

Chapter 5: Making a Difference — Addressing Systemic Legal Issues

The NSW Work and Development Scheme: A Therapeutic Response to an Infringement System that Oppresses People Experiencing Homelessness

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In the last 20 years, on-the-spot fines have become generally accepted in New South Wales (NSW) as a preferred means of dealing with many minor offences. Giving someone a fine can appear to be a cheap way for government to impose a penalty for minor offending. In reality, the fines system can be neither cheap nor fair for offenders or for the state.

For people experiencing homelessness in NSW, and other groups of vulnerable people, the penalty notices system generates, reinforces and exacerbates disadvantage. Accumulating massive fine debt adds to the problems of

finding food and shelter, dealing with a mental illness or navigating the world with a cognitive impairment. It is all but impossible for those surviving on a Centrelink benefit (and sometimes on no benefit at all), to pay off their debts to the State Debt Recovery Office (SDRO).

At nearly every stage of the penalty notice process, people who are homeless, have a mental illness, intellectual disability or a cognitive impairment are at a disadvantage. Due to their financial and housing circumstances, people experiencing homelessness are more likely to commit certain offences, such as fare evasion and consuming alcohol in a public place, which attract hefty penalties.

Because people experiencing homelessness tend to congregate in public places, they are more visible to enforcement officers and this leads to a greater likelihood of detection.

In the experience of the Public Interest Advocacy Centre's Homeless Persons' Legal Service (HPLS) in Sydney, people who are experiencing a complex set of problems in their life are also not likely to respond quickly to address the matter and even to ignore the penalty notice. People experiencing homelessness often lead chaotic lives. It is a constant battle to find safe accommodation or a meal. They may need to attend multiple appointments to get treatment and medication for various health conditions. Mental health or drug dependence problems may intervene. In these circumstances, remembering to do something about, or even to hold on to, a penalty notice can be very difficult.

For clients of homeless legal clinics, helping to resolve the problem of

accumulated fines forms a significant component of the casework. Fines are routinely one of the top issues that clients present with at the ten legal advice and assistance clinics operated by HPLS, and are second only to tenancy issues, making up about 13 per cent of all legal issues raised with HPLS solicitors each year. That is about 150 clients each year.

In April 2006, HPLS released a report, *Not such a Fine Thing! Options for Reform of the Management of Fines Matters in NSW*. The report was prepared in consultation with 29 community-based and other agencies with an interest in improving the fines system in NSW.

What emerged was a recurring theme of systemic problems with the fines system. One key theme was that there was a problem with the public transport system and the Transit Officers who issue fines.

The report concluded that, as well as people experiencing homelessness, people with disabilities, young people, Indigenous people, recent refugees and migrants appeared to be easy targets for public transport fines. There were perceptions of bias in the way fines were issued and of an informal quota system for public transport fines.

Another key theme was the impact of penalties for fine defaulters, especially driving sanctions such as the suspension of the fine defaulter's driver's licence and vehicle registration. For people living in rural and regional areas, or even in suburbs poorly serviced by public transport, there is often no reasonable alternative to driving. This compounded the social exclusion and disadvantage already being experienced by these people.



The report drew attention to the fact that the fines system in NSW impacts disproportionately on people living in poverty, children and young people, and people who are otherwise socially or economically disadvantaged. The report concluded this is largely because the penalty system offered few accessible options for non-financial penalties.

A further problem with the fines system was that it cost the NSW Government an inordinate amount of money to seek to enforce fine debts that individuals lacked the capacity to pay.

Following the release of the report, PIAC worked closely with the NSW Department of Justice and other key NSW government agencies to identify appropriate reforms and to develop a system of fines enforcement that did not have such a harsh effect on the most vulnerable and disadvantaged people in NSW. Many of the reforms sought were legislated in November 2008 in the *Fines (Further Amendment) Act 2008 (NSW)*. PIAC, through HPLS, continues to work with the government to fully implement these reforms.

The most significant reform was the introduction of Work and Development Orders (WDOs). Under the scheme, an individual who has a mental illness, intellectual disability or cognitive impairment; is suffering from acute economic hardship; or who is homeless, may apply to the NSW State Debt Recovery Office to participate in a WDO. A WDO allows such a person to 'pay off' their fines in ways other than with money. This may be done, for example, through volunteer work with an approved organisation, participation in approved medical or mental health treatment programs or participation in education and/or vocational courses.

An important difference between a WDO and a court-ordered Community Service Order is that there is no negative consequence that attaches to non-completion or partial completion of the WDO. Because there is no concept of failure to complete a WDO, the worst possible outcome for an individual is

that their outstanding fines debt remains unpaid.

An individual will receive full credit for every hour spent in undertaking a WDO. This means that if a person completes one quarter of their WDO obligation, their fines debt will be reduced by 25 per cent, and only the remaining 75 per cent remains outstanding. Further, all enforcement sanctions, such as cancellation of a driver's licence, are lifted once a WDO application has been approved. The experience of HPLS is that these reforms to the on-the-spot fines system in NSW have made a significant difference for people who are homeless and others who face disadvantage.

HPLS WDO Case studies

MD had over \$7,000 in accumulated fines, largely as a result of travelling on public transport without a valid ticket. MD applied to the State Debt Recovery Office to reduce his fines by applying for a Work and Development Order. As part of his WDO, MD completed a 16-week computer course. He believes this will assist him to return to work and eventually obtain housing.

DT attended an HPLS clinic for assistance in managing his accrued fines debts, which were over \$6,000. He wanted to get his driver's licence back so he could take up a work offer. DT applied for a WDO, which allowed him to do volunteer work and enabled his fine debt to be reduced so he could obtain his licence.

JH had 34 enforcement orders in place. The SDRO agreed to stay the execution of the writ for the levy of property and all enforcement action until JH commenced a WDO. JH undertook voluntary work as part of his WDO and reduced his overall fines debt to a manageable amount.

HPLS worked with the NSW Department of Justice and a number of other government agencies and non-government organisations to develop the guidelines that underpinned the operation of the two-year trial of WDOs. The trial commenced on 1 July 2009 and

allowed for 2,000 people to undertake a WDO. A subsequent review of the pilot concluded that the scheme was successful in assisting eligible people to both 'work off' their debts and to gain benefit from their work experience, training or support program.

Following a review of the pilot WDO scheme, the NSW Department of Justice identified several benefits from the scheme, including:

- reduced reoffending
- engagement of clients in appropriate activities
- reduction of stress and hopelessness
- promotion of agency and self-efficacy
- building client skills and an incentive to work
- a reduction of costs to government relating to enforcement, offending behaviour, welfare dependency, mental health problems and drug and alcohol problems.¹

In 2011, the then NSW Attorney General Greg Smith announced that the scheme would become permanent.

Since the scheme became permanent, the number of organisations applying to sponsor WDO clients has rapidly increased, with over 700 organisations becoming sponsors for WDO orders, in over 700 locations across NSW. Sponsor organisations include not-for-profit sponsors, government agencies (including NSW Corrective Services) and health practitioners.

The WDO Scheme has transformed the effect of the NSW infringements system on the most disadvantaged in the community. Whereas the system previously reinforced the disadvantage experienced by those experiencing homelessness, people with disability or mental illness, or those in financial distress, WDOs provide a systemic response that engages people in activities that can assist them in acquiring new skills, work opportunities or medical treatment.

Endnote

1. NSW Department of Attorney General and Justice 2011, *A Fairer Fine System for Disadvantaged People*, pp.40–41.