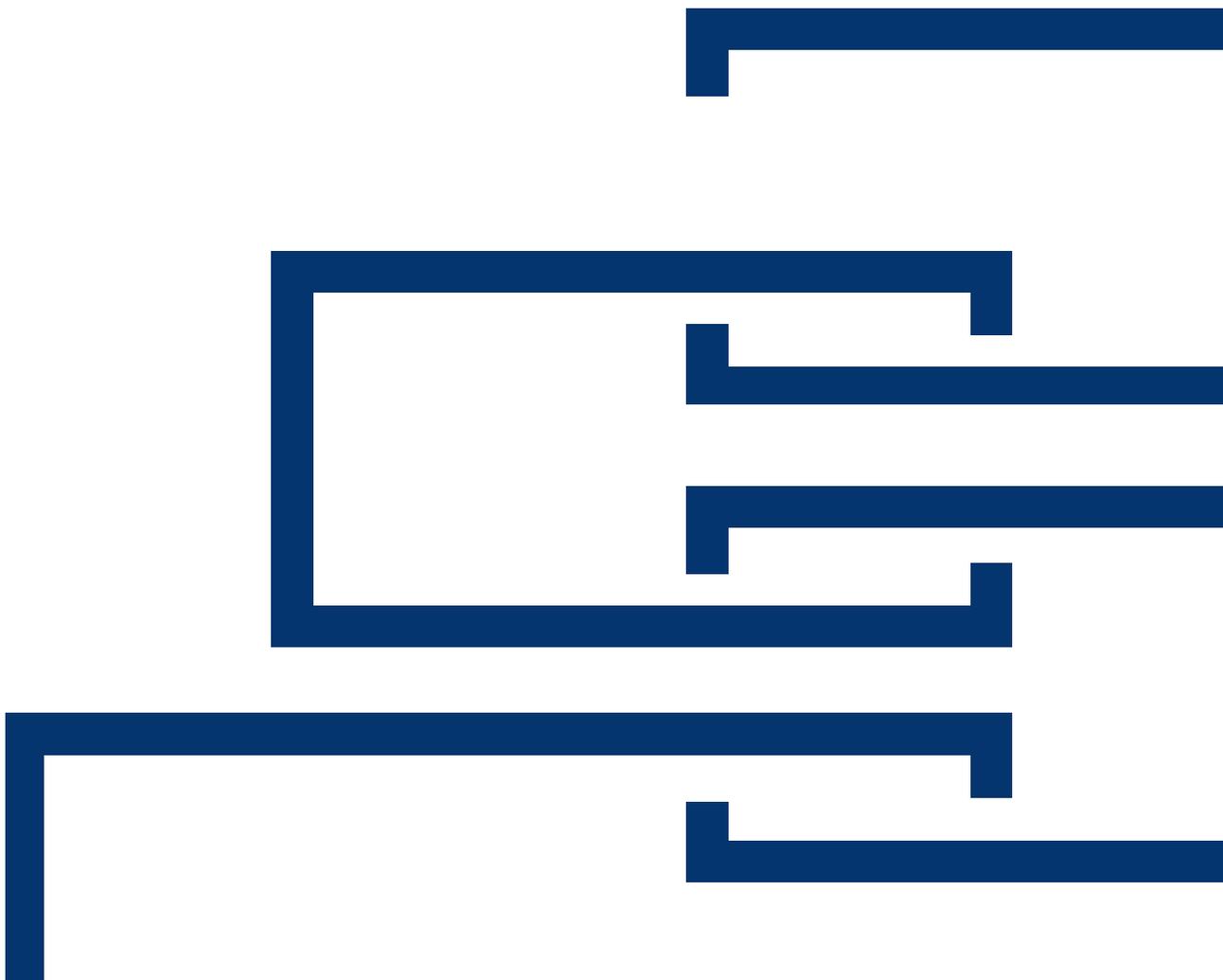


Not such a Fine Thing!

Options for Reform of the Management of Fines Matters in NSW

April 2006



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Homeless Persons' Legal Service,
Public Interest Advocacy Centre

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A Joint Initiative of the Public Interest Advocacy Centre Ltd and the Public Interest Law Clearing House Inc

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This Report was prepared in consultation with community-based and other agencies with an interest in the fines system in NSW. The Homeless Persons' Legal Service and the Public Interest Advocacy Centre acknowledge with thanks the contribution of ideas, case studies, written information including past submissions dealing with problems facing disadvantaged people who receive fines, and feedback on issues and previous drafts from staff of the following organisations:

Anglicare Marrickville; Auburn Migrant Resource Centre; Canterbury Bankstown Migrant Resource Centre; City of Sydney Homelessness Coordination Group; Coalition of Aboriginal Legal Services; Combined Community Legal Centres Group; Council of Social Services NSW (NCOSS); Fairfield Migrant Resource Centre; Homeless Persons' Legal Clinic, Melbourne; Inner City Legal Centre; Intellectual Disability Rights Service; Kempsey Shire Council; Law & Justice Foundation of NSW; Legal Aid Commission of NSW; Macarthur Legal Centre; Marrickville Community Legal Centre; Northern Rivers Community Legal Centre; NSW Attorney General's Department; NSW Young Lawyers; Office of NSW Ombudsman; Redfern Legal Centre; Shoalcoast Legal Centre; Shopfront Youth Legal Service; South Sydney Youth Services; University of NSW Institute of Languages; Welfare Rights Centre; Western NSW Community Legal Centre; Youth Action & Policy Association of NSW; Youth Justice Coalition.

While these organisations have provided enormous assistance, the views expressed in the paper and the recommendations are those of the Homeless Persons' Legal Service and the Public Interest Advocacy Centre.

Produced with the assistance of the HPLS member firm, Clayton Utz.

Published by:

© Public Interest Advocacy Centre Ltd
Level 9, 299 Elizabeth Street, Sydney NSW 2000
April 2006

ISBN: 0-9757934-2-X

All case studies in this Report are based on real cases and were provided by some of the organisations listed above. All names used have been changed to protect client anonymity.

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Glossary

Acronyms used in this report

CSO	Community Service Order
HPLC	Homeless Persons' Legal Clinic, Public Interest Law Clearing House Vic Inc – http://www.pilch.org.au/html/default.asp
HPLS	Homeless Persons' Legal Service – http://piac.asn.au/legal/hpls.html
IPB	Infringement Processing Bureau – http://www.infringements.nsw.gov.au
NCOSS	NSW Council of Social Services – http://www.ncoss.org.au
OSR	Office of State Revenue – http://www.osr.nsw.gov.au
PIAC	Public Interest Advocacy Centre – http://www.piac.asn.au
PILCH	Public Interest Law Clearing House – http://piac.asn.au/legal/pilchhelp.html
RTA	Roads & Traffic Authority – http://www.rta.nsw.gov.au
SDRO	State Debt Recovery Office – http://www.sdرو.nsw.gov.au

Not such a fine thing! Overview

The fines system in New South Wales impacts disproportionately on people living in poverty, children and young people, and people who are otherwise socially or economically disadvantaged. This is largely because its penalty system offers few accessible options for non-financial penalties.

This Report suggests options for reforming the fines system in NSW, especially in relation to on-the-spot fines. It draws on the casework experience of the Homeless Persons' Legal Service and other community-based agencies that often find themselves assisting disadvantaged people who cannot afford to pay their fines, or who feel they have been fined unfairly.

On-the-spot fines are now an accepted part of the legal system with a number of entities having officers who are authorised to issue such fines through the penalty notice process. However, in terms of the rationale for this system, there is little or no evidence that fines and enforcement fees work to prevent disadvantaged people from engaging in the behaviour for which the fines are imposed. Rather than preventing recidivism, the fines system often results in mounting debts to the State Debt Recovery Office.

CASE STUDY

After years of homelessness, Ed had many outstanding fines. He sought help from a specialist legal service because he knew he had to deal with them to get his life back on track.

An investigation found more than 40 fines referred to the State Debt Recovery Office. He owed more than \$15,000, with enforcement fees making up over half the total amount.

As well as failing to achieve the objective of discouraging particular conduct, there are a number of problems with the way in which fines are imposed and enforced that work to disadvantage people who are already marginalised. These range from the greater likelihood of people who are more visible in public space being fined, to the fact that contesting fines is difficult, stressful and time consuming, requiring skills such as literacy and self-confidence. The current court-election system also discourages people from contesting their fines.

Despite recent positive reforms such as the introduction of a Hardship Review Board, greater flexibility to waive fees and enforcement costs, changes to the system of driver's licence sanctions and of how fines affect young people, there is still a long way to go before the NSW fines system can work fairly for disadvantaged people.

Most organisations consulted for this Report identified problems with the bureaucratic processes involved in collecting fines and managing defaulters. This includes communication breakdowns between advocates and the Infringement Processing Bureau (IPB) and the State Debt Recovery Office (SDRO). Agencies also identified a lack of easily accessible information about how the system works.

CASE STUDY

Martin is an Aboriginal man living in a regional area. He was unemployed for seven years. Although he qualified for a truck driver's licence nine years' ago, he was excluded from driving due to a fines debt.

This severely affected Martin's ability to get work in an area with no public transport.

Martin recently participated in an innovative program aimed at helping Aboriginal people without a licence to obtain their drivers' licences and deal with any outstanding fines. Soon after he got his licence back, Martin successfully applied for a full-time job as a truck driver.

One key theme that emerged was problems with fines in the public transport system and the Transit Officers who issue them.

As well as homeless people, people with disabilities, young people, Indigenous people, recent refugees and migrants appear to be easy targets for public transport fines. There are perceptions of bias in the way fines are issued and of an informal quota system for public transport fines, both of which must be dealt with if the system is to be considered appropriate, fair and equitable.

