

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CRIMES (AMENDMENT) BILL 1993

**REPORT NO.1 OF THE STANDING COMMITTEE ON LEGAL AFFAIRS
MAY 1993**

TERMS OF REFERENCE

On 25 February 1993 the Legislative Assembly passed the following resolution:

That, notwithstanding the provisions of Standing Order 174 –

- (1) the Crimes (Amendment) Bill 1993 be referred to the Standing Committee on Legal Affairs for inquiry and report by 13 May 1993; and
- (2) on the Committee presenting its report to the Assembly resumption of debate on the question 'That the Bill be agreed to in principle' be set down as an order of the day for the next sitting day.

On 13 May 1993 the Legislative Assembly passed the following resolution:

That the resolution of the Assembly of 25 March 1993, concerning the reference of the Crimes (Amendment) Bill 1993 to the Standing Committee on Legal Affairs, be amended by omitting 'by 13 May 1993' and substituting 'by 18 May 1993'.

COMMITTEE MEMBERSHIP

Mr Gary Humphries	(Presiding Member)
Mr David Lamont	(Deputy Presiding Member)
Ms Helen Szuty	

Secretary (Acting):	Judy Starceвич
Administrative Support:	Karen Pearce

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RECOMMENDATIONS

The Committee recommends that:

1. . the Legislative Assembly not proceed with the *Crimes (Amendment) Bill 1993* until the issues outlined in the Committee's report have been addressed (Paragraph 2.11);
2. . the Bill be amended to include a sunset clause to provide that the impact of the Bill be reviewed after a trial period of two years (Paragraph 2.14);
3. . the Bill be amended to remove the offence of indecent exposure from the list of offences to which on-the-spot fines will apply (Paragraph 3.7);
4. . the ACT Attorney-General's Department promptly conduct a review of all legislation with the view to recommending summary offences to which the infringement notice system could appropriately apply; and
 . when the review is completed the Committee examine the proposed list of offences to be included in the Bill (Paragraph 3.14);
5. . an offence be created to cover the situation whereby a person fails or refuses to supply his/her correct name and/or address to a police officer (Paragraph 3.17);
6. . a review be conducted by the AFP of fines imposed for each of the offences over the last five years and advise the ACT Attorney-General's Department of the appropriateness of the proposed \$100 fines (Paragraph 3.23);
7. . the Bill be amended to provide that the police be given the discretionary power to grant extensions of time for payment of the fines within a definitive period yet to be determined. The grace period should be standardised for all infringement notices (Paragraph 3.27);

8. . the Attorney-General's Department review the infringement notice schemes currently in operation and develop a system of standardised infringement notices (Paragraph 3.32);
9. . the Bill be amended to provide that the Commissioner of Police be given the power to withdraw infringement notices and the delegation of that power be restricted to designated senior officers (Paragraph 3.37);
10. . the Bill be amended to provide police with the power to withdraw an infringement notice and proceed by summons (Paragraph 4.16);
11. . the payment of previous infringement notices of a similar nature be included as part of antecedent reports for court cases (4.18);
12. . the Bill be amended to specify that evidential matters be included on infringement notices (Paragraph 4.25);
13. . the Bill be amended to provide that an offender may apply for a court order for the return of an article that has been forfeited under the legislation. It would be at the discretion of the court to determine whether the article should be returned (Paragraph 4.31);
14. . the Juvenile Justice Committee consider the application of the *Crimes (Amendment) Bill 1993* to juvenile justice and report back to the Attorney-General's Department with its recommendations (Paragraph 4.40); and
15. . the Government give consideration to the establishment of a computerised information system for recording criminal convictions and all infringement notice offences (Paragraph 5.10).

CHAPTER ONE: INTRODUCTION

Background

1.1 The Standing Committee on Legal Affairs was formed on 27 March 1992 to:

inquire into and report on matters referred to it by the Assembly or matters that are considered by the committee to be of concern to the community relating to administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, law reform and consumer affairs.

1.2 On 17 February 1993 Mr Michael Moore, MLA moved that the *Crimes (Amendment) Bill 1993* be agreed to in principle. Debate was adjourned by the Assembly.

