered a "miscellaneous deposit". In both of these cases, the amount may be garnisheed.

9.3 Charge on land

The fine enforcement order may be registered as a charge on land where the amount exceeds \$1,000.

9.4 Examination summons

An examination summons may be issued, requiring the fine defaulter to go before a Local Court to provide information about their assets and income.

10 Enforcement action stage 3: community service order (ss 78-86)

10.1 Eligibility

A Community Service Order (CSO) will be made by the SDRO if it is satisfied that:

- (a) civil enforcement has not been successful, or is unlikely to be successful; and
- (b) the fine defaulter is capable of performing work under the CSO (this assessment will be made by the Probation and Parole Service or the Department of Juvenile Justice).

10.2 Performance of work

The work to be performed is calculated at the rate of 1 hour for every \$15, up to a maximum of 300 hours (for an adult) or 100 hours (for a child) on any one order. It is the person's age at the time of the CSO being imposed (not at the time the fine was imposed) that is relevant. Adults perform their fine-default CSOs cumulatively; children do them concurrently (s81).

Instead of completing the work, the fine defaulter may pay the full amount outstanding under the CSO at any time.

10.3 Revocation

If the fine defaulter fails to comply with the CSO, the SDRO may revoke the order and notify the fine defaulter, who may apply to have the revocation reversed.

If a CSO is revoked, this will normally mean a warrant is issued and the fine defaulter faces imprisonment.

10.4 Expedition of CSOs

A commonly-asked question is “Can I apply to turn my fines into community service instead of paying off my fines?”. The answer is, generally, no.

The SDRO has the power to decide that civil enforcement is unlikely to be successful, and progress to the issue of a CSO. However, this is rarely done – except in a couple of places (mainly Aboriginal communities) where the SDRO is piloting the issue of fine default CSOs.

The reluctance to expedite the issue of CSOs stems partly from the revenue-collection objective of the fine enforcement regime. There is also a lack of community service work available in many areas, and the Probation and Parole Service already has difficulty placing people on court-ordered CSOs.

11 Enforcement action stage 4: imprisonment (ss 87-97)

11.1 Issue of warrant

If a CSO is revoked, the SDRO may then issue a warrant of commitment for the imprisonment of the fine defaulter.

A person will not be imprisoned for defaulting on juvenile fines only, or if they have a disability which makes them ineligible for a CSO.

11.2 Execution of warrant

Under the old fine enforcement regime, police were required to give a fine defaulter seven days’ notice before executing a warrant. This is no longer the case. However, in some circumstances, police may delay the execution of the warrant to enable the fine defaulter to pay the fine or seek cancellation of the warrant.

A police officer executing a warrant may require a person whom they reasonably suspect to be the fine defaulter to give their name and address, and to produce identification. Failure to do so without reasonable excuse is an offence (maximum penalty: \$1,100). The police officer must first warn the person that failure to provide details is an offence (s104).

The fine defaulter can avoid execution of the warrant by paying the full amount outstanding.

11.3 Term of imprisonment

The term of imprisonment may be served by full-time imprisonment or by periodic detention. The current rate is one day’s imprisonment for every \$120 owing.

Multiple terms of fine default imprisonment are served consecutively, but are concurrent with any term of non-fine default imprisonment. This means that, in theory, people can still cut out

their fine default warrants while they are serving a sentence. However, this is only possible if a warrant has already been issued. As far as we know, it is not possible to get the SDRO to expedite the issue of a warrant so a person can conveniently cut out their fines.

11.4 Special provisions for under 18s

If the fine defaulter was under 18 at the time of the offence (and under 21 when charged or issued with a penalty notice) they cannot generally be imprisoned or detained for defaulting on the fine.

However, if a person also has warrants for defaulting on adult fines, it appears they will serve time in an adult prison for the juvenile as well as the adult fines (s92).