Another key theme was the impacts of penalties for fine defaulters, especially driving sanctions like the suspension of the fine defaulter's driver's licence and vehicle registration. There is evidence to suggest that, for people living in poverty, these penalties can inhibit their ability to find work. 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 compounds the social exclusion and disadvantage already being experienced by these people.

CASE STUDY

John, aged 17, has a mild intellectual disability. He is unemployed and currently attends TAFE. Centrelink has denied him financial assistance, so John relies on his sister and parents for financial support.

Recently, John made some new friends at TAFE and youth group who he has been meeting up with at train stations. Twice, while waiting for his friends, Transit Officers issued him with penalty notices for being in a restricted area without a ticket. Apparently John should have bought a 'platform ticket', although there was no sign on the station to inform people of this requirement.

He also received another penalty notice for having a container of liquid chalk in his pocket, allegedly for the purpose of damaging property. John had bought the liquid chalk to complete an art assignment for his TAFE course. He had no intention of using it for any other purpose.

John has difficulty understanding why he was fined just for waiting for his friends on the platform. He did not travel on a train or have any intention of travelling on a train. Nor did he intend to damage any property. John has no real means of paying the fines.

People with little hope of being able to afford to pay their fines are prevented from quickly opting for community service as an alternative to financial penalties. Instead, they face lengthy delays before the fines collection process runs its course to the point where they are able to take up this option.

Finally, there is the role of the courts. For people living in poverty or who are otherwise disadvantaged, the prospect of facing multiple court dates and venues to deal with outstanding fines can be daunting. This is especially the case for people who may already face other legal, social and economic problems in addition to their fines.

It must be acknowledged that the NSW fines collection system includes fines imposed by courts, as well as on-the-spot fines issued by various agencies. Some disadvantaged people carry the burden of debts for court-imposed fines as well as those imposed through penalty notices. However, this Report focuses primarily on on-the-spot fines because of the impact they have on socially and economically disadvantaged people.

Instead of reinforcing disadvantage, the system can change to make a positive impact on people who already live on society's margins.

Background to this report

In the last two decades, on-the-spot fines have become generally accepted in NSW as a preferred means of dealing with many minor offences. They provide an administrative measure to relieve costs and other pressures on the legal system and courts.

For many people in NSW, on-the-spot fines are simply an inconvenience, easily resolved by paying the penalty imposed. Reforms to the system of collecting fines introduced by the *Fines Act 1996* (NSW) (the *Fines Act*) significantly reduced the risk of serving jail time for fine defaulters. This was a welcome reform. More recently, a 2002 review of the *Fines Act* and the *Fines Amendment Act 2004* (NSW) sought to improve the fines collection system.

These changes have gone some way to making the system fairer.

However, for people who are socially and economically marginalised, the fines system still works to exacerbate disadvantage.

The Homeless Persons' Legal Service¹ (HPLS) has been providing free legal advice to people who are homeless or at risk of homelessness since May 2004. Within its first year of operation, it became evident to HPLS that fines and debt are major contributing factors in reinforcing the disadvantage faced by homeless people and those at risk of homelessness. Helping clients resolve the problem of accumulated fines forms a significant component of the casework of HPLS.

When HPLS started investigating systemic problems with the fines system, it consulted a diverse range of other organisations with an interest in fines. These included community-based legal services, youth organisations, Indigenous organisations, migrant resource centres, disability and social support agencies.

What emerged was a recurring theme of social and economic disadvantage exacerbated by a complex and bureaucratic system. This Report draws on experience of and attempts to consolidate the issues raised by organisations that work with people in the community every day.

Many of the problems outlined in this Report have been raised in previous reviews of the *Fines Act* and other legislation dealing with on-the-spot fines in NSW.

Recommendations

1. That officers issuing on-the-spot-fines be given greater authority and discretion to issue warnings or cautions prior to issuing a penalty notice.
2. That the NSW Government investigate mechanisms for enabling greater access to Community Service Orders for fine defaulters in financial hardship without having to first accrue enforcement costs or attend court.
3. That training for officers who issue fines be reviewed to include positive strategies for dealing with marginalised, disadvantaged and vulnerable people, including appropriate use of discretion and anti-discrimination principles.
4. That the Infringement Processing Bureau be authorised and encouraged to accept payments by instalment.
5. That the Office of State Revenue introduce direct debit (including Centrepay) and Bpay facilities for the payment of fines and fines-related debts to the Infringement Processing Bureau and State Debt Recovery Office.
6. That the State Debt Recovery Office automatically waive enforcement and annulment fees for people who can produce a Centrelink pension card or health care card.
7. That the NSW Government, in consultation with community-based legal services and other organisations working in the field, review the comparative fairness of the amount paid for on-the-spot fines.
8. That the NSW Government investigate the feasibility of introducing a concession rate for on-the-spot fines for people on low incomes.
9. That the Office of State Revenue adopt the position that people receiving income from Centrelink are, by definition, on low incomes. Presentation of a Centrelink health care card or pension card should be deemed by the Office of State Revenue to be adequate proof for a person to qualify for a time-to-pay arrangement on hardship grounds.
10. That the State Debt Recovery Office make publicly available clear, written guidelines to assist potential applicants and their advocates in seeking write-off or waiver of fines. These guidelines should be available in plain English and community languages, printed as leaflets and published on the State Debt Recovery Office website.
11. That the Hardship Review Board release clear written guidelines to assist potential applicants and their advocates in seeking review of State Debt Recovery Office decisions. Further, that the Hardship Review Board should expand to include the appointment of an external community-based member. The State Debt Recovery Office facilitate hardship reviews by informing people in writing of their rights to refer matters to the Hardship Review Board.
12. That the NSW Government review the way in which the State Debt Recovery Office imposes driving sanctions and the circumstances under which such sanctions may be lifted.

13. That the State Debt Recovery Office lift driving sanctions for low-income fine defaulters within four weeks of making a payment arrangement for their fines-related debt. Where a person enters a Centrepay or direct debit arrangement, driving sanctions should be lifted immediately.
14. That the State Debt Recovery Office introduce a community education campaign to ensure that people better understand their rights and obligations under the fines system. Such a campaign should include an outreach program providing information for people who have been fined and advocates in community-based organisations and should be developed in consultation with key community organisations that work with people affected by the fines system.
15. That all penalty notices, reminder notices and enforcement orders be revised with a view to including clearer information about the recipient's rights, who to contact for legal advice, the effect of court election, and how to opt for court election.
16. That the NSW Government should investigate increasing access to justice in fines matters by considering ways in which the court-election process could be made more accessible, especially for people representing themselves. Suitable reforms might include introducing special sittings for fines matters, more informal procedures and guidance through the process from court staff.
17. That the NSW Government should increase access to justice in fines matters by reviewing processes affecting people seeking court election or annulment for more than one fine. This includes allowing all fines matters to be heard at one court and limiting fees to a single fee per hearing, rather than one fee per offence.
18. That the NSW Government investigate the option of introducing a Special Circumstances Court to deal with fines matters (and possibly other legal matters) affecting disadvantaged people. Such a court would have the power to hear all matters affecting a defendant, which would otherwise be dealt with by separate court hearings. It would also have the discretion to order alternative penalties and rehabilitation plans that may assist defendants in changing behaviour that caused them to be fined.

The NSW fines system

A total of 1.3 million penalty notices (fines) were issued in NSW during 2004. While most were from traffic offences, such as speeding and running red lights, and for parking offences, some 202,000 (15.5 percent) were for non-traffic offences. In the 2003 to 2004 financial year, the Infringement Processing Bureau (IPB) referred 381,123 penalty notices to the State Debt Recovery Office (SDRO). It appears that more than \$11 million in NSW State revenue came from non-traffic fines in 2004.²

For people living in poverty or otherwise disadvantaged, the system for processing fines can be cumbersome and confusing. Community-based advocates working with disadvantaged people commonly report inflexibility and communication breakdowns with the IPB and SDRO. There are also complaints about inadequate information provision, both for people who have been fined and those who advocate on their behalf.

By addressing some of these bureaucratic problems, the NSW Government could achieve greater efficiencies and relieve the burden carried by people who are already marginalised. In other words, the Government could simultaneously make the system fairer and save on collection costs.

The fines system

In NSW, the Infringement Processing Bureau and the State Debt Recovery Office are key agencies in a centralised system for collecting and enforcing penalty notices (on-the-spot fines) as well as court-imposed fines, court costs and other penalties. Both the IPB and the SDRO are part of the Office of State Revenue (OSR). Members of the public can only contact them about fines matters by telephone or via the internet.

On-the-spot fines are the main focus of this Report.

The issuing of fines

These are issued by way of a penalty notice by an array of agencies, including police, local government, public transport authorities, private toll-road operators and various Government departments. While most fines are for road traffic and parking offences, a significant proportion are for non-traffic offences. These range from fines for fishing without a licence, to travelling on a train without a ticket, to littering, to failing to vote in a local or state election. Fines can also be ordered by courts as a way of dealing with minor criminal matters. These are also referred to the SDRO for enforcement.

The collection of fines

Once a fine is issued by the relevant agency, it is then transferred to the IPB. In some cases, such as fines issued as a result of an offence being photographed through a speed and red light camera, a penalty notice issued by the IPB may be the first time the person knows they have been fined for an offence.

The IPB is effectively a collection agency that only accepts payment of the fine in full. It also has a limited power to withdraw penalty notices. The IPB does not consider the circumstances of the offence or the situation of the person who received the fine.

The IPB provides for payment of fines through Australia Post (at a post office, by phone or internet), or by cheque, money order or credit card.