1.3 On 25 March 1993 the Assembly passed a resolution referring the *Crimes (Amendment) Bill 1993* to the Standing Committee on Legal Affairs for inquiry and report by 13 May 1993.

Conduct of the Inquiry

1.4 The inquiry was advertised in the *Canberra Times* on 3 April 1993.

1.5 The Committee also wrote to a number of individuals and organisations requesting a written submission. A total of seven submissions were received. A list of those who provided written submissions is at Appendix A.

1.6 The Committee also held a public hearing on 30 April 1993. This gave the Committee the opportunity to question representatives from the ACT Attorney-General's Department and the Australian Federal Police (AFP) at length. The Honourable J A Kelly, Chairman of the Community Law Reform Committee, also gave evidence in his capacity as a former legal practitioner and as a private citizen. A list of those who appeared as witnesses is at Appendix B.

CHAPTER TWO: THE PURPOSE OF THE BILL

The Bill's Intent

2.1 The Bill has three particular aims.

2.2 Firstly, it is intended to increase police flexibility. Mr Moore told the Legislative Assembly that:

This Bill is an attempt to increase the flexibility police have in dealing with public misbehaviour and also to give them the choice of charging people or giving them an on-the-spot fine, which is the effect of the Bill.¹

2.3 In particular, Mr Moore referred to the situation whereby two police officers were required to go to the police station to charge a member of the public.

2.4 While the Bill will increase police flexibility as evidenced by Mr Moore, the infringement notice system will impact on other areas of police resources. These are discussed in Chapter 5.

2.5 Secondly, Mr Moore argued that the Bill would reduce the pressure on the Magistrates Court in the ACT. He stated that:

the Magistrates Court may well be freed up from the Monday morning rush of charges. The result may well be that the Magistrates Court can deal with more serious matters, rather than having to deal with a range of general public misbehaviours.²

2.6 While the Bill will provide some benefits to the court system as described, the implications for court resources is also discussed fully in Chapter 5.

¹ Hansard: 17 February, 1993 p.123.

² Hansard: 17 February, 1993 p.125.

2.7 Finally, the Bill removes the necessity to record a criminal conviction for offenders for what may be considered minor breaches of the law. It thus reduces the criminal nature of those offences and provides an offender with the opportunity to avoid a criminal record.

Reaction to the Bill

2.8 As indicated earlier, the Committee received seven submissions on the Bill none of which identified any significant problems with the Bill's intent.

2.9 In particular, both the ACT Attorney-General and the AFP stated that they considered the Bill had merit and agreed with the rationale behind it.

2.10 The Committee has also taken the view that the purpose of the Bill has merit. However, it has identified a number of problems with particular features of the legislation which are addressed in the following chapters. It is the Committee's opinion that the Bill should not be proceeded with until these problems have been addressed.

2.11 The Committee recommends that:

- **the Legislative Assembly not proceed with the *Crimes (Amendment) Bill 1993* until the issues outlined in the Committee's report have been addressed.**

2.12 The Committee also took the view that since it had identified a number of problems with the infringement notice system, the Bill should be given a trial period after which the impact of the system can be reviewed.

2.13 It was suggested to the Committee by the Honourable J A Kelly that the Bill should contain a sunset clause.³ The Committee concurs with this view.

³ Transcripts 30.4.93.

2.14 The Committee recommends that:

- **the Bill be amended to include a sunset clause to provide that the impact of the Bill be reviewed after a trial period of two years.**

CHAPTER THREE: THE CONTENTS OF THE BILL

Offences included in the Bill

3.1 The Bill provides a \$100 on-the-spot fine for the following offences:

- (i) street fighting;
- (ii) misbehaviour at public meetings;
- (iii) possession of offensive weapons;
- (iv) offensive behaviour;
- (v) indecent exposure;
- (vi) noise abatement offences; and
- (vii) public mischief.

3.2 While the Bill is designed to remove from the criminal justice system matters which might be considered to be of a minor nature it does not follow that all offences listed in the Bill are appropriate for an infringement notice system.

