
Fines and young people - the punishment/poverty cycle

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1 Introduction

Fines (and the consequences of not paying them 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 complex and draconian enforcement system.

The Shopfront Youth Legal Centre has worked with hundreds of young people aged 15-25 who owe huge amounts in outstanding fines. Their inability to pay often has serious financial and personal consequences. While the Shopfront's clients are generally more disadvantaged than the majority of young people, we believe that the problems experienced by our clients are shared by a large number of young people in NSW.

This paper discusses some of the main problems our clients have faced.

2 The *Fines Act* and the State Debt Recovery Office

Enforcement of unpaid fines is governed by the *Fines Act 1996*. 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.

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.

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, which may include:

- driver licence suspension/cancellation
- cancellation of vehicle registration
- RTA "customer business restrictions"
- 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.

The previous system was not without its problems, but at least 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 or at least making several regular repayments.

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 were also some helpful amendments to the Act on 2004. However, most young people still find the system virtually impossible to negotiate without competent legal advice and advocacy - and there are simply not enough legal services to meet the demand.

3 Infringement notices

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).

We have we have been unable to obtain any more recent statistics (apart from a total statewide figure of almost 500,000 infringement notices in 2004), but our experience suggests that the problem is getting worse. Young people seem to be receiving increasing numbers (and amounts!) of fines, especially on the railways.

4 Railway fines

Railway fines are a growing problem for young people in metropolitan Sydney. In the last couple of years we have observed that:

- (a) Fines are often issued when the circumstances do not warrant it (for example, “offensive language” for the mere use of the word “f**k”, which in most contexts is not offensive at law).
- (b) RailCorp officers do not exercise discretion to warn offenders for minor infringements, instead issuing fines straight away.
- (c) There are sometimes 3 or more fines issued in relation to the one incident (although we understand that RailCorp policy is that a maximum of 2 fines should be issued in respect of any one incident).
- (d) Under-18s are not getting the benefit of *Young Offenders Act* warnings and cautions for infringement notice matters. This is partly a problem with the legislation (in that the YOA does not apply to matters investigated by non-police officers) but there is also a problem with police officers issuing penalty notices instead of considering the YOA.
- (e) Penalty notice amounts are unreasonably high (eg \$400 for smoking on a railway platform) and, apart from the offence of travelling without a ticket, there appears to be no lower amount applicable to juveniles.

Case study: Tina

Tina, aged 17, had just got off the train at Liverpool Railway Station and was asked to produce her ticket and concession entitlement. She had a weekly concession ticket but had inadvertently left her concession card and all her ID at home. She attempted to explain this, and gave the transit officers her name and address when asked. They continued to detain her, asking for more details, and she began to get agitated because it was late evening and she was worried about missing the last bus home. Tina said “I’ve got to catch my f***ing bus”. She was then given penalty notices for:

- fail to produce concession ticket entitlement
- fail to comply with requirements of authorised officer
- offensive language on railway land

Subsequently, Tina elected to take the fines to court. Once the matters were in court, we made representations to RailCorp, who eventually decided to withdraw all 3 fines. It is most unlikely this outcome would have been achieved without legal advice and advocacy.

5 Inflexibility of Infringement Processing Bureau

The Infringement Processing Bureau, which is responsible for collecting infringement notice fines, is very inflexible.

Firstly, it does not allow payment by instalments. People who cannot afford to pay their infringement notice have no option but to wait until the matter is referred to the SDRO (and pay enforcement costs \$50, or \$25 for under-18s) or take the matter to court.

Secondly, the IPB rarely exercises appropriate discretion when asked to withdraw infringement notices. Even where there are compelling circumstances, the IPB usually

sends back a standard letter stating it is satisfied that the penalty notice was correctly issued.

Case study: Nick

Nick is 19 and had his wallet (with his ID documents in it) stolen a few months ago. A few weeks later, he was surprised to receive in the mail two penalty reminder notices for offences allegedly committed at Central Railway Station. Nick had not been at Central that day, and presumed that the fines must have been incurred by someone using his stolen ID. Nick wrote a comprehensive letter to the IPB, enclosing statutory declarations and other documents to prove that he could not have been at Central on the relevant date and time. The IPB sent him a reply to the effect that they were satisfied that the fines had been correctly issued.

Nick elected to take the matter to court, whereupon we wrote representation to RailCorp, enclosing the same material and submitting that it was a clear case of mistaken identity. The matters were withdrawn.

6 Court-imposed fines

Court-imposed fines are not as much of a problem as infringement notices. The *Fines Act* requires courts to consider a person's capacity to pay when imposing a fine. For this reason, the Children's Court does not often impose fines, and if it does, the amounts are usually low.

Young adults who appear in Local Courts are more likely to be fined, but again, the fines are often relatively low if the magistrate has been given some information about the person's financial situation. However, hefty fines are often imposed in people's absence if they do not turn up at court.

7 The impact of driving licence sanctions

Many young people have their driving licence suspended (or are unable to apply for a licence) due to outstanding fines.

Some owe so much in fines that they often give up hope of ever getting a licence, so they run the risk and drive unlicensed, thus incurring heavy penalties and mandatory disqualifications from the courts. We have seen several cases in which one fine-default suspension sets off a chain of events which results in the young person being disqualified from driving for five years or more.

Fortunately, the situation has improved considerably in the last few years:

- (a) Firstly, licence sanctions can no longer be imposed in relation to non-traffic fines incurred by under-18s.
- (b) Secondly, it is now possible to get licence sanctions lifted after making six regular payments to the SDRO on a time-to-pay arrangement.
- (c) Thirdly, magistrates are more sympathetic when it comes to people who are charged with driving whilst suspended, if it is a fine-default suspension. Many magistrates will adjourn the matter for a period of time to allow the defendant to sort out their fines and get their licence. If they can demonstrate that they have done this, the magistrate will dismiss the matter without a conviction instead of

imposing the mandatory 12-month (or, for a second offence, 2-year) disqualification.