12 Contact details and further information

12.1 Infringement Processing Bureau

Address: PO Box 999, Hunter Region MC 2310 (general correspondence)

PO Box 777, Hunter Region MC 2310 (court elections)

Phone: 1300 138 118

Fax: (02) 4937 9088

Website: www.infringements.nsw.gov.au

We have had significant problems in dealing with the IPB. The website warns that delays can be experienced due to peak periods on the 1300 number. It is common to experience delays of 15-20 minutes, or find the line engaged. The IPB can also take several months to answer correspondence.

The website provides basic information about their procedures, downloadable court election and statutory declaration forms, and facilities for payment of fines by credit card.

12.2 State Debt Recovery Office

The SDRO is now part of the Office of State Revenue, having been transferred from the Attorney-General's Department a couple of years ago. It is a large and very busy organisation which has approximately 900,000 "customers" (fine defaulters) on its books at any time.

The SDRO deals with up to 11,000 phone calls per day. Not surprisingly, callers are often kept waiting on hold for some time, but the automated system does callers the courtesy of telling them where they are in the queue!

Most of the call centre staff are relatively junior and inexperienced, and are not in a position to deal with complex requests or inquiries. They are likely to give fine defaulters standard information (which is along the lines of "pay up or else") rather than fully explaining their options.

The SDRO has set up a very useful "hotline" arrangement for legal and community organisations. This means we have a direct phone line to an experienced staff member who is able to answer a range of queries. We have found this of great benefit and would recommend a similar arrangement to any organisation which assists fine defaulters.

The SDRO has recently relocated to Lithgow. It is too early to tell whether this will have a significant impact on the way they operate. We believe the SDRO has lost some of its more experienced staff who do not wish to relocate. On the positive side, it has been suggested that the move to Lithgow will mean the employment of more permanent staff, and fewer casuals, in the call centre and administrative areas. This will hopefully mean better-trained and more helpful staff.

Address: Although the SDRO is now in Lithgow, the postal address remains
PO Box A2571, Sydney South 1235

Phone: 1300 655 805

Fax: (02) 6354 6302 or 6354 6271

Website: www.sdرو.nsw.gov.au

The website provides information about the SDRO, its enforcement procedures and the options available to fine defaulters. There are also downloadable forms for time to pay, annulment, etc. In general the site is quite helpful.

12.3 “Fined Out” booklet

“Fined Out” is a very useful resource published by Inner City Legal Centre and Redfern Legal Centre. It contains practical information about dealing with unpaid fines, including contact numbers and sample letters.

It is available on-line at www.rlc.org.au or www.iclc.org.au, or call Redfern Legal Centre (9698 7277) or Inner City Legal Centre (9332 1966).

12.4 Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is happy to provide information to legal practitioners and welfare workers, and direct assistance to young people aged 25 and under, in relation to any aspect of the fine enforcement process.

Should you wish to contact me directly about anything arising from this paper, I am most easily reached by email at jane.sanders@freehills.com.

Otherwise, our contact details are as follows:

Address: 356 Victoria St, Darlinghurst NSW 2010

Phone: 9360 1847

Fax: 9331 3287

Website: www.theshopfront.org

Email: shopfront@freehills.com

The Shopfront Youth Legal Centre is a service provided by Freehills, in association with the Sydney City Mission and the Salvation Army.

This paper was last updated in September 2004. To the best of the author's knowledge, is an accurate summary of the law in New South Wales at that time.

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Fines and Young People - Appendix A

Summary of *Fines Act* amendments commencing 1 September 2004

Hardship Review Board

A **Hardship Review Board** has been established, consisting of representatives for the Office of State Revenue, the Treasury and the Attorney-General's Department (unfortunately there is no community representative). A person may apply to the Hardship Review Board if the State Debt Recovery Office has refused their application for time to pay or for a fine to be written off. (section 101A-101C)

Time limit for commencing proceedings

If a person has elected to take a penalty notice (infringement notice) to court, the time limit for commencing court proceedings is now 12 months from the date of the alleged offence (unless there is specific legislation providing a longer period, eg the *Rail Safety Act* provides a limitation period of 2 years for most railway offences). Previously the time limit was 6 months. (section 37A)

Annulment of fines

The SDRO's power to annul fines has been broadened. Previously, an annulment application could only be made to the SDRO within 12 months of the issue of the SDRO enforcement order. The Minister (Treasurer) had power to annul a fine after the 12-month period, but only if there was a doubt about the person's liability for the fine. Now, all annulment applications are made to the SDRO, and there is no longer a 12-month time limit on making applications (sections 48-49).