Enforcement action

The IPB refers unpaid fines to the SDRO for enforcement and collection. This results in the automatic addition of a \$50 enforcement fee (\$25 for under-18s) for each unpaid fine.

As with the IPB, the SDRO can accept payment of fines through Australia Post (at a post office, by phone or internet), or by cheque, money order or credit card. The SDRO can make payment arrangements for people who cannot afford to pay their fine(s) in full, but does not provide any form of direct debit to assist people in making timely repayments. This means that anyone who does not have a cheque account or credit card must queue in a post office to make payments in cash or by electronic funds transfer from their bank account.

If a fine remains unpaid after 28 days of an enforcement order being issued, the SDRO may ask the Road Traffic Authority (RTA) to implement driving sanctions such as suspending a fine defaulter's licence and vehicle registration, or preventing them from applying for a licence or registration, until the fine is paid. The RTA may impose a \$40 fee for driving sanctions.

If such driving sanctions do not result in payment of the fine, then the SDRO may take civil enforcement action to collect the debt. This can result in an order for repossession of property, a charge on land, garnisheeing wages or issuing an examination summons (which requires court attendance). Civil action involves the Sheriff's Office, which can add a \$50 fee to the fine.

If civil enforcement is unlikely to succeed in recovering a fines debt, then the SDRO can make a Community Service Order.

The *Fines Act* still provides that a fine defaulter can be sent to prison, but only after all these options are exhausted. In practice, imprisonment for unpaid fines is unlikely, and would not reflect public policy, which recognises that people with fines should not be jailed.

Challenging a fine

It is possible to dispute a fine or the amount of a fine by electing to have the matter dealt with by a court. Information about how to exercise this option is briefly outlined on the back of penalty notices.

Time to pay, write-off and annulment of unpaid fines

For people who cannot afford to pay, unpaid fines may be written off by the SDRO in a two-stage process. Firstly, the SDRO may postpone the due date for payment, for up to five years. If the person's financial situation has not improved and they do not receive any other fine enforcement orders in this time, then the fine can be cancelled (waived). In some limited cases a fine may be waived immediately.

SDRO decisions about applications for time to pay and to have fines written off can be reviewed by the Hardship Review Board, an independent panel comprising representatives from the Office of State Revenue, the Treasury and the NSW Attorney General's Department.

In some cases, a person can apply to the SDRO for a penalty notice to be annulled. Annulment applications cost \$50 per fine. The fee may be waived in cases of serious financial hardship or if the enforcement order is more than 12-months' old. SDRO decisions in annulment applications can be appealed to the Local Court. This involves another \$50 fee.

The issuing of fines

The disproportionate impact of fines

The current system impacts most on people who are both visible to enforcement officers and financially and socially disadvantaged: homeless people, young people, people with disabilities, Indigenous people and people from non-English speaking backgrounds. The system is difficult to negotiate and, at times, punitive.

CASE STUDY

While Hussan has been sleeping in his car, he has received repeated parking fines.

Due to restrictions imposed on Hussan by the Department of Immigration while he awaits the result of his refugee application, he cannot work and has no means to pay the fines.

Hussan relies on the charity of friends and community organisations. He is waiting for a State Debt Recovery Office decision on whether it will grant a further stay on enforcement proceedings or write-off the fines.

For instance, laws regulating behaviour in public places impact adversely on homeless people. This is especially the case where behaviour that would be legal in a private home, such as drinking alcohol, is penalised when conducted in public. Fines that appear straightforward to many people may cause undue hardship to those who are already socially disadvantaged. So, a homeless person who is forced to sleep in their car is likely to pick up many parking tickets and, if the fines remain unpaid, this could lead to the suspension of their driver's licence and registration.

Organisations consulted in the course of preparing this Report identified a divide between urban and regional areas when it comes to the types of fines that give rise to complaints.

In urban areas, community legal centres identified public transport fines and the way they are issued as significant sources of problems for disadvantaged clients. Organisations working in rural and regional areas identified fines for driving offences and the failure to wear bicycle helmets as key issues.

Young Indigenous people are often very visible in country towns, especially the smaller towns. Some organisations noted that parents on limited incomes simply do not buy bicycle helmets for their children because they have to prioritise their spending to ensure day-to-day living expenses are covered. Their children then have no choice but to ride their bicycles without a helmet and face an almost inevitable fine.

CASE STUDY

A 15-year-old boy in a country town had received 320 penalty notices for riding a bicycle without a helmet, because he rode past a police officer's house on the way home from school. At the time of publication, the financial penalty for riding a bicycle without a helmet is \$50 per offence.³

Although bicycle helmet laws were devised to protect against head injuries, in some regions they have a particularly adverse impact on Indigenous youth because of limited ability to afford the cost of a helmet and high visibility in the community. This can result in the young people seeming to be easily targeted by the police. This further erodes the relationship between police and young Indigenous people. Such fines could also have a financial impact on families decreasing the likelihood that they can afford to buy a helmet.

A recurring theme emerged of perceptions of bias among some people authorised to issue fines, notably RailCorp Transit Officers. Most organisations consulted believe an unreasonable number of penalty notices are issued to disadvantaged people.

Some people reported feeling that they were targeted in a discriminatory manner. Others note that this problem most likely relates to public visibility or appearing to be 'different'. There was general support for improving the training provided to those who issue fines to reduce such concerns.

CASE STUDY

Tina, aged 17, had just got off the train at an outer suburban railway station when she was asked to produce her ticket and proof of her concession entitlement. Tina 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. Tina began to get agitated because it was late evening and she was worried about missing the last bus home. She said 'I've got to catch my f***ing bus'.

She was then issued with penalty notices for three offences: failing to produce her concession ticket entitlement, failing to comply with requirements of an authorised officer, and offensive language on railway land. Later, Tina elected to take the fines to court. Once the matters were in court, RailCorp advised that it intended to withdraw all three fines.

CASE STUDY

Soon after arriving in Australia as a refugee, Umar was approached by Transit Officers as he walked through a train station with a crowd of commuters. They asked to see his ticket.

Umar felt singled out, as no one else appeared to be having their tickets checked. After seeing that his ticket and concession card were fine, the Transit Officers asked to see some other identification, but he wasn't carrying any.

The Transit Officers asked for his driver's licence. He doesn't have one. They then asked why he doesn't have a driver's licence. At this stage Umar began to feel under threat.

Umar has war trauma. Being questioned by Transit Officers made him feel intimidated. He replied, 'Why would I be on the train if I had a driver's licence'. He was fined \$200.

A migrant resource centre helped Umar write a letter appealing the fine. He still had not heard back three months later.

CASE STUDY

Paul has an intellectual disability and his money is controlled by the Office of the Protective Commission. Paul is a disability support pensioner living in a boarding house.

Paul has problems planning his actions and being aware of their consequences before he acts. His social and interpersonal skills are poor.

The State Debt Recovery Office sent Paul's financial manager at the Office of the Protective Commission fines totalling about \$5,000. About 20 enforcement orders, dating from 2001 to 2004, related to incidents on trains or in and around stations. The penalty notices were issued for: giving police officer incorrect name and address; entering restricted area; offensive behaviour; feet on seats; not paying fare.

Paul has no ability to pay the fines and is likely to re-offend unless his transport behaviour is changed. Existing legal processes offer little to someone in his situation.

Public transport

The research undertaken in preparing this Report indicates that fines are often issued to people with intellectual disabilities and people from non-English speaking backgrounds who do not understand the nature of their alleged offence. Young people are another group who commonly receive public transport fines.

One major complaint is that RailCorp Transit Officers generally do not exercise discretion to warn offenders for minor offences. Instead, they issue fines straight away, rather than providing individuals with an opportunity to desist from the behaviour.

Then there are the fines issued for behaviour offences such as offensive language, frequently after an initial fine has been issued or threatened. This is often an inappropriate exercise of discretion as many words considered 'offensive' by RailCorp Transit Officers when on duty are not offensive at law.

Recent media coverage about plans to possibly increase the stop and search powers of Transit Officers, in light of increased public security concerns, make the need for improved training even more pressing.

This need is reinforced by the reported increase in complaints about Transit Officers to the NSW Ombudsman.⁴ Recently, the NSW Ombudsman has raised serious concerns about the way RailCorp deals with complaints made against Transit Officers.⁵

It appears relatively common for several fines to be issued at the same time. This is despite anecdotal reports that RailCorp has adopted a policy that Transit Officers should not issue more than two penalty notices in relation to one incident.

Multiple fines immediately decrease the likelihood of a person on a statutory or low income being able to pay the fines and from entering into any arrangement to pay off the fines.

Warnings, cautions and diversions

Fines should be issued as a last resort, not as a first resort, for behaviour-related offences. Issuing authorities: police, council officers and RailCorp Transit Officers, should be required to follow mandatory guidelines that involve warning or cautioning alleged offenders about their behaviour and providing them with an opportunity to desist or remedy. Fines should not be the first and only response to alleged offences.

RECOMMENDATION 1:

That officers issuing on-the-spot-fines be given greater power to issue warnings or cautions prior to issuing a penalty notice.

Impact on young people

The current fines system impacts harshly upon young people (under 18 years old) and is inconsistent with the *Young Offenders Act 1997* (NSW).

For example, where young people commit public transport offences, Transit Officers do not appear to have the power to (or choose not to) issue warnings (as prescribed by sections 14 and 15 of the *Young Offenders Act*) or cautions (as prescribed by section 20 of the *Young Offenders Act*). Community legal centres and youth advocacy organisations report that the situation is unclear and, if Transit Officers do have the power to warn or caution under-18 year olds, they do not appear to use it often.

