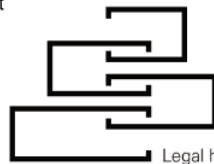




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Homeless Persons' Legal Service

Legal help for the homeless and those at risk of homelessness

2 October 2007

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

Dear Sir

The Effectiveness of Fines as a sentencing option: further submission from the Homeless Persons' Legal Service

The Homeless Persons' Legal Service (**HPLS**) welcomes the opportunity to make comments on the New South Wales Sentencing Council's interim report: *The Effectiveness of Fines as a Sentencing Option: Court-imposed fines and penalty notices (the Interim Report)*. The Homeless Persons' Legal Service commends the Council for producing comprehensive recommendations for reform to the fines system in New South Wales.

As noted in our original submission, the current operation of the fines system acts to reinforce the disadvantage faced by homeless people and those at risk of homelessness. A significant proportion of the casework of the Homeless Persons' Legal Service is concerned with assisting homeless people to resolve accumulated debt from the non-payment of fines. Drawing on this casework and the experiences of other community based organisations, the HPLS's original submission drew attention to the disproportionate impact of the penalty notice system on homeless people and provided suggested reforms in order to make it more appropriate, fair and equitable.

The Homeless Persons' Legal Service acknowledges that the Interim Report supports many of the recommendations made in its original submission and agrees with most of the options for reform proposed by the Council. The Homeless Persons' Legal Service also offers the following further recommendations and comments.

Penalty Notices

Training for the issuance of penalty notices

The Homeless Persons' Legal Service supports the Interim Report's proposal for the development of guidelines and training for the issuing of penalty notices by issuing agencies. The Homeless Persons' Legal Service welcomes the recommendation that such guidelines include instruction on the use of alternatives to the imposition of fines, including diversion into appropriate programs designed to modify offending behaviour. While the report makes no recommendations as to the nature of these diversionary programs, HPLS submits that they should be appropriately funded and provided by groups already working with vulnerable and disadvantaged people.

It is also important that the training of issuing officers include training on understanding the needs of homeless and vulnerable people. This training should be developed in consultation with community organisations that work closely with such people. Since the Homeless Persons' Legal Service's original submission, it has met with representatives from RailCorp about the content of its training to Transit Officers. Another meeting between Homeless Persons' Legal Service and RailCorp is proposed for 5 October 2007 to seek further progress towards appropriate training content.

Greater flexibility in Time-to-Pay Applications

The Homeless Persons' Legal Service welcomes the Interim Report recommendation for greater flexibility in approving Time-to-Pay arrangements prior to the enforcement stage. Since the publication of the HPLS's original submission, the State Debt Recovery Office has implemented a system for payment by instalment for people experiencing financial difficulties. Under this system, those issued with fines whose financial circumstances prevent them from paying the fines in full can apply to the State Debt Recovery Office to pay by instalments over a two-month period. However, if this two-month period has expired without the full payment of the fines debt, enforcement costs are imposed. After these enforcement costs have been added to the fine, the defaulter is then able to apply again to the State Debt Recovery Office for further time to pay their debt under the Time-to-Pay system.

HPLS believes that the two months available in order to pay by instalments is insufficient time for people experiencing severe financial difficulties. Most of HPLS clients' only form of income is Centrelink payments, making it highly unfeasible for them to pay their debt within two months. For example, one HPLS client received, in one instance, two \$400 fines, totalling \$800. As she was receiving income support from Centrelink of \$212 per week, in order to pay her debt within two months, she would have been forced to spend over 43% of her weekly income (or \$92 per week).

HPLS also submits that the imposition of enforcement penalties for those who are experiencing financial difficulties and who have already made arrangements to pay off their fines debt is unnecessarily harsh and punitive. The State Debt Recovery

Office must instead implement a Time-to-Pay system that enables those with fines to pay at a rate they can afford and that is available to those on Centrelink payments prior to the imposition of enforcement fees.

State Debt Recovery Office

Introduction of a Community Education Campaign

The Homeless Persons' Legal Service supports the Interim Report proposal for the State Debt Recovery Office to have a more proactive physical presence. To facilitate this aim, the Homeless Persons' Legal Service recommends that the State Debt Recovery Office implement a community education campaign to ensure that people better understand their rights and obligations under the fines system. Clients seeking assistance from the Homeless Persons' Legal Service in relation to fines matters often have no knowledge of these rights and, as a consequence, accrue mounting debts to the State Debt Recovery Office.

