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The Hon. James Wood AO QC
Chairperson
New South Wales Sentencing Council
GPO Box 6
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Dear Sir

The effectiveness of fines as a sentencing option: further submission from the Shopfront Youth Legal Centre

We were pleased to receive a copy of the Sentencing Council's interim report. We commend the Council on producing such a comprehensive, well-researched report with numerous practical suggestions for law and policy reform.

As noted in our initial submission, the Shopfront Youth Legal Centre has dealt with hundreds of young people who are negatively affected by the imposition and enforcement of fines. In many cases this involves secondary offending in the form of driving while unlicensed, suspended, cancelled or disqualified.

The Council's interim report makes it clear that our clients' experiences are not isolated, and that the fine enforcement system has adversely affected large numbers of people across the State (particularly those who are young, Aboriginal, on low incomes or otherwise disadvantaged).

The Shopfront agrees with most of the options for reform proposed by the Council. We also offer the following additional recommendations:

Fines in the Local Court

Option of imposing fine without conviction

We agree with the Council's observations about the perils of deemed convictions in the case of matters dealt with by criminal infringement notice.

A related, but distinct, issue is the fact that people who court-elect on infringement notices will, if found guilty of the offence at court, end up with a conviction which would not have ensued if the person had simply paid the infringement notice. This has a disproportionately negative impact on financially disadvantaged people, who often court-elect not because they wish to defend the charge, but because they simply cannot afford to pay the fine.

This is not a significant issue in the Children's Court, where the court has a discretion not to record a conviction, no matter what penalty it imposes. However, many of our young adult clients court-elect on infringement notices because of their incapacity to pay. While their matters are sometimes dealt with under s32 of the *Mental Health (Criminal Procedure) Act* or s10 of the *Crimes (Sentencing Procedure) Act*, they are often dealt with by way of fine (albeit a significantly reduced amount) which carries with it a conviction.

A conviction, even for a minor offence, can have a number of detrimental effects. In the case of some driving offences (for example, a first offence of driving unlicensed when never licensed) a conviction will affect the maximum penalty and mandatory disqualification period for any subsequent offence.

We would therefore like to see the introduction of a further sentencing option in the Local Court: the discretion to impose a fine without recording a conviction. We propose that this discretion would only be available for matters which are capable of being dealt with by infringement notice, so as to avoid net-widening.

Penalty Notices

We agree that there is a need for a review of the range and kinds of offences for which penalty notices may be issued, and also the prescribed penalty amounts.

Differential amounts for juveniles

As part of this review, we suggest that prescribed penalty notice amounts be set at significantly lower levels for under-18s. This is already the case in relation to the offence of travelling on the train without a valid ticket (\$50 for under-18s as opposed to \$100 for adults) but not in relation to most other offences.

Ideally we would like to see the complete abolition of the issue of penalty notices to children under 18, or at least to children under 16. However, we acknowledge that this is probably an unrealistic proposal and that, for some young people, being issued a penalty notice may be preferable to court proceedings or other forms of police intervention.

Young Offenders Act options for juveniles

We see a pressing need for alternatives to infringement notices for offences committed by children. Currently a child can be warned, cautioned or referred to a conference under the *Young Offenders Act* only if the "investigating official" is a police officer.

In our view there is a need for the *Young Offenders Regulations* to be amended to prescribe other types of officers (eg transit officers, council rangers) as "investigating officials" for the purposes of s4 of the Act. These officers would obviously require comprehensive training on the Act.

Licence sanctions and secondary offending

Removal of licence sanctions for non-traffic fines

The Shopfront Youth Legal Centre recommends the immediate amendment of the *Fines Act* so that RTA sanctions can no longer be imposed in relation to non-traffic fines. If we had to prioritise our recommendations for reform of the fine enforcement system, this would be at the top of our list.

In our view the imposition of driver licence sanctions for non-payment of non-traffic fines has no basis in logic and creates significant injustice. Further, as

discussed by the Council in its report, it may undermine the integrity of the driver of the licensing system and the promotion of road safety.

Review of penalties and disqualifications for licence-related offences

As we have discussed in our previous submissions, secondary offending is a huge problem for our clients and for young people in general. We support the introduction of a more flexible sentencing regime that recognises the different circumstances under which traffic offenders have come to be unlicensed, suspended, cancelled or disqualified.

Quite separately from the reform of the fine enforcement system, we are of the view that the system of mandatory disqualifications for traffic offences is in need of review as it causes manifest injustice in many cases.

Jurisdiction over traffic offences allegedly committed by juveniles

Although this is probably beyond the scope of the Council's Inquiry, we think it is relevant to include some discussion of the problems faced by 16- and 17-year-olds who are dealt with in adult courts for traffic offences.

In our view, all traffic offences allegedly committed by juveniles should be dealt with in the Children's Court. We are not persuaded by the claim that "a person who is old enough to have a licence is old enough to be treated as an adult for traffic offences". The fact is that children are generally less mature and more vulnerable than adults, whether it be as drivers, employees, consumers or in other roles. They deserve the special protection afforded by the Children's Court.

Although the Local Court has the option to sentence a juvenile traffic offender under the *Children (Criminal Proceedings) Act*, knowledge of this option is not widespread among magistrates or lawyers who do not specialise in children's matters. Moreover, defendants charged with traffic offences in Local Courts are not usually eligible for Legal Aid, even if they are under 18. These factors combine to cause injustice to many young people. In our experience, young people who are not competently represented and dealt with in a manner appropriate to their age often find themselves irreversibly disqualified for several years. The detriment to their future prospects is obvious.

Further consultation

We are aware that an inter-agency working group has been set up to develop strategies to improve the fine enforcement system. We are of the view that the working party would be more effective if it included representatives from non-government and community organisations who work face-to-face with fine defaulters.

Thank you for considering this submission. If you wish to discuss any issues arising, please contact me on 9322 4808 or at jane.sanders@freehills.com.

Yours faithfully

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