

**National Homelessness Conference  
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**Access to Justice**

**A fine outcome:  
Work and Development Orders**

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In the last 20 years, on-the-spot fines have become generally accepted in New South Wales as a preferred means of dealing with many minor offences. Fines provide an administrative means to relieve costs and other pressures on the legal system and courts.

For many people, fines are simply an inconvenience, easily resolved by paying the penalty. However, for people who are socially and economically marginalised, the fines system works to exacerbate disadvantage.

The Homeless Persons' Legal Service has been providing free legal advice to people who are homeless or at risk of homelessness since May 2004<sup>1</sup>. In the first year it became evident to HPLS that fines and debt are major contributing factors in reinforcing the disadvantage faced by HPLS clients. Helping clients resolve the problem of

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<sup>1</sup> The Homeless Persons' Legal Service is a joint initiative of the Public Interest Advocacy Centre (PIAC) and the Public Interest Law Clearing House. PIAC receives core funding for HPLS from the NSW Attorney General, through the Public Purpose Fund.

accumulated fines forms a significant component of the casework of HPLS.

Fines are routinely one of the top issues that we deal with, second only to tenancy, and making up about 10% of all legal issues (or roughly 100 clients) raised with HPLS solicitors each year.

In April 2006, the Homeless Persons' Legal Service released a report, [\*Not such a Fine Thing! Options for Reform of the Management of Fines Matters in NSW.\*](#)

*Not such a Fine Thing* was prepared in consultation with 29 community-based and other agencies with an interest in the fines system in NSW:

1. Anglicare Marrickville
2. Auburn Migrant Resource Centre
3. Canterbury Bankstown Migrant Resource Centre
4. City of Sydney, Homelessness Co-ordination Group
5. Coalition of Aboriginal Legal Services
6. Combined Community Legal Centres Group
7. Council of Social Services NSW (NCOSS)
8. Fairfield Migrant Resource Centre
9. Homeless Persons' Legal Clinic, Melbourne
10. Inner City Legal Centre
11. Intellectual Disability Rights Service
12. Kempsey Shire Council
13. Law and Justice Foundation of NSW
14. Legal Aid NSW
15. Macarthur Legal Centre
16. Marrickville Community Legal Centre
17. Northern Rivers Community Legal Centre
18. NSW Attorney General's Department
19. NSW Young Lawyers

20. Office of the NSW Ombudsman
21. Redfern Legal Centre
22. Shoalcoast Legal Centre
23. Shopfront Youth Legal Service
24. South Sydney Youth Services
25. University of NSW Institute of Languages
26. Welfare Rights Centre
27. Western NSW Community Legal Centre
28. Youth Action & Policy Association of NSW
29. Youth Justice Coalition

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

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

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

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.

The report drew attention to the fact that 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. The report concluded this is largely because the penalty system offered few accessible options for non-financial penalties.

Eighteen options for reforming the fines system in NSW were suggested, especially in relation to on-the-spot fines. In making these suggestions for reform, HPLS drew on its casework experience and that of other community-based organisations that often assist disadvantaged people who cannot afford to pay their fines, or who feel they have been treated unfairly.

The case studies that I will share are real cases told to HPLS by some of these organisations. So let's set the scene...

### **Ed**

After years of homelessness, Ed knows he that he has to deal with his outstanding fines debt as part of getting his life back on track. An investigation with the State Debt Recovery Office found more than 40 fines totalling more than \$15,000. Enforcement fees made up over half the debt.

### **John**

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

John made some friends at TAFE 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 tell people about this requirement.

He also received another penalty notice for have a container of liquid chalk in his pocket, allegedly for the purposes of damaging property. John bought the liquid chalk to complete an art assignment for his TAFE course.

John has difficulty understanding why he has been fined and has no real means of paying the fines.

*Not such a Fine Thing!* Acknowledged positive reforms such as the introduction of the Hardship Review Board, greater flexibility to waive fees and enforcement costs, and changes to the system of driver's licence sanctions. But HPLS concluded there was still a long way to go before the fines system in NSW could work fairly for disadvantaged people.

The Hon Bob Debus, then NSW Attorney General, was concerned by the issues raised in *Not such a Fine Thing!* and was receptive to considering the radical reform suggested by HPLS.

The now famous fines story that is repeated more than any other, and that apparently resonated with the Attorney General more than any other is...

A 15-year-old boy in a country town has received 320 penalty notices for riding a bike without a helmet because he rode past a police officer's house on the way home from school. In 2006, the fine was \$50 per offence. A staggering \$16,000.

(The current maximum is 20 penalty units or \$2,200).