Lack of community service options

Under the current fines system in NSW, a Community Service Order (CSO) is rarely an option for a person with outstanding fines. Instead, community service is treated as an option of last resort, normally only available after a lengthy process of first dealing with the IPB, then the SDRO.

Generally, a person who receives a penalty notice cannot elect to do community service instead of paying the fine or as an alternative to civil enforcement action (like repossessing property or garnisheeing wages). However, if a person has no significant assets and no means to pay their fine(s), they can inform the SDRO of this in writing, indicating that they would be prepared to do community service. The SDRO may in that circumstance agree to impose a CSO.⁶

Although the SDRO has the power to approve community service under some circumstances, HPLS could not find any case studies to demonstrate the use of this power. Whether a CSO is issued by the SDRO or a court, failure to comply with the order can result in imprisonment.

For someone experiencing financial hardship, the lengthy process of obtaining a court-ordered CSO simply does not make sense. Allowing people to enter community service arrangements at an earlier stage would alleviate the financially crippling impact of fines on low-income earners.

CASE STUDY

Ryan is now in his early 20s. As a teenager, he lived in a refuge and incurred several thousand dollars in railway and traffic fines. He had a learner driver's licence at one stage, but this was cancelled due to State Debt Recovery Office licence sanctions. 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 back until the fines were paid in full.

At the rate Ryan was paying his fines, he would not have repaid the debt until 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 to accumulate several years of court-imposed disqualifications. He was then declared a habitual traffic offender, which meant a further five years off the road. Fortunately his lawyer succeeded in having this declaration quashed, but Ryan is still disqualified for several years.

He is now mature enough to resist the temptation to drive unlicensed, but Ryan is finding that, without a driver's licence, his employment prospects are limited.

CASE STUDY

Serena worked from time to time as a casual cleaner, until she lost her driver's licence for defaulting on State Debt Recovery Office time-to-pay arrangements.

As a casual worker, Serena's income was inconsistent and unstable. The State Debt Recovery Office had agreed to a payment plan for her outstanding fines, but Serena defaulted when her working hours changed.

Losing her licence made it harder for Serena to obtain cleaning work, so she had to apply to Centrelink for income support. In turn, this made it even harder to pay her fines debt.

Serena tried to do something positive about her situation, which she discussed with workers at the homelessness agency she attended for lunch. She asked if they would agree to her doing some community service at the agency as a way of paying off her fines. Serena hoped that she would soon get some casual work, and pointed out that she would face similar problems committing to regular repayments since her income would vary from week to week. Serena saw working off the fines through community service as being mutually beneficial: she would be able to pay off her fines faster, as well as contribute to the homelessness agency that had helped her; and the agency would benefit from her assistance.

Serena wrote to the State Debt Recovery Office stating that the manager of the homelessness agency agreed to her working at the agency as a way of paying off her fines. She provided contact details for the manager of the agency.

The State Debt Recovery Office informed Serena that hers was an unusual request, then later told her it could not accept her proposal.

The option of undertaking community service as an alternative to having to enter into a payment arrangement would be of significant benefit, particularly if it were made available before any enforcement costs are incurred.

People owing large fines debts, and receiving Centrelink incomes or low wages, have little prospect of clearing their fines through financial contributions. Repaying fines with as little as \$10 per fortnight often removes any capacity for low-income earners to absorb unexpected expenses, like rent increases or their children's school expenses. This compounds the impact of the fine(s).

Further, the intangible costs to individuals from having unpayable fines hanging over them should not be discounted. The pressures on low-income people carrying the burden of large debts may exacerbate problems for the families of fine defaulters, magnifying stressors on people who are already economically marginalised. This can result in increasing cynicism about the legal system due to a general sense that the system is unfair, and a sense of hopelessness due to the seeming impossibility of paying the fine.

Under the current system, the Probation and Parole Service is responsible for assessing a person's suitability for a CSO. As such, the increased use of CSOs may impose some additional burden on that Service due to the costs involved in making those assessments and supervising people undertaking community service. However, in the interests of access to justice, these factors should be offset against the need to relieve the financial burden of fines on disadvantaged individuals. Making community service more readily available could also relieve pressure on the courts and the community-based legal advocates who represent low-income fine defaulters, freeing up their time to deal with other matters.

RECOMMENDATION 2:

That the NSW Government investigate mechanisms for enabling greater access to Community Service Orders for fine defaulters in financial hardship without Education and training for fines officers.

It is clear through the work of a range of community-based legal services that fines impact disproportionately on disadvantaged people, and in particular people with disabilities.

Those who are more visible in public spaces are invariably more likely to come to the attention of enforcement officers. Unfortunately, this means that homeless people will often attract attention. A high proportion of homeless people have mental illnesses or substance abuse problems. This may result in their interaction with enforcement officers being more volatile than for other people and, as a result, additional fines being issued for behaviour offences.

RailCorp (through the former State Rail Authority) is a current partner of the *Protocol for Homeless People* which was introduced to guide NSW government agencies in their dealings with homeless people in public places.

Yet research for this Report indicates that at least some Transit Officers are ill informed about how to use the discretion the Protocol requires. This Protocol is also used by police and local government.

Many people with intellectual disabilities also seem to be fined for offences they do not understand. In that circumstance the issuing of the fine will do little or nothing to prevent the conduct being repeated.

It is extremely concerning that many officers who issue fines seem unable to ascertain whether the person they are dealing with has a disability and when it might be appropriate to exercise their discretion by not issuing a penalty notice. This lack of understanding of disability and discretion may explain the current situation.

Further, there are complaints that Aboriginal people and some ethnic groups feel unfairly targeted for fines. Our research revealed several cases where Transit Officers apparently ignored language barriers by issuing fines to people who could not speak English well enough to understand that they had committed an offence.

RECOMMENDATION 3:

That training for officers who issue fines be reviewed to include positive strategies for dealing with marginalised, disadvantaged and vulnerable people, including appropriate use of discretion and anti-discrimination principles.

Such training would be useful for Transit Officers, council officers and police, as well as IPB and SDRO staff and judicial officers.

Enforcement

Complex and inflexible

Once a fine is issued, the individual must negotiate the complex fine-enforcement system.

Hand written penalty notices are often difficult to understand and read, especially for people with poor English literacy. Although penalty notices indicate on the back that the fine can be contested in court, they give no indication of where to go for legal advice. Many people do not understand how particular fines can be contested and require legal assistance to do so. Research indicates, however, that often disadvantaged people facing legal issues including fines do not seek legal assistance at all, or not until the issues have compounded to crisis point.⁷

The fine-enforcement system causes confusion to people unfamiliar with the legal system. Bureaucratic delays intrinsic to IPB and SDRO operations do not make sense to ‘outsiders’, who may expect that withdrawing a wrongly issued fine or making a time-to-pay arrangement should be straightforward processes. This causes some people unnecessary concern that they may face criminal sanctions.

Some of these complexities are outlined below.

Payment arrangements

The IPB has no enforcement powers, rather it relies on referral to the SDRO for enforcement.

Research has shown that while most offenders comply by paying their fines, a minority (though large in absolute numbers) have problems paying.⁸

CASE STUDY

Jin-Ho, a recent immigrant with limited English skills, had his wallet stolen. Some weeks after he reported the theft to police, he received a fine in the mail from a local council for illegally dumping rubbish. He did not understand why.

An investigation revealed that Jin-Ho was fined because his wallet containing his credit cards and identification (but no money) was found in the illegally dumped garbage bag.

He made numerous unsuccessful attempts to settle this matter with the Infringement Processing Bureau, informing it that his wallet had been stolen and he had reported this to the police. Eventually the Infringement Processing Bureau issued him with a Court Attendance Notice. By this time, Jin-Ho was extremely upset and fearful of a criminal conviction.

Later, he sought help from a community legal centre, which eventually succeeded in having this fine withdrawn by the Infringement Processing Bureau.

Payment by instalments

The failure to allow the IPB to accept payment by instalments creates the first block to anyone who cannot afford to pay a fine up front.

Anyone living in poverty who cannot afford to pay the fine in a lump sum, but who is willing and able to pay off their fine(s) by instalment, is immediately forced to wait up to three months before their case is referred to the SDRO. For people who are homeless or living in tenuous housing, such a long wait could mean that they have moved on or other pressing personal issues overtake the fine, so it remains unpaid.

Referral of outstanding fines to the SDRO automatically results in the addition of enforcement fees. Given that both the IPB and the SDRO are now both part of the OSR, this seems to be a harsh measure.

They could also take the matter to court, but this too involves delay and, if a person admits the offence, is likely to waste court time and resources. They run the risk of a larger fine being imposed, as well as being ordered to pay court costs.

RECOMMENDATION 4:

That the Infringement Processing Bureau be authorised and encouraged to accept payments by instalment.

Direct debit

Currently, the IPB and SDRO payment systems rely on people paying their fines at a post office, or by cheque, money order or credit card. This is out of step with the common business practice, in both the private and public sectors, of providing direct debit and Bpay facilities.

CASE STUDY

Michael lives with schizophrenia and wanted to arrange to pay off his fines.

He could not do so because he knew his illness made him unable to remember to make regular payments at a post office.

For people who are homeless or otherwise disadvantaged, attending a post office regularly to pay money toward a fine is often impossible. Also, many low-income people do not have cheque accounts or credit cards, nor access to the internet.

Direct debit arrangements should include banks, other financial institutions and Centrepay, and should be available for both one-off payments and instalment arrangements.

CASE STUDY

Nick, aged 19, had his wallet (with identification documents in it) stolen a few months ago. Several weeks later, he was surprised to receive in the mail two penalty reminder notices for offences allegedly committed at a city train station.