3.3 The Commonwealth Attorney-General's Department argued that the offences of possession of offensive weapons and causing a public mischief respectively in subsection 493(1) and section 546E of the *Crimes Act 1990* were not appropriate offences to be handled by the application of an infringement notice. The Department stated:

The position adopted in Commonwealth criminal law policy is that an offence notice should only be used for minor offences with the more serious offences, particularly those which carry a penalty of imprisonment and the forfeiture of property, always left to the courts for a proper determination of liability.⁴

3.4 The ACT Attorney-General expressed reservations about indecent exposure being included among the public misbehaviour offences on the basis that people with a record of such offences may go on to commit major sexual offences.⁵

⁴ Submission No.7.

⁵ Submission No.5.

3.5 Mr Moore agreed that indecent exposure should be withdrawn from the Bill.⁶

3.6 The Committee concurred with this view.

3.7 The Committee recommends that:

- the Bill be amended to remove the offence of indecent exposure from the list of offences to which on-the-spot fines will apply.

Offences not included in the Bill

3.8 The offences which have been included in the *Crimes (Amendment) Bill 1993* do not necessarily represent an exhaustive list to which on-the-spot fines could be applied. Such a system has the potential to be extended to a wide range of summary offences.

3.9 A number of submissions identified additional behaviours which could be covered by the system.⁷ For example, it was suggested in one submission that a fine should be applied to the offence of urinating in public.⁸

3.10 Alternatively, the Attorney-General referred to the Australian Law Reform Commission as having taken the view that the infringement notices approach to offences should only be available in respect of offences that are not *mens rea* offences, that is to say where there is more than a minimal element of intent.⁹

3.11 Similarly, the ACT Attorney-General's Department recognised the 'problem of creep'. The Department noted that the infringement notice system began with parking offences, moved on to traffic offences and now consideration is being given to applying the system to offences which have a greater degree of criminality associated with them. The question arises of where to draw the line.¹⁰

⁶ Submission No.4.

⁷ Submissions Nos. 1,6.

⁸ Submission No.1.

⁹ Submission No.5.

3.12 The Committee agrees that the infringement notice system should not be extended unnecessarily to areas where it would be inappropriate to deal with offences with on-the-spot fines. Care must be taken to ensure that the community does not end up with a system of justice that is increasingly dependent upon arbitrary on-the-spot fines.

3.13 However, the Committee considers that, potentially, there are other offences to which such a system could appropriately be applied. This view was supported by the AFP.¹¹

3.14 The Committee recommends that:

- the ACT Attorney-General's Department promptly conduct a review of all legislation with the view to recommending summary offences to which the infringement notice system could appropriately apply; and
- when the review has been completed the Committee examine the proposed list of offences to be included in the Bill.

3.15 The AFP noted that the Bill was based on the premise that offenders will be honest and will provide their correct name and address to police officers. Accordingly, there was a need for an additional offence to cover situations where a person fails or refuses to supply the information.¹²

3.16 The Committee concurs with this view.

3.17 The Committee recommends that:

- an offence be created to cover the situation whereby a person fails or refuses to supply his/her correct name and/or address to a police officer.

¹⁰ Transcripts 30.4.93.

¹¹ Submission No.6.

¹² Transcripts 30.4.93.

The level of the fine

3.18 The Bill provides that the level of the fine to be imposed for all listed offences will be \$100.

3.19 The maximum fine currently permissible for the offences under the Crimes Act is \$1000, except for public mischief which provides for a \$2000 maximum fine. Some of the offences also carry a penalty of imprisonment for either six or twelve months.

3.20 To determine the appropriateness of the \$100 fine the Committee sought statistical information on the number of convictions recorded under the designated offences and the amounts of fines imposed. The Committee was told that a manual system of information was kept so that while total numbers of convictions could be and were provided, the varying amounts of fines imposed would require manual checking which would be extremely labour intensive. The keeping of records is discussed in Chapter 5.

3.21 The Committee considered that if the average level of the fine imposed in court was \$200 then \$100 on-the-spot would be a significant reduction. Alternatively, if the average level was \$50 then this would be a significant increase.

