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Our ref Jane Sanders

Doc no Sydney\004530360

Manager
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Dear Sir/Madam

Review of fines and demerit points: Submission from Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. The Shopfront has been operating since 1993 and is a joint project of Freehills, Mission Australia's Sydney City Mission and the Salvation Army. We represent and advise young people on a range of legal issues, with a particular emphasis on criminal law.

The vast majority of the Shopfront's clients are homeless. Most have been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. Many of our clients have mental health problems, intellectual disabilities, or limited literacy and numeracy.

A substantial number of our clients have outstanding fines resulting from traffic offences. Many of these clients receive disqualifications and, even when the disqualifications have expired, are unable to obtain or re-obtain their licences due the operation of the *Fines Act* and their inability to pay their fines or to negotiate appropriate time-to-pay arrangements.

We welcome the opportunity to provide a submission to this review. We address in this submission some specific problems encountered by our clients, and offer some recommendations for changes to regulation and policy.

1 Fines

1.1 Fines do not act as a deterrent for disadvantaged people

A reason given for the imposition of fines in relation to offences is that they operate as a deterrent. We accept that fines may act as a deterrent for people with the capacity to pay. However, the levels of fines in relation to many traffic offences are simply so high that they represent an unrealistic sanction to financially disadvantaged people and,

accordingly, have little or no deterrent effect on those people. In our experience, the deterrent effect of fines decreases with the person's ability to pay. For those reasons, in our view, fines may be characterised as a "middle class" sanction.

The consequence is that disadvantaged people frequently accumulate very high levels of fines as a result of repeat offending, and have little hope of ever paying them off. The enforcement sanctions imposed under the *Fines Act* then take their course, and inevitably the person will have her or his driver's licence suspended or cancelled. This can have consequences for the person's work, educational, medical and family commitments and can also play a significant role in the loss of self-esteem.

Furthermore, it seems to us that the present levels of fines, rather than deterring people from committing offences, actually encourage many people to give up hope of obtaining a licence and instead to take the risk of driving without one. While we do not condone this behaviour, we can understand why some young and disadvantaged people resort to it.

In this way, the levels of fines, together with the *Fines Act* system, operate to perpetuate the circumstances of hardship experienced by disadvantaged people and are, accordingly, inequitable. Indeed, a substantial proportion of our clients are in circumstances just like this.

The appropriate response, in our submission, is to develop machinery for fining disadvantaged people at realistic levels, so that the fines system has a suitable deterrent effect on those people. We accept that a system of on-the-spot fines does not lend itself to discrimination based on the means of the offender, as police officers are, mostly, not in a good position to assess ability to pay. Nevertheless, we consider that age is an appropriate indicator in this regard and offer the following suggestions.

1.2 Levels of fines should distinguish between adults and juveniles

Young people do not have the financial advantages that most adults have. Also, the juvenile justice system is premised upon the principle that, because young people may not have the same level of maturity as adults, they may unwittingly expose themselves to offending behaviour more readily. Accordingly, the juvenile justice system gives primacy to the principle of rehabilitation over the principles of deterrence and punishment in imposing sanctions for offences.

In our submission, these fundamental principles should be reflected in the levels of fines imposed on juveniles and consideration should be given to a two-tiered system of fines. We note that fines for railway offences differentiate between adults and juveniles in this way.

1.3 Young Offenders Act

The *Young Offenders Act* provides alternatives to dealing with young people according to law in appropriate cases. The Act does not apply to traffic offences if the child is old enough to have a driver's licence but, importantly, does apply if a child is not old enough.

Accordingly, in our view, police should always consider the application of the *Young Offenders Act* when dealing with traffic offences committed by children under sixteen years old. Because of the disadvantages experienced by young children, both in terms

of finance and maturity as already indicated, fines ought only to be imposed in circumstances where the *Young Offenders Act* is clearly inappropriate. In our experience, police have not taken this approach.

2 Demerit points

Our client group rarely presents with issues relating to demerit points. Nonetheless, we do draw to your attention the following aspect of the demerit point system which we consider to be anomalous.

As you know, Local Court magistrates have a discretion under section 10 of the *Crimes (Sentencing Procedure) Act* not to enter a conviction against a person who has been found guilty of an offence. It follows from the absence of a conviction that no penalty is imposed. Section 10 provides a means of dealing with persons who, although technically in breach of the law, ought not to have a conviction recorded against them, having regard to the subjective and objective features of the case.

Traffic offences carrying demerit point penalties represent an exception to the important role played by section 10 inasmuch as a magistrate has no discretion to remove demerit points earned by committing the offence. In our view, where a person makes a court election in respect of a traffic offence and the offence is dealt with by way of section 10, the magistrate ought to have the discretion to remove demerit points. That would be consistent with the magistrate's power not to disqualify a person from holding a licence where an offence carrying that penalty is dealt with by way of section 10.

3 Recommendations

For the reasons given, we recommend that consideration be given to ensuring that the levels of of fines and demerit points operate as a realistic and effective deterrent for young and disadvantaged people. In particular we submit that:

- consideration should be given to a two-tiered system of fines for adults and juveniles;
- the *Young Offenders Act* should be applied in respect of traffic offences committed by children under the age of sixteen; fines should only be imposed where it is not appropriate to proceed by way of that Act; and
- there should be a judicial discretion to remove demerit points in respect of an offence for which a conviction is not recorded.

Thank you for considering our submission. Please contact us if you have any questions.

Yours faithfully

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