Nick was not at the station that day, and presumed the fines must have been incurred by someone using his stolen identification. Nick wrote to the Infringement Processing Bureau, enclosing statutory declarations and other documents to prove that he was elsewhere at the time. The Bureau 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 his lawyer made representations to RailCorp, enclosing the same material and submitting that it was a clear case of mistaken identity. The matters were withdrawn.

Organisations consulted in the preparation of this Report identified the lack of alternative payment options as a significant and ongoing problem for people on low incomes or living in isolated areas. If resolved, the SDRO could potentially save money on enforcement.

By providing direct debit and Bpay facilities, the SDRO would help ensure that more instalments were paid on time, thereby reducing the number of fine defaulters. For people who depend on Centrelink for their incomes, Centrepay provides a convenient form of direct debit. Regular direct debit payments could result in more people being eligible for the reinstatement of their drivers' licences.

Organisations also commented that they were informed some time ago that the SDRO was negotiating a Centrepay arrangement with Centrelink. They complained it is unclear whether any progress has been made. HPLS's attempts to clarify this point have also met with contradictory responses.

RECOMMENDATION 5:

That the Office of State Revenue introduce direct debit (including Centrepay) and Bpay facilities for the payment of fines and fines-related debts to the Infringement Processing Bureau and State Debt Recovery Office.

Infringement Processing Bureau: discretion to withdraw fines

While the IPB has the power to withdraw penalty notices, organisations consulted in the preparation of this Report complained that it rarely exercises appropriate discretion when asked to do so.

Instead, they report that even when there are compelling circumstances, the IPB generally sends back a standard letter stating it is satisfied that the penalty notice was correctly issued. This leaves court-election as the only option for ensuring that the circumstances of the offence will be considered.

Enforcement and annulment fees

Since some people receive numerous fines and a failure to pay results in an enforcement fee of \$50 (\$25 for people under 18), enforcement costs can become significant and exacerbate financial hardship.

Fine annulment applications must be made separately for each enforcement order, with a fee of \$50 payable for each application. Many people have multiple enforcement orders and cannot afford the application fees.

Community legal centres report that, in the past, advocates have successfully applied for these fees to be waived. However, recently the SDRO has tended to decline applications to waive the annulment fee.

RECOMMENDATION 6:

That the State Debt Recovery Office automatically waive enforcement and annulment fees for people who can produce a Centrelink pension card or health care card.

Are fines fair?

Consultations for this Report revealed a common complaint: the fines system in NSW impacts disproportionately on people living in poverty.

Some fines, and the penalties for defaulting on them, are simply unfair for socially and economically disadvantaged people, particularly when compared with penalties for other offences. Inequities in how the fines system works are a common source of complaints from organisations dealing with socially or economically disadvantaged members of the community.

Some realistic solutions include greater use of warnings and cautions, and easier access to community service and other penalties as an alternative to paying fines. This is in addition to finding ways to reduce delays in how the SDRO deals with fines matters, and a need to re-examine the appropriateness of some fines.

There is also a need to accept that some individuals simply do not fit the system. People living with poverty, debt and homelessness may never be able to pay monies owing. Others with intellectual disabilities may never understand why they were fined. For people who have literacy or English language problems, a system reliant on written evidence and legalistic processes may just be too difficult to negotiate.

For instance, community-based legal services often assist people on low incomes who have incurred multiple on-the-spot public transport fines.

In some cases, the size of these fines seems inequitable when compared with the fines imposed for other types of offences. A comparison of public transport fines with penalties for road safety offences shows some relatively minor public transport offences attract higher fines than offences affecting public safety.⁹

Public transport	Road safety
<p>Travelling without a valid ticket</p> <p>\$200 on-the-spot fine (maximum \$550)</p>	<p>Speeding more than 15 km/h but not more than 30 km/h</p> <p>\$208 & 3 demerit points</p>
<p>Smoking under any covered station area or on a train</p> <p>\$400 on-the-spot fine (maximum \$1,100)</p>	<p>Drive using hand held mobile phone</p> <p>\$225 & 3 demerit points</p>
<p>Offensive language, offensive behaviour or spitting</p> <p>\$400 on-the-spot fine (maximum \$1,100).</p>	<p>Not stopping at a red light; driving behind another vehicle too closely to stop safely (tailgating); and negligent driving</p> <p>\$300 & 3 demerit points.</p>

RECOMMENDATION 7:

That the NSW Government, in consultation with community-based legal services and other organisations working in the field, review the comparative fairness of the amount paid for on-the-spot fines.

Income inequality

In addition to comparative fairness, there is also the issue of income inequality.

In 2004, the Australia Institute proposed a proportional fines system based on income. The system proposed would allow for a concessional rate of fines for people on low incomes.

Few would argue against the principle that the penalty for an offence should affect all offenders equally. No-one would argue that rich people should receive shorter jail sentences or have fewer demerit points deducted than poor people. Yet the system of flat rate fines for traffic and other offences in Australia is grossly unfair in just this way. A flat fine applied to all imposes much more pain on low-income people than it does on high-income earners.¹⁰

The Public Interest Advocacy Centre (PIAC) and the Council of Social Services NSW (NCOSS) support this proposal, although it is acknowledged that there may be difficulties in assessing income for a proportional fines system. Lessons may be learned from existing systems in Denmark, Finland, France, Germany, Greece, Portugal and Sweden where police and the courts work on a principle that the economic burden of fines should be similar for all offenders.

The impact of disproportionately high fines is to create a system under which, for some people, the fines debt can never be paid. For instance, some public transport fines exceed the fortnightly incomes of many people reliant on Centrelink incomes, which range from around \$270 to about \$490 per fortnight, depending on age and entitlements¹¹.

The casework experience of community legal centres suggests that clients who cannot afford their fines debts often become overwhelmed and disillusioned with the system. This could contribute to recidivism, since people living in poverty and debt may have little incentive to avoid fines that they know they cannot pay.

RECOMMENDATION 8:

That the NSW Government investigate the feasibility of introducing a concession rate for on-the-spot fines for people on low incomes.

Recognising hardship

As noted above, many disadvantaged people with fines debts rely on Centrelink for their income. Their fortnightly income will generally be insufficient to pay their fines in full and still be able to pay day-to-day living expenses. Yet the process of negotiating a payment arrangement can be daunting, with many people needing assistance to complete the necessary paperwork.

Put simply, someone living on welfare payments is likely to be living in hardship. There will always be some individuals who need to prove their difficult financial circumstances to the SDRO by providing details in writing. However, people receiving government welfare payments should not have to do so.

RECOMMENDATION 9:

That the Office of State Revenue adopt the position that people receiving income from Centrelink are, by definition, on low incomes. Presentation of a Centrelink health care card or pension card should be deemed by the Office of State Revenue to be adequate proof for a person to qualify for a time-to-pay arrangement on hardship grounds.

Write-off and waiver of fines

CASE STUDY

Lee has an intellectual disability; she works part time and receives a part Disability Support Pension. She lives in a caravan and has large debts that she is paying off.

An application to write off her fines due to disability and financial disadvantage was rejected by the State Debt Recovery Office, despite evidence about her intellectual disability and her limited earning capacity.

Community legal centres report that it is extremely difficult to get the SDRO to write-off or waive fines, even with supportive medical documentation indicating significant and serious medical conditions. They commonly complain that the criteria for write-off and waiver is unclear.

Several organisations consulted expressed a need for better information from the SDRO so that advocates can improve their understanding of what is required. Without this information, current write-off or waiver provisions appear to be ineffective in curtailing the impact of fines on certain vulnerable and disadvantaged people.

In its 2003 to 2004 annual report, the OSR reports that:

*We received and approved 74 fine write off applications worth a total of \$171 532 under Section 120 of the Fines Act 1996. The fines will not be formally waived for five years. If during this time the fine defaulter incurs further fines, the original fines may be reinstated for enforcement.*¹²

To put these figures in context, the OSR collected \$167 million in fines revenue in the same period: comprising \$99 million collected by the IPB for traffic and parking fines, and \$69 million by SDRO in fines revenue.¹³

RECOMMENDATION 10:

That the State Debt Recovery Office make publicly available clear, written guidelines to assist potential applicants and their advocates in seeking write-off or waiver of fines. These guidelines should be available in plain English and community languages, printed as leaflets and published on the State Debt Recovery Office web site.

CASE STUDY

Danielle, aged 32, owes around \$1,100 in fines to the State Debt Recovery Office for travelling on trains without valid tickets. She has been a disability support pensioner for 12 years and lives with chronic Bipolar Affective Disorder.

Danielle has been admitted numerous times to psychiatric hospitals with manic episodes with psychotic features. These episodes may have been exacerbated by not taking medication and the use of drugs.

A community legal centre applied for a write-off of Danielle's fines due to her financial hardship and mental illness. The State Debt Recovery Office denied the application, instead entering Danielle into a time-to-pay arrangement of \$15 per fortnight (clearly not what was requested).

Her advocates are currently trying to gather a more comprehensive report from Danielle's treating doctor and are planning to make an application to the Hardship Review Board.

Hardship review board

Further, community legal centres and other relevant organisations complain that they have difficulties in obtaining written guidelines for the Hardship Review Board, an independent panel comprising representatives from the OSR, the Treasury and the NSW Attorney General's Department. These advocates complain that the existing SDRO information sheet about the Hardship Review Board provides inadequate information.