If a person making an annulment application raises a question of liability (i.e. says they are not guilty of the offence to which the fine relates, or that the fine is greater than the maximum penalty provided by law), the SDRO will refer the application back to the prosecuting authority for their consideration. This allows the prosecuting authority to consider whether they wish to proceed with a prosecution. If so, a court date will be set; if not, the fine will be withdrawn (section 49A)

The SDRO must annul the enforcement order if it is satisfied that:

- (a) the person was not aware that a penalty notice had been issued until the enforcement order was made,
- (b) the person was otherwise hindered by accident, illness, misadventure or other cause from taking action in relation to the penalty notice,
- (b1) a question or doubt has arisen as to the person's liability for the penalty, or
- (c) having regard to the circumstances of the case, there is other just cause why the application should be granted (section 49(2))

The SDRO may waive the annulment application fee. If the applicant has paid the fee, the SDRO may (but is not required to) refund the fee if the annulment application is successful (section 49(7)).

If the SDRO refuses an annulment application, the applicant may appeal to the Local Court. The Act has been amended to specify that the time limit for appeals is 28 days (section 50).

Information in enforcement orders

There have been some amendments made to the information that must be included in enforcement orders sent out by the SDRO. The Enforcement Order must say that there are review options available (section 60).

SDRO's power to withdraw enforcement orders

The SDRO's powers to withdraw court fine or penalty notice enforcement orders have been clarified, to reflect existing practice (sections 17, 46).

Fine defaulter's last known address

The SDRO is now able to use an address considered to be the fine defaulter's most recent. Previously, the Act required the SDRO to serve the Enforcement Order on the address supplied by the prosecuting agency, which might have been out-of-date (section 61(3)(b)).

Fines Amendment Regulation 2004

This Regulation makes minor changes to forms, procedures, etc.

Fines and Young People - Appendix B

Summary of *Fines Act* amendments commencing 1 January 2005

Licence sanctions for under-18s

The RTA will no longer be able to impose sanctions against a fine defaulter's driver licence for non-traffic fines incurred by under-18s.

As of 1 January 2005, section 65(3) will read:

“(3) Despite subsections (1) and (2), enforcement action with respect to a fine defaulter's driver licence is not to be taken under this Division if:

(a) the offence:

(i) in respect of which the fine concerned was imposed on the fine defaulter by a court, or

(ii) in respect of which the penalty notice from which the fine concerned arises was served on the fine defaulter,

occurred while the fine defaulter was under the age of 18 years, and

(b) the offence is not a traffic offence.”

Unfortunately, this is not much of an improvement. The way the SDRO has interpreted "enforcement action with respect to a fine defaulter's driver licence" means that - although they can't suspend, cancel or refuse to renew an existing licence - they can still stop a young person from getting a licence if they have never had one before. There is also no restriction on other types of RTA enforcement action (eg cancellation of registration).

Lifting of licence sanctions after regular payments

If RTA sanctions (licence suspension, cancellation of rego, etc) have been imposed against a fine defaulter, and the fine defaulter makes a time-to-pay arrangement, the sanctions must be lifted after 6 regular payments (section 65(4A) & (4B)). Although this amendment is not yet in force, the SDRO has already adopted the policy of lifting RTA sanctions after 6 instalments.

Enforcement costs for under-18s

The SDRO will be required to waive enforcement costs on fines incurred by under 18s (except the cost of making the enforcement order, which is imposed when the fine first reaches the SDRO. According to the SDRO, this will be capped at \$25 for under-18s). The protection offered here is very limited - the SDRO can charge enforcement costs for juvenile fines if the person also has enforcement orders for adult fines (section 102A).