When *Not Such a Fine Thing!* was published some statistics for 2004<sup>2</sup> were included:

- 1.3 million penalty notices were issued in NSW
- 202,000 (or 15.5%) were for non-traffic related offences
- 381,123 penalty notices were referred to the State Debt Recovery Office for enforcement
- It is estimated that more than \$11 million of revenue came from non-traffic related fines

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<sup>2</sup> Office of State Revenue, *Annual Report 2003-2004* (2005), 67 and 69

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

If we compare that to 2009<sup>3</sup>, we get:

- 17,000 different offences under 97 different laws<sup>4</sup>
- 2.6 million penalty notices were issued in NSW
- 1.5 million (or more than half) were for non-traffic related offences
- 819,960 penalty notices were referred to the State Debt Recovery Office for enforcement
- It is estimated that more than \$50 million of revenue came from non-traffic related fines

<sup>3</sup> Office of State Revenue, *Annual Report 2008-2009* (2006), 27 and 28

<sup>4</sup> New South Wales, Parliamentary Debates, Legislative Council, 27 November 2008, 11968-11972, (Hon John Hatzistergos MLC, Attorney-General)



In December 2008, two years after the release of *Not such a Fine Thing!* the NSW Government made a number of amendments to the *Fines Act 1996 (NSW)* that reflect many of the recommendations made in the HPLS report and those raised by HPLS in subsequent meetings with the NSW Attorney General's Department.

HPLS believes these reforms to the on-the-spot fines system in NSW will make a significant difference for people who are homeless and others who face disadvantage.

The most radical reform will enable an individual who has a mental illness, intellectual disability or cognitive impairment; is suffering from acute economic hardship; or who is homeless, to apply to the State Debt Recovery Office to participate in a Work and Development Order (WDO) that allows them to 'pay off' their fines in ways other than with money. This may be done, for example, through volunteer work with an approved organisation, participation in approved medical or mental health treatment programs or participation in education and/or vocational courses.

A very important difference between a WDO and a court-ordered Community Service Order is that there is no negative consequence that attaches to non-completion or partial completion of the WDO.

Because there is no concept of failure to complete a WDO, the worse outcome for an individual is that their outstanding fines debt remains

unpaid. An individual will receive full credit for every hour spent in undertaking a WDO; so, if a person completes one quarter of their WDO obligation their fines debt will be reduced by 25% and only the remaining 75% remains outstanding. Further, all enforcement sanctions, like cancellation of a driver's licence, are lifted once a WDO application has been approved.

HPLS worked with the NSW Attorney General's Department and a number of other government agencies and non-government organisations to write the guidelines that underpin the operation of the two-year trial of Work and Development Orders. The trial commenced on 1 July 2009 and allows for 2,000 people to undertake a WDO.

At the moment, I am supervising a young homeless woman complete a WDO. She has \$1,600 worth of fines all through riding on a train without a ticket. She will do volunteer work with HPLS to improve her computer skills and telephone skills. Already, the biggest improvement is in her general confidence and self-esteem.

By spending four hours each week in the office, she will have completely cut out the debt in 14 weeks. Even though it doesn't count toward the cut-out rate, she is also engaged in drug counselling.

Her motivation is to get rid of the debt and to get her driver's licence. For her, a WDO is all carrot and no stick; a very nice change from her usual involvement with government agencies.

The development and introduction of the WDO scheme, is largely due to the work of HPLS in researching and publishing *Not Such a Fine Thing!*.

So, what made this campaign so successful when so many other equally important issues fail to gain traction? For me, coming in at the tail end of the campaign, I can identify a number of key factors:

1. The Government Minister with control of the problem was prepared to listen to what HPLS had to say about the impact of fines on homeless people.
2. The then NSW Attorney General and his staff wanted to know more about the fines problem and were very open to suggestions from the sector on how to fix it.
3. HPLS was able to engage with other organisations across NSW who had direct knowledge of the broad impact of fines on their clients from a range of perspectives: city v regional; adult v youth; personal circumstances.

4. We took the time to do it right. It took a year to research and write *Not Such a Fine Thing!*
5. The statistics and data were damning and the case studies were powerful. This made the issue live and real.
6. We gave 18 sound recommendations to fix the problem – we offered solutions. Six were adopted; another couple are still in the pipeline.
7. The government continued involvement with the non-government sector and were not precious about sharing ownership of the reforms.

Instead of reinforcing disadvantage, the introduction of the Work and Development Order scheme proves that if Government has the will, then the community sector can drive systemic change to make a positive impact on people who already live on society's margins.