The Hardship Review Board can review SDRO decisions about time-to-pay applications and applications for postponement or cancellation of enforcement orders. In 2003 to 2004, it considered only 23 applications, down from 93 applications the previous year. Full relief was granted to four applicants and payment deferred for another three.¹⁴

RECOMMENDATION 11:

That the Hardship Review Board release clear written guidelines to assist potential applicants and their advocates in seeking review of State Debt Recovery Office decisions. Further, that the Hardship Review Board should expand to include the appointment of an external community-based member. The State Debt Recovery Office should facilitate hardship reviews by informing people in writing of their rights to refer matters to the Hardship Review Board.

Driving sanctions: creating new criminals

For people who are already disadvantaged, the system of imposing driving sanctions for fine defaulters may further complicate their lives. Driving sanctions may be imposed on anyone who has not paid their outstanding fines to the SDRO. This includes fines imposed for offences unrelated to motor vehicles, such as littering or travelling by train without a valid ticket.

By using driving sanctions as an incentive for paying fines, the NSW Government is effectively creating a class of new offenders who otherwise would not be charged with a criminal offence. That is, people who are fined for driving unlicensed when the only reason they lost their licence in the first place was due to unpaid fines.

The threat of driver's licence or vehicle registration suspension may work to encourage some people to pay their fines. However, for some socially and economically marginalised people who are unable to pay, driving sanctions can have serious consequences that compound their disadvantage.

RECOMMENDATION 12:

That the NSW Government review the way in which the State Debt Recovery Office imposes driving sanctions and the circumstances under which such sanctions may be lifted.

For many disadvantaged people, paying the fines or challenging them in court are unrealistic and unattractive options. They have limited financial means to pay the fine or get legal representation, and may be incapable of representing themselves. As a result, their driver's licences and vehicle registrations are suspended.

CASE STUDY

Darren, aged 31, had a long history of homelessness and drug abuse. He had successfully stopped his drug use. He was fit and wanted to get a job labouring but could not drive to building sites because his licence had been suspended due to unpaid fines.

The State Debt Recovery Office asked for a letter from prospective employers to indicate his need for a licence.

However, Darren felt that this would ruin his employment prospects and suggest to his potential employer that he was of poor character.

People who rely on driving for employment or child-care arrangements, or as the only available accessible transport, are placed in the invidious position of having to choose the greater priority; often there is little choice but to drive. Making the choice to drive unlicensed exposes people to the risk of mandatory disqualification periods, further fines and imprisonment.

Licence suspension also further limits employment opportunities and can impact on the long-term ability of the person to pay their fines.

Impact in rural, regional and remote areas

With no public transport available in areas away from major urban hubs, there is no real alternative to driving.

Several organisations reported that these factors cause serious problems for regional Aboriginal communities, which can be located more than 50 kilometres from the nearest town. Individuals with fines debts and no driver's licence are unable to get to a post office to make payments to the SDRO. Without a licence, it is hard to find a job, especially in regional areas.¹⁵

Added to this is the difficulty faced where, in many regional Aboriginal communities, people commonly rely on one car for transport. Losing vehicle registration can further isolate the community and increase the risk of being charged with driving offences.¹⁶

Disturbingly, some research suggests that the introduction of the *Fines Act* may have contributed to increasing imprisonment of Aboriginal people for drivers' licence offences, which 'were the third highest offence category'¹⁷ for Aboriginal people in 2001. Although the RTA does not collect data on Aboriginality in accident and licensing statistics, anecdotal evidence and crime statistics indicate that few Aboriginal people hold current licences.¹⁸

During 2001 approximately 11% of all driving licence convictions involved aboriginal defendants. In fact between 1997 and 2001 there was an increase in the number of aboriginal people convicted for driver licence offences from 949 in 1997, to 1957 in 2001, an increase of 51.1%.

While there has been a steady increase in aboriginal convictions over that 5 year period there was a particular jump between 1998 and 1999. That period coincides with the implementation of legislative changes to driver licensing and fine enforcement, and the offence of "drive whilst suspended" has increased each year.¹⁹

CASE STUDY

Frances is a sole parent with reduced intellectual capacity and limited social skills, the legacy of adverse events in her life, notably abuse as a child and later as a victim of domestic violence.

She incurred numerous parking fines. Frances did not understand the full extent and significance of these fines and therefore failed to pay them by their due dates. Consequently her driver's licence and vehicle registration were suspended.

Frances continued driving due to child-care needs and working late night shifts. She subsequently incurred fines for driving while unlicensed and unregistered.

These fines continue to adversely impact on her life. Frances faces the threat of imprisonment as a possible habitual offender, and the intervention of the Department of Community Services for the removal of her child as a result.

These cases have a clear human cost.

They are also a cost to the system: in both time and financial resources. Preventative measures to avoid this problem arising would be preferable to the current situation where the time of Local Courts, the SDRO, the alleged offenders and various other services are tied up trying to reinstate licences and registration in a complex fine enforcement system.

Currently the SDRO requires six consecutive payments towards a person's fine-related debt before it will authorise the reinstatement of a driver's licence. For a low-income person who can only manage fortnightly payments, this means waiting three months before they can drive again. An alternative would be to set a period of time (rather than a number of payments) in the *Fines Act*, say four weeks.

RECOMMENDATION 13:

That the State Debt Recovery Office lift driving sanctions for low-income fine defaulters within four weeks of making a payment arrangement for their fines-related debt. Where a person enters a Centrepay or direct debit arrangement, driving sanctions should be lifted immediately.

Impact on prisoners and ex-prisoners

In our society, being able to produce a driver's licence as identification is often a key to accessing essential services. Although the RTA also provides a proof of identity card for people without drivers' licences, it is only available on payment of a fee, thereby making it inaccessible to many people on low incomes.

As already mentioned, Indigenous people experience high rates of imprisonment for driving offences. Researchers have noted that:

Having a licence is a visible symbol in our community. Inmates released from (jail) need identification documents to re-establish themselves in the outside world. Aboriginal inmates often do not have identification documents such as birth certificates or drivers' licences. In our society you cannot even borrow a video let alone open a bank account, rent a flat or a caravan without them. To access Centrelink services a driver's licence is also a major form of ID.

For Aboriginal people, lack of ID can act not only as a major barrier to accessing essential services and resources, but also increases invisibility. Being unable to produce these 'bits of paper' leaves people outside mainstream society in a very tangible way.²⁰

Various advocates and researchers have noted that unpaid fines are a major obstacle for prisoners. For one, 'if inmates have unpaid fines they are not able to participate in the Driver Education program as they are not permitted to gain a licence until all fines are paid'.²¹

CASE STUDY

Nick is serving 18 months in jail for driving while suspended. He has a long history of driving-related fines. Sometime in the 1990s, when Nick was again in jail, he asked for all his fines to be consolidated so that he serve extra time to 'pay off' the fines.

Although he was told this would happen, after his release he was charged with driving without a licence. He found out that the State Debt Recovery Office still had outstanding fines that predated his time in jail.

Nick is and very bitter. He blames his current situation on what he believes was an administrative error that meant when he was released he did not come out with a 'clean slate'.

Also, since the *Fines Act* was introduced in 1996, prisoners have been unable to 'cut-out' their fines while serving time for other offences. There is some difference of opinion between community legal centres, and other agencies working with prisoners and ex-prisoners, about whether this key reform has worked fairly for people serving jail terms.

Given that *Fines Act* was devised expressly to prevent people from being jailed for minor offences, in keeping with international human rights principles, PIAC cannot support any move to reintroduce imprisonment for fine defaulters. However, it is acknowledged that solutions must be found which enable people serving prison terms to participate in driver education programs.

Some of the reforms suggested in this paper would go some way to reducing the impact on prisoners. However, it must be acknowledged that the income of people in prison is extremely limited. Consideration could be given to developing a mechanism that enables people leaving prison to do so free of fine-related driving sanctions and recognises the limited income of people in jail.

Impact on young people

Community legal centres and other agencies report that many disadvantaged young people seeking help have had their driver's licence suspended, or are unable to apply for a licence because of outstanding fines. Often they owe so much in fines that they give up hope of ever getting a licence, and drive unlicensed, thereby further incurring heavy penalties and mandatory disqualifications from the courts as a result. The lack of a licence also impacts upon their ability to gain employment and find a path out of their disadvantaged situation.

The situation has improved considerably in recent years. Licence sanctions can no longer be imposed in relation to non-traffic fines incurred by under-18s. It is now possible to get licence sanctions lifted after making a few payments on a time-to-pay arrangement. Community-based lawyers report that some magistrates appear to be more sympathetic when it comes to people who are charged with driving whilst suspended.

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 tempted to drive unlicensed. Many people are still suffering the effects of disqualifications imposed when the system was less flexible with respect to licence sanctions.

RECOMMENDATION 14:

That the State Debt Recovery Office introduce a community education campaign to ensure that people better understand their rights and obligations under the fines system. Such a campaign should include an outreach program providing information for people who have been fined and advocates in community-based organisations and should be developed in consultation with key community organisations that work with people affected by the fines system.

Reforming the courts

The present system minimises judicial review of the issuing of on-the-spot fines. Most fines are not contested in court, even if there are good reasons for doing so. This removes the issuing of fines from a key means of achieving public accountability. Stories of unfair treatment, discriminatory conduct or misconduct are common amongst disadvantaged communities. However, the experience and impact of fines on individuals is an invisible social problem.

Inappropriate court listings

There appears to be an administrative problem where fines matters for young people are being wrongly listed in the Local Court instead of the Children's Court.

Shopfront Youth Legal Service reports numerous recent experiences of this type of error, notably with court attendance notices and annulment applications. From the available documents, it seems obvious that the clients involved were under 18 (or, in the case of traffic offences, under 16) when they incurred their fines.

