



public interest
ADVOCACY CENTRE LTD

**Considering the impact of CIN more broadly:
Response to the NSW Ombudsman's review of the impact of
Criminal Infringement Notices on Aboriginal and Torres Strait
Islander Communities**

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- Expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Two programs of PIAC are the Homeless Persons' Legal Service and the Indigenous Justice Program. The issues raised by the current inquiry are relevant to both.

Homeless Persons' Legal Service

In 2003, following an extensive consultation process, the Homeless Persons' Legal Service (HPLS) was established by the Public Interest Advocacy Centre and the Public Interest Law Clearing House (PILCH). HPLS is funded by the NSW Public Purpose Fund through the support of the NSW Attorney General.

HPLS provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. It operates nine clinics on a roster basis at welfare agencies in the greater Sydney area.¹ These are agencies that provide direct services, such as food and accommodation to people in housing crisis. The clinics

¹ The clinics are hosted by the following welfare agencies: Edward Eagar Lodge (Wesley Mission), Matthew Talbot Hostel (St Vincent de Paul Society), Newtown Mission in Partnership with Newtown Neighbourhood Centre, Normal Andrews House (Uniting Care), Parramatta Mission (Uniting Church), Streetlevel Mission (Salvation Army), The Station, Wayside Chapel (Uniting Church) and Women's and Girls' Emergency Centre.

are co-ordinated by HPLS and staffed by lawyers from PILCH members.² Since the launch of HPLS in May 2004 it has provided advice to over 2,200 clients.

Indigenous Justice Program

The Indigenous Justice Program at PIAC was established in November 2001 with funding from law firm, Allens Arthur Robinson, to enable the employment of a full-time solicitor. This funding continues to provide the core funding for the program. The focus of the program has been civil law issues including developing mechanisms to support and respond to the experiences of the Stolen Generation, the repayment of monies held in trust by the state, the experience of Indigenous people in correctional settings and with police, and discrimination issues.

Previous work on Penalty Infringement Notices

In April 2006, HPLS published its report on the NSW on-the-spot fines system, *Not Such a Fine Thing! Options for Reform of the Management of Fines Matters in NSW*.³ This report was the result of collaborative research with a number of community-based legal assistance and related organisations. That research drew on the day-to-day experience of those organisations working with homeless people and other people facing disadvantage, including the advice and casework services of the Homeless Persons' Legal Service.

Since the launch of that report, PIAC has been working with the NSW Attorney General's Department and other key NSW Government agencies to identify appropriate reforms. Many of the reforms sought were legislated in November 2008 in the *Fines (Further Amendment) Act 2008* (NSW). PIAC, through HPLS, will continue to work with Government to fully implement those reforms.

The current Inquiry

On 24 October 2007, PIAC and HPLS issued a media release in which concern was expressed about the introduction of the Criminal Infringement Notices system. PIAC welcomes the NSW Ombudsman reviewing the impact of Criminal Infringement Notices (CIN) on Aboriginal and Torres Strait Islander (ATSI) communities, but is disappointed that the terms of this review are not much broader to consider the impact of the CIN scheme on other vulnerable groups.

General comments

It is PIAC's experience that the fines system within NSW disproportionately affects the most vulnerable groups within our community including people from an ATSI background, homeless people, people with an intellectual disability, people with mental health problems, and people from non-English-speaking backgrounds. Often the reason that the system creates greater disadvantage for members of these groups than for others is that they are highly visible to enforcement officers.

In *Not Such a Fine Thing!*, HPLS illustrated the impact of fines on vulnerable groups and the need for reform of the NSW fines system. A key aspect of the impact is that activities that are legal when undertaken in the privacy of a person's home are often illegal when conducted in public, for instance, drinking alcohol.

² The following members of PILCH provide lawyers on a *pro bono* basis to HPLS to provide free legal services through the clinics: Allens Arthur Robinson, Baker & McKenzie, Corrs Chambers Westgarth, Deacons, DLA Phillips Fox, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Legal Aid NSW and Minter Ellison.

³ Ellena Galtos and Emma Golledge, *Not Such a Fine Thing! Options for Reform of the Management of Fines Matters in NSW* (2006), available at <http://www.piac.asn.au/publications/pubs/fines_20060404.html>.