3.22 However, without statistical information the Committee was unable to draw conclusions about the appropriateness of the \$100 fine.

3.23 The Committee recommends that:

- a review be conducted by the AFP of fines imposed for each of the offences over the last five years and advise the ACT Attorney-General's Department of the appropriateness of the proposed \$100 fines.

The affordability of the fine

3.24 It is probable that the infringement notice system may lead those socially disadvantaged in the community to refuse an on-the-spot fine on the grounds that they are unable to afford payment of the fine. As such they would elect by default that the matter be dealt with in court.

3.25 The AFP suggested that the police should be granted the discretion to provide an extension of the time to pay a fine. It currently has a limited discretion under the *Motor Traffic Act 1936*.¹³

3.26 The Committee agrees that such discretion should be provided to the police.

3.27 The Committee recommends that:

- the Bill be amended to provide that the police be given the discretionary power to grant extensions of time for payment of the fines within a definitive period yet to be determined. The grace period should be standardised for all infringement notices.

The Infringement Notice

3.28 The ACT Attorney-General's Department stated that if the current proposals under the Bill were adopted there would be at least four infringement notice schemes applying under four different pieces of legislation.¹⁴ The AFP listed Dog Control Notices, Litter Notices, Motor Traffic Notices and Simple Cannabis Notices as examples.¹⁵

¹³ Transcripts 30.4.93.

¹⁴ Transcripts 30.4.93.

¹⁵ Transcripts 30.4.93.

3.29 It was pointed out to the Committee that the various types of infringement notice schemes differ considerably. In particular, variations can be found in the time periods within which notices have to be expiated and the penalties applied under the various notices. With traffic infringement notices and parking infringement notices there is a 28 day period to pay with a discretion to extend that time. Under the Litter Act there is a 14 day period to pay with discretion to extend the time. With cannabis notices there is a 60 day period.¹⁶ This Bill also proposes a 60 day period for payment of the fine.

3.30 The Commonwealth Attorney-General's Department noted that the Bill does not make provision for certain matters that have been included in Commonwealth infringement notice schemes. The Department suggested that the Committee should consider whether the infringement notice should specify:

- (i) the name of the police officer by whom the offence notice has been served under subclause 573(3);
- (ii) if the offence notice can be withdrawn by a police officer and under what particular circumstances;
- (iii) if more than one offence notice can be served for the same offence;
- (iv) evidential matters at the hearing of a prosecution for an offence specified in an offence notice; and
- (v) the procedures if payment for the penalty specified in the offence notice can be made by cheque.¹⁷

3.31 The Committee considers that infringement notices should be standardised throughout all relevant legislation. A model notice should be developed and be included in schedules attached to the various Acts.

¹⁶ Transcripts 30.4.93.

¹⁷ Submission No.7

3.32 The Committee recommends that:

- . the Attorney-General's Department review the infringement notice schemes currently in operation and develop a system of standardised infringement notices.

Withdrawing the Notice

3.33 The Motor Traffic Act contains provision for people to make representations to the police to have an infringement notice withdrawn.

3.34 The Committee believes that it is not unacceptable that extenuating circumstances may warrant the withdrawal of an infringement notice issued under the Bill.

3.35 The AFP expressed concern that the power to withdraw an infringement notice would be granted to every police officer. Such authority could lead to potential problems of accountability, discipline and corruption. Under the Motor Traffic Act the Commissioner of Police has delegated this power to two senior officers only.¹⁸

3.36 The Committee considers that the power to withdraw an infringement notice should be included under the Crimes (Amendment) Bill but that power should be restricted to designated officers as it applies under the Motor Traffic Act.

3.37 The Committee recommends that:

- . the Bill be amended to provide that the Commissioner of Police be given the power to withdraw infringement notices and the delegation of that power be restricted to designated senior officers.

¹⁸ Transcripts 30.4.93.