In some cases, it seems IPB and SDRO employees simply fail to read Shopfront's covering letters, which routinely request in bold type 'please list in a Children's Court as the client was under 18 at the time the fine was incurred'. Such failures create extra, unnecessary paperwork for legal services, which must then write to the court asking it to re-list in a Children's Court.

Resolving this problem would make the fines collection process more efficient and free up community-based legal services to assist other disadvantaged clients.

Awareness of right to elect to go to court

The current system provides inadequate information to people about their rights. This is particularly the case with penalty notices.

Although information about court election appears on the back of penalty notices, it is often overlooked or misunderstood. This is particularly a problem for people with low English literacy and others whose knowledge of the legal system is limited.

Community legal centres and other organisations consulted while preparing this Report suggested that the information on the back on fines notices be revised to include useful legal contact points, such as LawAccess and the Legal Aid Under-18s Hotline. This would enhance the ability of people to gain access to legal advice about their options, and may increase the likelihood of people electing to have the matter dealt with in court if they have a hardship issue or believe the fine was improperly issued.

RECOMMENDATION 15:

That all penalty notices, reminder notices and enforcement orders be revised with a view to including clearer information about the recipients' rights, who to contact for legal advice, the effect of court election, and how to opt for court election.

Barriers to court election

As noted above, on-the-spot fines often exceed the fortnightly income of people receiving income from Centrelink. As the system presently operates, people living in poverty who cannot afford to pay their on-the-spot fines only have the option of electing for the matter to be heard at the Local Court and, if the offence is not contested, to put their circumstances to the magistrate with the aim of having the fine reduced in proportion to the person's income.

Many disadvantaged people are unlikely to pursue this option.²² The reasons for this can be manifold.

Firstly, there is the practical impact of poverty. For people experiencing homelessness or poverty, securing accommodation, and food is often a day-to-day proposition. In this context, electing to have a fine matter heard in court may easily be given low priority in light of these essential needs.

The itinerant nature of many people who are homeless or living in poverty also adds practical difficulty in electing to have a matter heard in a court, as it will be necessary for it to be heard in the court near where the offence occurred. In some cases the offences occurred in multiple localities, involving many Local Courts.

Further, many people avoid legal procedures. The experience of community legal centres, together with research into access to justice issues, suggest that many people find their fines stressful and legal processes intimidating. Most people fear court and are unlikely to initiate their own attendance. In some cases, people fear that they may be arrested for outstanding warrants, or believe that they may be jailed for their fines. Fear of the law sometimes results in people continually moving, to avoid any interactions with police, courts or the prison system.

Individuals may have concerns about the risk of being ordered to pay both court costs and a higher penalty than their original fine, thereby increasing their indebtedness rather than decreasing it. In some cases, where the only witnesses in a court case are the person who received the fine and the person who issued it, people may also fear that the court is more likely to believe the issuing officer. This may especially be the case for people who have previously come to the attention of the criminal justice system, such as homeless people, who may feel that they will not be considered credible.

CASE STUDY

After he was fined for allegedly giving a Transit Officer a false address, Raoul unsuccessfully tried to defend himself in the Local Court. With limited English, he argued that he had shown a Health Care Card with his correct address. However, the Magistrate accepted the Transit Officer's testimony over Raoul's.

Later, a free legal service helped Raoul appeal the Court's decision. His lawyer was able to show that Centrelink had never issued Raoul with a Health Care Card showing the address the Transit Officer claimed to have been given.

The earlier Court decision was overturned, with costs awarded against RailCorp.

Lack of available legal representation

In order to effectively contest a fine, or in the case of a guilty plea present their circumstances to the court, people who are homeless or otherwise disadvantaged generally require representation by a legal practitioner. People experiencing homelessness, a mental illness, Aboriginal people, people from non-English speaking backgrounds, people with a disability and young people often face significant barriers in representing themselves in court.

A clear barrier to accessing justice is the shortage of available free legal services in this area. Community legal centres are generally unable to provide widespread representation in fines matters. Legal Aid does not provide representation in fines matters.

The lack of available advocates to represent disadvantaged people in court-election matters is a significant barrier to justice. This could increase the likelihood that the fine will be ignored, leading to its escalation through enforcement costs at the SDRO. It may also result in driving sanctions, further increasing the impact of a fine.

RECOMMENDATION 16:

That the NSW Government should investigate increasing access to justice in fines matters by considering ways in which the court-election process could be made more accessible, especially for people representing themselves. Suitable reforms might include introducing special sittings for fines matters, more informal procedures and guidance through the process from court staff.

Developing Magistrates' discretion

Given the current problems demonstrated with an exclusively financially based penalty system, Magistrates should be encouraged to exercise their judicial discretion to order alternate penalties.

It would assist if Magistrates had ready access to information about the fines a person appearing before them has accumulated. This might prevent further unrealistic fines being imposed on people who already have large debts outstanding with the SDRO. Allowing Magistrates to consider a person's fines matters in their entirety could increase the likelihood of fair and reasonable penalties. It would also enable a person to leave court with a 'clean slate'.

Magistrates could be encouraged to adjourn fines matters to provide the defendant with an opportunity to undertake community service, enter a mental health program, attend counselling or undertake education or training.

If at the return date the Magistrate was satisfied that the defendant had taken positive steps to address some of the underlying issues in relation to the fine, or had undertaken community service, the Magistrate could order that no financial penalty be imposed, or that the matter be dismissed as no conviction recorded, under section 10 of *Crimes (Sentencing Procedure) Act 1999* (NSW).

CASE STUDY

Simon, aged 19, had an unstable time during his teens. After he was asked to leave home as a teenager, life took a turn for the worse. He became drug dependant, lived in and out of various residences and was diagnosed with bipolar disorder.

Simon is now determined to turn his life around and achieve something worthwhile. During the years Simon was transient, he incurred around \$7,000 in fines for various offences including public transport fines for smoking on platform, drinking liquor on platform and travelling on a train without a valid ticket.

A specialist legal centre is currently making annulment applications on all these fines to have them heard by a court. There are 33 enforcement orders; this will mean 33 Court dates at 33 locations across Sydney and nearby regional areas.

Different fines, different courts

Under the current fines system, court elections and SDRO annulment applications are listed at the court closest to where the alleged offence occurred. Hence different fines may be listed at different courts. This can result in confusion and extra costs for individuals with more than one court-listed matter.

Anyone who makes several annulment applications is likely to find these matters listed at different courts, and on different dates. This is problematic for people with limited transport and limited money to pay for public transport, and may serve to deter people from attending court at all. It is also extremely time consuming for legal representatives to have to make themselves available for an array of court dates at differing localities.

It would be simpler and more efficient for all matters to be heard at one court.

RECOMMENDATION 17:

That the NSW Government should increase access to justice in fines matters by reviewing processes affecting people seeking court election or annulment for more than one fine. This includes allowing all fines matters to be heard at one court and limiting fees to a single fee per hearing, rather than one fee per offence.

A special circumstances court

The NSW justice system would be well served by introducing a Special Circumstances Court, or a Special Circumstances Court List, to deal with fines and other legal problems for disadvantaged people. This could result in the court system becoming more efficient in its handling of fines matters. It would also be more accessible for people who are homeless, living in poverty or disadvantaged by physical or intellectual disabilities, chronic alcoholism or other drug dependence, family fragmentation, personal histories of abuse, illiteracy, discrimination and lack of social supports.

The court could take an active role in resolving fines matters, rather than the present system where high levels of uncollected fines accumulate at the SDRO.

Any plans to introduce such a Court should involve consultation with legal, welfare and other organisations with an interest in access to justice for disadvantaged people who receive fines.

This type of court reform fits within the concept of therapeutic jurisprudence. An innovative example in NSW is the Circle Sentencing System currently used in Aboriginal communities at Dubbo and Nowra. The apparent success of Circle Sentencing in reducing recidivism and thereby reducing the numbers of Aboriginal people being jailed has led to plans to expand its application to other Aboriginal communities in NSW.

Other promising examples of therapeutic jurisprudence in this State include the Magistrates Early Referral Into Treatment (MERIT) program, Youth Justice Conferencing and the Drug Court program.

A similar approach to the suggested Special Circumstances Court is taken in Victoria, where many people with special needs are served by the Melbourne Magistrate's Court Disability List. This court sits monthly and is equipped to identify and deal with issues underlying the offending behaviours of people with special circumstances, but does not specifically include the category of homelessness as suggested above. The Victorian PILCH Homeless Persons' Legal Clinic (HPLC) has been lobbying for homelessness to be included as a special circumstance for the Disability List. In the meantime, many HPLC clients already qualify for the Disability List on the basis of their own disabilities.

In the USA, 11 counties (mainly in California) operate specialist homeless courts and many other jurisdictions are exploring the potential of such programs. The first American homeless court program started in San Diego in 1989.

The Homeless Court Program operates on a monthly basis at two of San Diego's largest shelters. A special voluntary court session is convened at the shelter - a judge, clerk, public defender and prosecutor come to the shelter to provide greater access to justice to homeless people with outstanding criminal misdemeanour warrants. The philosophy behind this unique program is rehabilitative rather than punitive, and no one is taken into custody.

*The key players involved in the program realise that outstanding criminal warrants often preclude homeless people from accessing vital services such as employment, housing, public benefits, and treatment for mental health and/or substance abuse problems. As such, the court seeks to address the legal problems of the homeless participants as well as linking them with appropriate services and treatment programs.*²³

The development of a specialist NSW Court could involve the collaboration of homelessness, disability and other welfare organisations, the judiciary and individuals issued with fines to use judicial power to positively intervene in the lives of people who come before the Court.

