

A Coalition of Youth, Legal and Welfare Workers

4 October 2007

The Hon. James Wood AO QC
Chairperson
New South Wales Sentencing Council
Box 6 GPO Sydney 2001

Dear Sir

**Interim Report – The effectiveness of fines as a sentencing option: further comments
from the Youth Justice Coalition**

Thank you for the opportunity to provide further comments to the Sentencing Council's interim report on fines. The report has been an important means of highlighting and emphasising the many issues faced by young people (and other marginalised sections of the community) who are negatively affected by the imposition and enforcement of fines, whilst also providing practical suggestions for law reform and practice.

The Youth Justice Coalition ("YJC") would like to endorse the submissions made to the Sentencing Council by the Shopfront Youth Legal Centre and by the Homeless Persons' Legal Service.

The YJC agrees with many of the suggestions proposed by the Council in the report. In addition to those comments, the YJC also wish to make the following submissions:

Penalty Notice System

Appropriateness of fines for young people

The appropriateness of fines as a sentencing option for juvenile offenders has long been questioned. The Australian Law Reform Commission and the Human Rights & Equal Opportunity Commission's report "Seen and heard: Priority for Children in the Legal Process" highlighted the many issues associated with fines and juvenile offenders, particularly those who come from financially disadvantaged backgrounds. The report also pointed out the limited rehabilitative value for young offenders when using fines as a sentencing option¹.

The approach that has been adopted when dealing with young offenders within the juvenile justice system has been one focused on rehabilitation, reintegration and diversion. The sentencing options afforded to the Children's Court allow these principles to be taken into consideration when sentencing a young offender.

¹ The Australian Law Reform Commission/Human Rights & Equal Opportunity Commission, Report No: 84 *Seen and heard: Priority for children in the legal process*, 1997 at 19.34.

These principles are clearly not taken into account when fines are issued at the penalty notice stage. The imposition of fines on young people has little deterrent or rehabilitative value, and is likely to have adverse effects on young people, given their inability to pay and their susceptibility to secondary offending. Without any deterrent or effective behaviour modification value, the operation of the penalty notices system appears to be largely focused on revenue – a system which is particularly likely to affect those most marginalised in the community.

Development of diversionary options for young people

As noted in the report, fines are considerably less utilised in the Children's Court, given their inadequacy as a deterrent when taking into consideration young people's capacity to pay, as well as the possibility of adding to the seriousness of an offence through licence sanctions and secondary offending.²

Whilst fines are less utilised in the Children's Court, this is not the case at penalty notice stage, where there is no obligation for issuing officers to consider individual circumstances (such as age, capacity to pay, homelessness, mental illness, intellectual disability etc) when issuing a fine. The discretion to warn or caution is not prescribed in guidelines in relation to issuing officers (particularly transit officers), and as a result, fines are issued to young people without any capacity to take into account individual circumstances.

The issuing of penalty notices thus disproportionately and adversely impacts on young people in a number of ways:

- Young people are less likely to have the capacity to pay for fines;
- Young people are more likely to be adversely affected by secondary offending and civil enforcements;
- Young people are less likely to advocate on behalf of themselves and have less knowledge of the options available to them in appealing a fine.

The YJC believes that the current penalty notice system should be brought into line with the approach of dealing with young people as per the *Young Offenders Act 1997* ("YOA"). Under the guiding principles of diversion and finding alternative and appropriate means of dealing with young people, police officers are able to warn, caution or refer a young person to a conference under the YOA. The YJC endorses the Shopfront Youth Legal Centre's recommendation that the definition of "investigating officials" under the YOA should be expanded to include other officers (such as transit officers, council rangers and other issuing officers). Providing such officers with a legislative base to warn or caution a young person ensures that more appropriate and alternative options can be exercised.

Use of discretion and diversionary options to be prescribed in guidelines/policy

² NSW Sentencing Council (October 2006) "The Effectiveness of Fines as a sentencing Option: Court- imposed fines and penalty notices" at 2.58

As noted in the report, there is inadequate guidance on when it is appropriate to issue a penalty notice³. The YJC recommends that specific guidelines be developed in relation to the issuing of penalty notices to young people, so that an officer must take into account a young person's individual circumstances (including age, capacity to pay, disability, homelessness etc) *before* issuing a penalty notice. Consideration should also be given to the seriousness of and circumstances surrounding the offence, such that the penalty is proportionate to the offence.

The YJC recommends that the guidelines prescribe for an issuing officer to consider the options of a warning or a caution before proceeding to issuing a penalty notice when dealing with young people. This is particularly the case with minor offences (such as travel with a valid ticket, minor conduct offences).