CHAPTER FOUR: THE RIGHTS OF THE ACCUSED

4.1 The imposition of a system of on-the-spot fines has implications for the rights of those accused of the offences.

4.2 Mr Moore argued that in the drafting of the Bill particular concern was taken to ensure that the civil liberties of people given an on-the-spot fine would not be restricted.¹⁹

The discretionary powers of the police

4.3 The Bill provides that police officers may fine an individual which he/she 'reasonably believes' has committed one of the offences listed in the Bill.

4.4 Concern for this discretionary power provided to police officers was expressed by both the ACT Legal Aid Office and Jobless Action Inc.²⁰

4.5 The discretionary powers of the police are particularly enhanced by the Bill given that if a police officer decides an on-the-spot fine is appropriate the offender will be fined \$100. Alternatively, if the police officer decides a court prosecution is more appropriate then a \$1000 (or in the case of public mischief a \$2000) fine could be imposed.

4.6 The AFP suggested that the discretionary element in the Bill in terms of whether a police officer reasonably believes that an offence has been committed would be addressed through training. Training on the proper use of the system could also be supplemented with an issue by the Chief Police Officer of a regional instruction indicating when a police officer may or may not consider issuing an on-the-spot fine. However, the constable would retain his/her common law discretion as to what action he/she would take.²¹

¹⁹ Submission No.4.

²⁰ Submissions Nos. 2-3.

²¹ Transcripts 30.4.93.

4.7 The Committee sees no problem with the discretionary powers provided to the police in the Bill if such training was undertaken. Accordingly, the Government should consider the question of resources required for the training of police officers.

The issue of criminality

4.8 The offences listed in the Bill are found in the Crimes Act and constitute criminal offences.

4.9 The proposed infringement notice system provides for the decriminalisation of the offences. The rationale behind the Bill is that an on-the-spot fine removes the element of criminality of the offence if the notice is expiated. Accordingly, failure to expiate the notice activates the criminality.

4.10 A decision to expiate an infringement notice is a decision based on an individual's choice about whether or not he/she wishes to contest the matter in court. By paying the infringement notice he/she ensures that a criminal conviction is not recorded.

4.11 It was pointed out by the ACT Attorney-General's Department that this is the one consistent provision in all such legislation involving infringement notices.²²

4.12 The AFP also takes the view that payment of a fine means that a conviction has not been recorded.²³

4.13 The Committee agrees that accepting an infringement notice is not tantamount to accepting guilt or actually being proven guilty of an offence. The Committee believes that this provision should remain as it provides the incentive for discharging the notice by payment and not proceeding to court.

²² Transcripts 30.4.93.

²³ Transcripts 30.4.93

4.14 However, the AFP expressed concern about an offender having a history of being issued with infringement notices. In such cases the AFP felt it should be open to the police to take action to ensure the offender is prosecuted. This would avoid the situation whereby somebody could get away with repeated offences. The ACT Attorney-General's Department suggested that there should be a provision for following up a notice so that when a police officer returns to the police station and finds that a person is a repeat offender the fine can be withdrawn and the officer can proceed by summons. The Motor Traffic Act provides that any time before a notice is expiated an officer can decide to proceed by way of a normal prosecution.²⁴

4.15 The Committee considers that the Crimes (Amendment) Bill should contain a similar provision.

4.16 The Committee recommends that:

- the Bill be amended to provide police with the power to withdraw an infringement notice and proceed by summons.**

4.17 The payment of an infringement notice does not constitute a criminal offence. However, the Committee considers that antecedent reports prepared for sentencing purposes in court cases should include records of previous similar infringement notices paid by an offender.

4.18 The Committee recommends that:

- the payment of previous infringement notices of a similar nature be included as part of antecedent reports for court cases.**

4.19 The Committee also considers that a demerit point system for offenders should be considered to ensure that repeated offenders are easily identified by police officers.

²⁴ Transcripts 30.4.93.

Evidential matters

4.20 The ACT Legal Aid Office and Jobless Action Inc both expressed concern about evidential matters when an alleged offender elected to defend him or herself against an infringement notice.²⁵ The Legal Aid Office stated that a recipient of an offence notice may decide, for the sake of convenience, not to contest a matter where proper grounds might exist to do so. The office suggested that a useful addition to subsection 573(3), perhaps between present paragraphs (c) and (d), might be a provision alerting the recipient of the notice to the fact that if they are in any doubt as to their liability in respect of the alleged offence, then they should obtain legal advice either from a private solicitor or from the Legal Aid Office. The contents of sub-section 575(5) should be adverted to in the offence notice for similar reasons.