However, problems still remain. Many young people still believe that there is nothing they can do to get their licence if they owe money to the SDRO, and are therefore tempted to drive unlicensed. Many people are still suffering the effects of disqualifications imposed when the system was not so flexible with respect to licence sanctions.

Case study: Ryan

Ryan is now in his early 20s. When he was in his teens he lived in a refuge and incurred several thousands of dollars in railway and traffic fines. He had his learner's licence at one stage, but this was cancelled due to his fines. He entered a time-to-pay arrangement and slowly began to pay off his fines. However, the policy at the time was that he could not get his licence until the fines were paid in full.

At the rate Ryan was paying his fines, he would not have been able to pay them off till he was in his 30s. Not surprisingly, he gave up hope of getting a licence and started driving without one. It did not take long for him to accumulate several years of court-imposed disqualifications.

He was then declared a "habitual traffic offender" which meant a further 5 years off the road. Fortunately we were able to have this declaration quashed, but Ryan is still disqualified for several years. He is now mature enough to resist the temptation to drive unlicensed, but he is finding that his employment prospects are very limited without a licence.

8 Annulment application fees

A person who has been issued with a penalty notice and wishes to take it to court may fill in the court election form. We often advise our clients to do this, even if they are guilty of the offence, because courts will often significantly reduce the fine or even dismiss the matter with a caution.

If the fine has already gone to the SDRO and it too late to send in the court election, the fine defaulter may make an annulment application to the SDRO. Clients of the Shopfront are often in this situation and we therefore make a large number of annulment applications.

A separate annulment application must be made for each enforcement order and the fee is currently \$50 per application. Most of our clients have anywhere from 1-20 enforcement orders and due to financial hardship cannot afford the application fee(s). We have been successful in the past in getting these fees waived but in recent months the SDRO seems to have become stricter in requiring applicants to pay the fees. This operates unfairly to disadvantaged young people who, for one reason or another, were unable to deal with their fines at the infringement notice stage.

Case study: John

John is a 19-year-old man who is on a disability pension. He has recently been unsuccessful with the Department of Housing for priority housing and is appealing this decision. He suffers from depression and memory loss and is gathering supporting medical documentation to assist with his application. He is being case managed by an intensive support service for homeless young people, and getting assistance with accommodation, employment, counselling, education, mental health and drug and alcohol issues.

John has a fine for travel on train without valid ticket. He originally wrote to the IPB asking them to withdraw the penalty notice but did not elect to take the matter to court. He did not hear back from the IPB for several months so assumed the matter had been withdrawn. He then received notification that the matter had not been withdrawn and had been referred to the SDRO. John then sought legal advice and now wishes to have the matter dealt with by a court.

John works part-time for (1 day per week) and is studying music at uni. He declares his income to Centrelink each fortnight which therefore decreases his fortnightly benefits. Even with his income from both Centrelink and working, his finances are taken up with general living expenses, medication, transport, rent, uni fees and food. He is not in a position to pay the annulment application fee. We have applied to the SDRO to review their decision and are currently waiting for their reply.

9 Methods of payment

The lack of a direct debit facility for payment of fines continues to be a problem. A direct debit facility would be a convenient option for many young people, and would help ensure that more instalments were paid on time. It can be very hard for some young people to get to a post office to make repayments (eg if they live in a remote area or have a disability) and even harder for them to remember to pay on the same day each fortnight.

Some time ago, we were told that the SDRO was negotiating an arrangement with Centrepay (to enable people to have fine repayments deducted from their Centrelink payments), but it seems that progress has been very slow.

10 Write-off of fines

We have observed that it is very difficult to get fines written off by the SDRO, even with supportive medical documentation.

Case study: Danielle

Danielle has approximately \$1,100 in outstanding fines with the SDRO for travelling on trains without valid tickets incurred between 1992 and 2003.

Danielle suffers from chronic Bipolar Affective Disorder and has been on a disability pension for the last 12 years. She has been admitted on numerous occasions to psychiatric hospitals suffering from manic episodes with psychotic features.

We made an application for a write off of Danielle's fines due to her financial hardship and her mental illness and included a letter from her doctor confirming her diagnosis. The SDRO denied our application and instead entered Danielle into a time to pay arrangement paying \$15 per fortnight (which was clearly not what we requested).

We are currently trying to gather a more comprehensive report from Danielle's treating doctor as to her condition and any change there may be in the foreseeable future, and are planning to make an application to the Hardship Review Board.

11 Conclusion: a wish-list

- An urgent review of infringement notice fine amounts, especially in relation to under-18s.
- Amendments requiring officers to consider *Young Offenders Act* sanctions before issuing fines to under-18s, and/or a procedure for young people to elect to receive a police caution as an alternative to paying the fine.
- More information (including contact numbers for legal advice) to be provided to people receiving infringement notices and SDRO enforcement orders.
- Removal of RTA sanctions as a means of enforcing fines, at least in relation to non-traffic offences.
- More flexible payment options (at SDRO and IPB).
- More capacity for SDRO to waive enforcement costs and other fees.

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. We assist clients with a range of legal issues, but the majority of our work involves criminal law and dealing with unpaid fines.

As well as helping individual young people, the Shopfront aims to train and resource youth workers so they are better able to assist their clients. Resources about how to deal with fines and the SDRO are available on our website.

We are also developing a fines kit for youth workers, which we hope to have available in late 2005. If you are interested in getting a copy of the kit, or receiving training about fines, please email us.

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