A Special Circumstances Court could be combined with a shift toward community-based penalty options rather than financial penalties. If necessary, it could be convened at organisations that people experiencing poverty or disability already attend for services such as meals, counselling, training, internet access and referral to other agencies.

It is not within the scope of this Report to define how a Special Circumstances Court would function, since such definition requires time and extensive consultation. However, an appropriate model would take a problem solving approach to fines issues.

For instance, a Special Circumstances Court could order defendants found guilty in infringement matters to attend a health service, perform community service or enter an employment program instead of simply ordering a financial penalty. It would allow all fines matters (and possibly other legal matters) to be dealt with at one time, in one place. This would have the important benefit of resolving all an individual's outstanding fines at the one hearing. It would allow people to begin again and have a larger impact on curbing the behaviour that results in infringements. In short, it could assist in moving people out of crisis situations and make a positive impact on their lives.

Clearly, there is potential for a Special Circumstances Court to reduce costs in the administration of justice through less adjournments and more effective use of the court's time. This type of reform could also assist by increasing the confidence of disadvantaged people in the administration of justice and the operation of the law. Individuals have the opportunity to put all their circumstances to the Court, allowing the judicial officer to consider and reflect those circumstances in the Court's decision. Presently, the inherent unfairness of the fines system in not considering the individual circumstances in a comprehensive way undermines the effectiveness of the system to encourage legal compliance, and results in the SDRO enforcing fines that can never be paid.

RECOMMENDATION 18:

That the NSW Government investigate the option of introducing a Special Circumstances Court to deal with fines matters (and possibly other legal matters) affecting disadvantaged people. Such a court would have the power to hear all matters affecting a defendant, which would otherwise be dealt with by separate court hearings. It would also have the discretion to order alternative penalties and rehabilitation plans that may assist defendants in changing behaviour that caused them to be fined.

In summary

This Report has outlined a variety of options for reforming the fines system in NSW.

Some suggestions, such as improving access to a range of payment options and direct debits for low-income people with fines-related debts, are easy to implement. Others, such as the idea of introducing a Special Circumstances Court to simplify access to justice for disadvantaged people, require further research and public consultation.

There may be other options for reforming the NSW fines system not included in this Report. However, HPLS hopes that the Report will serve as a starting point for dealing with issues that various community-based advocates and their clients have been confronting for years.

This Report will be submitted to the NSW Attorney General and relevant NSW Government departments and agencies. It will be also distributed to community organisations, so that community efforts to make the NSW fines system fairer for disadvantaged people can have greater co-ordination.

Endnotes

- 1 The Homeless Persons' Legal Service (HPLS), which was launched in May 2004, is a joint initiative of the Public Interest Advocacy Centre Ltd (PIAC) and the Public Interest Law Clearing House Inc (PILCH). The appendix to this Report provides a brief overview of PIAC, PILCH and HPLS.
- 2 Office of State Revenue, *Annual Report 2003-2004* (2005), 67 and 69.
- 3 See the Road Traffic Authority website <http://www.rta.nsw.gov.au/rulesregulations/downloads/0905_demerits_general.pdf> for downloadable document on general driving offences.
- 4 See: NSW Ombudsman, *Annual Report 2003-2004* (2004); and 'Complaints soar 200 per cent over fine notices' *Sydney Morning Herald* (Sydney) 29 October 2003.
- 5 NSW Ombudsman *Annual Report 2004-05*
- 6 Inner City Legal Centre and Redfern Legal Centre, *Fined Out* (2004).
- 7 Suzie Forell, Emily McCarron and Louis Schetzer, *No Home, No Justice? The Legal Needs of Homeless People in NSW* (2005).
- 8 Richard Fox, 'Criminal Sanctions at the Other End' (Paper presented at the 3rd National Outlook Symposium on Crime in Australia, Mapping the Boundaries of Australia's Criminal Justice System convened by Australian Institute of Criminology, Canberra 22-23 March 1999).
- 9 See the State Transit website <<http://www.cityrail.info/fares/fines.jsp>> and the Road Traffic Authority website <<http://www.rta.nsw.gov.au/rulesregulations/penalties/speeding.html>> for more details on speeding offences and <http://www.rta.nsw.gov.au/rulesregulations/downloads/2005_06_demeritlist_dll.html> for downloadable documents on speeding offences, parking offences and general driving offences.
- 10 Clive Hamilton, *Making fines fairer* (2004).
- 11 The Centrelink rates referred to here do not include additional payments for children.
- 12 Office of State Revenue, *Annual Report 2003-2004* (2005) 13.
- 13 Office of State Revenue, *Annual Report 2003-2004* (2005) 10.
- 14 Office of State Revenue, *Annual Report 2003-2004* (2005) 13.
- 15 See Mark Thompson, *Evaluation of the Aboriginal Road Safety & Licence Program* (2005).
- 16 Allison Jones and Deidre Hyslop, 'Can't Wait to Get Out & Drive Past the Cops. This Time I'll have a Licence. Pre-Release Programs in NSW Correctional Centres: Driver Education at Mannus NSW Department of Corrections' (Paper presented at Best Practice Interventions in Corrections for Indigenous People Conference convened by the Australian Institute of Criminology, Sydney, 8-9 October 2001).
- 17 Mark Thompson, op cit, 1
- 18 Ibid
- 19 Ibid, 2
- 20 Jones & Hyslop op cit, 4.
- 21 Ibid, 4.
- 22 Suzie Forell, Emily McCarron and Louis Schetzer, *No Home, No Justice? The Legal Needs of Homeless People in NSW* (2005).
- 23 See American Bar Association website on homeless courts at <http://www.abanet.org/homeless/Homeless_Courts.html>.

Further reading

For more information about access to justice issues affecting disadvantaged people and the way fines work, see:

- Suzie Forell, Emily McCarron and Louis Schetzer, *No Home, No Justice? The Legal Needs of Homeless People in NSW* (2005). See also other publications in this series from the NSW Law and Justice Foundation's Access to Justice & Legal Needs project.
- Richard Fox, 'Criminal Sanctions at the Other End' (Paper presented at the 3rd National Outlook Symposium on Crime in Australia, Mapping the Boundaries of Australia's Criminal Justice System convened by Australian Institute of Criminology, Canberra, 22-23 March 1999).
- Inner City Legal Service and Redfern Legal Centre, *Fined Out* (2004).
- Monash University Faculty of Law & Victorian Department of Justice, *On-The-Spot Fines & Civic Compliance 2003 – a two year co-operative research project* (2003).
- Jane Sanders, *Fines & young people (or, all you need to know about the SDRO)* (2004). Jane Sanders is the Co-ordinator of the Shopfront Youth Legal Centre. This paper was originally prepared for the Children's Legal Service Bulletin, April 2004, and was updated in September 2004.

Appendix

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal and policy centre located in Sydney. Its charter is:

To undertake strategic legal and policy interventions in public interest matters in order to foster a fair, just and democratic society and empower citizens, consumers and communities.

PIAC's work extends beyond the rights and interests of individuals; it specialises in working on issues that have systemic impact. PIAC's clients and constituencies are primarily those with least access to economic, social and legal resources and opportunities. PIAC provides its services for free or at minimal cost.

The Public Interest Law Clearing House

The Public Interest Law Clearing House (PILCH) was established in 1992 by the Law Society of New South Wales, the Public Interest Advocacy Centre and the private legal profession to respond to the growing incidence of unmet legal needs within the community. Underlying the establishment of PILCH is the commitment from lawyers that the provision of legal services on a *pro bono publico* ('for the public good') basis is intrinsic to legal professional responsibility.

The aims of PILCH are:

1. to identify matters of public interest that warrant legal assistance *pro bono publico*;
2. to identify the legal needs of non-profit organisations;
3. to match disadvantaged and under-represented individuals, groups and non-profit organisations with a need for otherwise unavailable legal assistance with PILCH member firms and barristers;
4. to utilise the diverse skills and resources of lawyers in a broad range of public interest matters;
5. to expand the participation of private practitioners in the law reform process;
6. to seek the integration of *pro bono* work with legal practice; and
7. to encourage co-operation between private practitioners and public interest lawyers.

PILCH provides services to community organisations and individuals for free. It is a membership-based organisation with members including small, medium and large private law firms, individual barristers, barristers' chambers, accounting firms, the Law Society of NSW, the NSW Bar Association and PIAC.

Homeless Persons' Legal Service

In 2003, following an extensive consultation process, PIAC and PILCH established the Homeless Persons' Legal Service (HPLS). HPLS was established with funding support from the Commonwealth Department of Family and Community Services under the National Homelessness Strategy, and the NSW Public Purpose Fund through the support of the NSW Attorney General, the Hon Bob Debus. HPLS is currently funded by the Public Interest Advocacy Centre, which is seeking funding support to continue this important initiative.

HPLS provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. It operates six clinics on a roster basis at welfare agencies in the inner city of Sydney and Parramatta. These are agencies that provide direct services, such as food and accommodation to people in housing crisis. The clinics are co-ordinated by HPLS and staffed by lawyers from law firms that are members of PILCH. Since the launch of HPLS in May 2004 it has provided advice to more than 600 clients.

The following private law firms provide lawyers on a *pro bono* basis to HPLS to provide legal services through the clinics: Allens Arthur Robinson, Baker & McKenzie, Clayton Utz, Ebsworth and Ebsworth, Gilbert + Tobin, Henry Davis York, and Minter Ellison. The clinics are hosted by the following welfare agencies: the St Vincent de Paul Society's Vincentian Village and Matthew Talbot Hostel, The Station, the Uniting Church's Parramatta Mission, Wesley Mission's Edward Eagar Lodge, and the Salvation Army's Streetlevel Mission.

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