4.21 It is apparent that some people may pay a fine simply because they either feel intimidated by the police or are ignorant of their rights.

4.22 It is also apparent that there is a difference in concept between somebody pleading guilty to an offence following a formal charge and prosecution in court and the simple acceptance of an infringement notice. Those who expiate a notice have not been presumed innocent or subjected to a trial according to the normal criminal standard of proof.

4.23 As indicated earlier, the Commonwealth Attorney-General's Department has suggested that evidential matters be specified in an offence notice.

4.24 The Committee considers that offenders should be made fully aware of their rights to a court hearing.

4.25 The Committee recommends that:

- the Bill be amended to specify that procedural matters be included on infringement notices.

²⁵ Submissions No.2-3.

Automatic forfeiture of belongings of the accused

4.26 The Bill provides for automatic forfeiture of any substance, equipment or object seized under the legislation. There is no opportunity for an offender to apply for the return of his or her belongings.

4.27 The Attorney-General suggested there should be some provision for the seeking of a court order for the return of an article seized by the police.²⁶

4.28 The Committee considers that if payment of a fine is not an acknowledgement of guilt and does not constitute a conviction, then such offenders should not be liable to forfeiture of their goods without compensation. The offenders should have a right to recover their property.

4.29 However, in some circumstances offensive weapons may be illegal, illegally owned or may be considered sufficiently dangerous to warrant police retention of them. Alternatively, there may be circumstances where an offensive weapon may in fact be a stolen item.

4.30 The Committee believes that the police should have the power to retain all goods but provision be made for a court order to recover property seized.

4.31 The Committee recommends that:

- the Bill be amended to provide that an offender may apply for a court order for the return of an article that has been forfeited under the legislation. It would be at the discretion of the court to determine whether the article should be returned.

The impact of the Bill on the *Children's Services Act 1986*

4.32 It is clear that many of the offences listed in the Bill would impinge on young people, some of whom will be under age.

²⁶ Submission No.5.

4.33 It was pointed out by the Attorney-General that the Bill appeared to conflict with special safeguards in place to protect children under the *Children's Services Act 1986*. Limitations in respect of criminal proceedings against children are found in section 33 of that Act. A strict procedure must be followed by police before they decide to prosecute young offenders.

4.34 In addition to the application of the Children's Services Act, there is also the issue of affordability of an infringement notice for young people. The question becomes one of who will pay the fine, the juvenile or his/her parents. If the fine was not paid and prosecution was necessary then a court appearance may also lead to a criminal record for the juvenile.

4.35 The AFP stated that over 70% of children who come into contact with the police are simply cautioned. Applying an infringement notice to juveniles would lead to more charges being made against juveniles.²⁷

4.36 The Committee considered that the infringement notice scheme requires a lower standard of proof so that it may be better if children were dealt with by the courts where a higher standard of proof would be applied.

4.37 However, the Committee also considered that juveniles should be given the same options of a fine as adults are granted with regard to the designated offences. This is particularly so since a fine specifically excludes a criminal offence being recorded.

4.38 The Attorney-General's Department recognised a number of ways of dealing with this problem.²⁸ The AFP referred to the role played by the Juvenile Justice Committee which is examining juvenile justice in the ACT.²⁹

4.39 The Committee considers that the Juvenile Justice Committee should consider the application of the Crimes (Amendment) Bill in its deliberations.

²⁷ Transcripts 30.4.93.

²⁸ Transcripts 30.4.93.

²⁹ Transcripts 30.4.93.

4.40 The Committee recommends that:

- the Juvenile Justice Committee consider the application of the *Crimes (Amendment) Bill 1993* to juvenile justice and report back to the Attorney-General's Department with its recommendations.