In an attempt to provide more information to individuals affected by the fines system, the Homeless Persons' Legal Service has begun providing training and information sessions at a number of community centres. The Homeless Persons' Legal Service recommends that the State Debt Recovery Office implement a more comprehensive version of these training sessions both to those who have been fined and to advocates and community workers in community-based organisations. This community education campaign should be developed in consultation with key community organisations that work with disadvantaged and marginalised people.

Debt Write-Off

HPLS supports the Interim Report recommendation for improving the procedures for the writing off of obviously unrecoverable debt at an early stage. As the report details, the procedure of making debt write-off subject to the condition that the offender does not incur any debts for five years, is inadequate for individuals with a mental illness or experiencing another form of disadvantage which make the incursion of further fines a high probability. One of HPLS's recent clients suffering from a severe mental illness, after having his original fines written off for hardship has received another fine and therefore is liable to have his original fine re-imposed.

Further, despite already having provided documentation of our client's health condition, HPLS once again needs to make an application to the SDRO for his fines to be written-off on the basis of special circumstances. Such a procedure would not be necessary if, in the first instance, the transit officer had applied discretion and not issued our client with a fine. However once a fine has been issued, HPLS submits that the SDRO should implement a policy of waiving fines unconditionally in the instances of offenders with special circumstances and allowing a way to ensure that, for some individuals, a quicker process for withdrawal of subsequent fines can be accessed.

Improved Information

The Homeless Persons' Legal Service supports the Interim Report recommendation that the State Debt Recovery Office publish and supply information in Plain English

informing people of their entitlements under the penalty notice and enforcement processes.

Since the HPLS's original submission, the State Debt Recovery Office has placed some information about the fines process on its website. Although the Homeless Persons' Legal Service welcomes the supply of web-based information, the clarity of the information could still be improved. In particular, the penalty notice section of the website fails to provide information to someone having received a penalty notice about their ability to apply to the SDRO for debt write-off, to pay their fines by instalments or to contest their receipt of a fine in court. Further, we submit that the exclusive provision of web-based information fails to adequately address the needs of disadvantaged and marginalised people who may have no or limited access to internet facilities. The Homeless Persons' Legal Service recommends that the State Debt Recovery Office also publish this information about a person's rights and entitlements in a hard copy form and that it be provided to those whose debts have been referred to the State Debt Recovery Office. This information should be available in Plain English and community languages.

Community Service and Diversionary Options Prior to the Enforcement Stage

The Homeless Persons' Legal Service again recommends community service be made an alternative to payment prior to the enforcement stage. As was outlined in the previous submission, people with large fines debts and receiving Centrelink incomes or low wages often have little ability to clear their fines through financial contributions. However, under the current system, community service orders are rarely, if ever, imposed as a sanction in the event of non-payment of fines. The Homeless Persons' Legal Service is currently conducting research into an appropriate community service model, that could be included as a payment option prior to the imposition of enforcement costs. We look forward to sharing the results of this research with the Sentencing Council and others once it is completed.

Introduction of a Special Circumstances Court

The Homeless Persons' Legal Service believes that the Interim Report's recommendation to overhaul the Hardship Review Board and replace it with a State Debt Recovery Office Review Board is not sufficient to address the problems with efficiency and accessibility inherent in the system for handling fines for disadvantaged people. The original submission proposed the introduction of a Special Circumstances Court. Such a Court would be established to specifically deal with fines and other court matters involving people who face significant disadvantage in dealing with court procedures. The Homeless Persons' Legal Service continues to support the implementation of a Special Circumstances Court or, at a minimum, a Special Circumstances List in the Local Court and is currently conducting further research into an effective model to be implemented in New South Wales. The Homeless Persons' Legal Service is willing to provide its report to the Sentencing Council once it is finalised.

Thank you for considering this submission. If you wish to discuss any issues arising, please contact me on 8898 6510 or at chartley@piac.asn.au.

Yours sincerely
Homeless Persons' Legal Service
Public Interest Advocacy Centre

Chris Hartley
Homeless Persons' Legal Service Policy Officer