Training of issuing officers in working with young people

Training of issuing officers is currently needed in outlining their powers to exercise discretion in issuing penalty notices. The YJC recommends that training be provided to issuing officers on dealing with young people and other vulnerable groups in the community (including people at risk of homelessness, people from non-English speaking backgrounds, people with intellectual disabilities, people suffering from mental illness etc). The Youth Action and Policy Association NSW in their 2005 report on "Young people and transit security"⁴, highlighted how young people felt disproportionately targeted due to their age, and in some cases, due to their cultural and ethnic background. Proper training on working with young people, including raising awareness of the specific issues of young people from diverse cultural backgrounds and those from socially disadvantaged backgrounds, will ensure that issuing officers are able to adopt appropriate measures when dealing with young people.

Improved information on legal rights and options

Young people are less likely to be aware of the options for appealing or having fines set aside as provided by the SDRO guidelines and legislation. In addition, young people are less likely to advocate for themselves and are more inclined to allow a fine to reach enforcement stage before doing anything about it.

In order to increase awareness of young people's legal appeal options, the YJC recommends that information be provided in hard copy of the entitlements and options available to young people at both penalty and enforcement stage. In addition, the YJC recommends that the contact details of Law Access be provided with or on the penalty notice itself. This would assist young people to be aware of their options and how to seek assistance in that process. This in turn could help reduce the number of fines defaulted on as fines would be removed or young people would be better informed of their options in terms of payments.

³ NSW Sentencing Council (October 2006) "The Effectiveness of Fines as a sentencing Option: Court-imposed fines and penalty notices" at 3.123

⁴ Youth Action and Policy Association NSW "Fair go RailCorp", *YAPRap* Volume 15(5) May 2005, page 1-6.

Differential penalty amounts for young people and discretion to vary amount

The report highlights the issues relating to the arbitrary and uncoordinated system of fixing penalty notice amounts, which has seen certain offences attracting up to 3 times the amount depending on which agency issues the penalty notice⁵. This system particularly disadvantages young people, given the strict liability nature of penalty notices, and the absence of any discretion in the issuing officer to be able to vary the prescribed amount.

The YJC endorses the Shopfront Youth Legal Centre's recommendation that penalty notice amounts be set at significantly lower levels for those young people under 18 years of age, in order to take into account their capacity to pay.

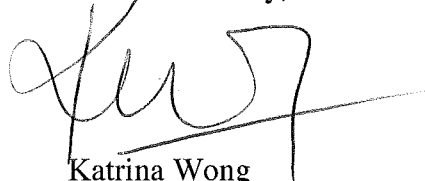
The YJC would also further recommend that issuing officers be given the discretionary powers to vary the penalty notice amounts when issuing fines to young people (and other marginalised members of the community). Noting that the courts are required to take into account a person's capacity to pay before imposing a fine, this discretionary power would allow issuing officers to take into account various factors (such as age, homelessness, mental illness etc) in issuing a penalty notice that is in proportion with a young person's capacity to pay.

Abolition of fines for young people under the age of 16

The YJC recommends that the issuing of penalty notices be abolished for young people under the age of 16. As noted by the report, young people are severely disadvantaged by the fines system in that they have less access to resources to pay fines. This is even more the case for young people under the age of 16 who would be unlikely to have any income. Their very low or non-existent income means that even a single fine at the minimum level represents a significant proportion of their income. This has wide reaching implications, the most basic of which is that young people are faced with an enforceable debt that potentially draws their already scarce resources away from essential living expenses such as housing and food.

Thank you for considering the YJC's submission. If you have any issues you would like to discuss, please contact me on 9559 2899 or at Katrina.Wong@clc.net.au.

Yours Faithfully,



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⁵ NSW Sentencing Council (October 2006) "The Effectiveness of Fines as a sentencing Option: Court-imposed fines and penalty notices" at 3.19-3.24

About the Youth Justice Coalition

The Youth Justice Coalition (“YJC”) is a network of youth workers, children’s lawyers, policy workers and academics working to promote the rights of children and young people in New South Wales.

The YJC aims to promote the rights of children and young people, to promote appropriate and effective initiatives in areas of law affecting children and young people, and to ensure that children’s and young people’s views, interests and rights are taken into account in law reform and policy debate.

The Youth Justice Coalition (“YJC”) is pleased that the numerous issues and suggestions raised in the various submissions have been canvassed in the report, with practical suggestions for law and administrative reform.