CHAPTER FIVE: RESOURCE IMPLICATIONS OF THE BILL

5.1 The introduction of a system of on-the-spot fines as proposed in the Crimes (Amendment) Bill would have considerable financial and administrative consequences.

The impact of the Bill on police resources

5.2 The AFP argued that the instituting of a criminal infringement notice system would cost the police approximately \$300,000. This was based on the premise that the Bill would impact on police resources in six areas:

- . the printing of the notices;
- . the costs associated with designing appropriate software to record the information on a database which was estimated to be \$40,000;
- . the cost of staff, either police officers or other staff members, to key in the data;
- . the costs associated with notifying the AFP, either by computer link or by other means, that the notice had been paid;
- . the cost of follow-up action, most likely in the form of a summons, if the notice was not paid which would involve the preparation of the summons, court presence to have the summons sworn, registration in the Warrants and Process Section and the serving of the notice on the offender; and
- . the cost of training most police officers in the region on the proper use of the notice system which would be extremely resource intensive.³⁰

5.3 The AFP did concede that some of those costs could be offset by expanding the scheme to include other offences. Probable court efficiencies discussed below might also offset the cost of the system.³¹

³⁰ Transcripts 30.4.93.

Recording the Offences

5.4 The need to address the problem of habitual offenders was discussed in Chapter 4. In such situations it would be necessary for the police to keep some record of offences committed.

5.5 The ACT Attorney-General's Department noted that there will always be records of infringement notices having been issued because of the need to take follow-up action if an offender does not pay his fine. That will be the case even though there is in fact no recording of a criminal conviction. The Attorney-General's Department suggested that the police should continue to keep records although records of criminal convictions should be kept separately.³²

5.6 With information technology available it would not be a difficult matter to establish whether or not an offender already had a string of infringement notices.

5.7 However, the Committee was informed that since different procedural elements of the various schemes were different from each other there was no common computerised system. As indicated earlier, the Committee had difficulties in obtaining information of the level of fines imposed under the various offences. No computer system existed either in the court system or in the AFP from which such data could be easily extracted.³³

5.8 The AFP indicated that there were offences where they would like to have a record of particular convictions easily accessible to them, such as for possession of an offensive weapon.

5.9 The Committee believes that consideration should be given to the establishment of a computerised record system for not only criminal offences but also infringement notices. With a computerised system many of the administrative difficulties identified would be addressed.

³¹ Transcripts 30.4.93.

³² Transcripts 30.4.93.

³³ Transcripts 30.4.93.

5.10 The Committee recommends that:

- the Government give consideration to the establishment of a computerised information system for recording criminal convictions and all infringement notice offences.

The implications for the Courts

5.11 As indicated in Chapter 2, one of the arguments advanced by Mr Moore in support of the Bill was that it would free up the Magistrates Court.

5.12 The AFP admitted that while the Bill will lead to extra costs for the AFP, there would be savings to the courts because they would no longer be dealing with a large percentage of fairly minor matters that simply clog the system. Alternatively, the AFP also recognised that the courts may experience revenue losses because at the moment the courts can charge certain fees for people appearing in them.³⁴

5.13 In addition, if prosecutions were reduced it is likely that there would also be savings to the DPP.

5.14 The Committee agrees that the Bill will reduce the demands on the court system which will represent some cost savings.

Gary Humphries
Presiding Member

17 May 1993

³⁴ Transcripts 30.4.93.

Appendix A
Written Submissions Received

Mr Terry Connolly, MLA – Attorney-General

Ms Vesna Cvjeticanin – Jobless Action Inc.

Mr P G Dawson Chief – Assistant Commissioner, Australian Federal Police

Ms Laurel Johnson – A/g Assistant Secretary, Commonwealth
Attorney-General's Department

Mr Michael Moore, Independent MLA

Mr C J Staniforth – Chief Executive Officer, Legal Aid Office (ACT)

Mr Christopher Stent

Appendix B
List of Witnesses

Mr Gavan Cashman – ACT Attorney-General's Department

Ms Faye Westwood – ACT Attorney-General's Department

Superintendent Christopher Lathbury – Australian Federal Police

The Honourable J A Kelly