The introduction of the CIN system for minor criminal offences like offensive behaviour, offensive language and shoplifting are the kinds of offences that are more likely to involve the vulnerable groups identified above. HPLS lawyers at the clinics often hears stories of enforcement officers issuing a fine or CIN in circumstances when a warning or caution would have been an effective alternative in the circumstances.

It appears that there is a general lack of consideration by enforcement officers of the person's capacity to pay the penalty, the impact that paying the penalty will have on the person's ability to meet other essential financial responsibilities, like pay the rent or buy food, or the likelihood of secondary offending because the unpaid fine remains outstanding for many months or years.

Unfortunately, it is not surprising that while ATSI people make up only 2% of the NSW population they have received 4.9% of the CINs issued since this scheme commenced statewide in 2007. In PIAC's submission, it would be useful for the NSW Ombudsman to ensure the collection and reporting of data of the negative impact of the CIN scheme on a range of socially and financially disadvantaged groups, including but not limited to ATSI.

The issues for consideration identified by the NSW Ombudsman have an negative impact across all vulnerable and marginalised groups and should be reviewed more broadly than only ATSI groups, including:

1. a CIN recipient's capacity to pay the fine and any accumulated fine debt;
2. cancellation of a CIN recipient's driver's licence and/or vehicle registration;
3. the impact of accumulated debt on education and employment opportunities;
4. a reduction in cautions or warnings being issued (the so-called 'net-widening' of options for minor criminal offences that has been created by the CIN scheme);
5. the use by NSW Police of a recipient's CIN history in later court proceedings, even though the payment of a CIN is not an admission of guilt and does not result in a criminal record for that offence.

Recommendation:

PIAC recommends that the NSW Ombudsman expand the scope of the current review to consider the negative impact of the CIN scheme on socially and/or financially disadvantaged groups more broadly, including people who are homeless and people with disabilities.

Work and development orders

People dependent on Centrelink benefits or other limited income streams often do not have the capacity to pay the financial penalty attached to a fine or CIN. The recently developed Work and Development Order (WDO) provides the option for a fines recipient to apply to:

- complete a certain number of hours of voluntary work with an approved community organisation;
- commence or continue with a mental health treatment plan;
- commence or continue an educational, vocational or life skills course;
- commence or continue with drug and/or alcohol treatment; or
- undertake financial or other counselling.

Successful completion of any of the above options results in the fines debt being fully mitigated.

HPLS was actively involved in the legislative reform⁴ introduced by the NSW Attorney General and passed by NSW Parliament in November 2008. PIAC is looking forward with anticipation to the introduction of a two-year trial of WDOs as an alternative to meeting the obligation of fines by purely monetary means.

Section 99B of the *Fines Further Amendment Act 2008* (NSW) (the Act) states that the State Debt Recovery Office (SDRO) will only consider a WDO application where the person making the application 'has an intellectual disability, a mental illness or cognitive impairment, is homeless or is experiencing acute economic hardship'.

The guidelines underpinning the trial of WDOs are yet to be written but will be developed by the Attorney General's Department and SDRO in conjunction with non-government organisations, including PIAC, and mental health services. Under section 99B the fact of being ATSI will not, on its own, qualify a person to apply to participate in a Work and Development Order (WDO) arrangement.

PIAC suspects that acute economic hardship would require more than merely being the recipient of a Centrelink benefit and an unintended consequence of the Act may be that many ATSI people who are issued CINs may fall outside the scope of some of the benefits offered by the current reforms.

Recommendation:

PIAC recommends that the NSW Attorney General's Department, when developing the guidelines for the implementation of Work and Development Orders under the Fines (Further Amendment) Act 2008 (NSW), to carefully consider the accessibility of the options to ensure that people of Aboriginal and Torres Strait Islander descent are not inadvertently excluded from benefiting from these reforms. PIAC further recommends that consideration be given to expressly including people of Aboriginal and Torres Strait Islander descent in the named categories of people under section 99B of that Act.

⁴ *Fines (Further Amendment) Act 2008* (NSW).