



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),
Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Penalties for Minor Offences and Vulnerable People

Submission Number: 009

Date Authorised for Publication: 28 April 2023

19 April 2023

The Standing Committee on Justice and Community Safety
Legislative Assembly for the ACT
GPO Box 1020
Canberra ACT 2601

By email: LACommitteeJCS@parliament.act.gov.au

Dear Committee,

RE: Inquiry into Penalties for Minor Offences and Vulnerable People

Thank you for the opportunity to provide comments in your inquiry into Penalties for Minor Offences and Vulnerable people.

Legal Aid ACT ('The Commission') provides assistance to the ACT community's most vulnerable and disadvantaged individuals as they navigate the justice system.

The Commission appreciates that the ACT government is aware of the risk that financial penalties pose by creating inequitable outcomes for marginalized and vulnerable communities. Importantly, if a person does come before the courts their individual financial capacity to pay a penalty must be considered.¹

Where a person is unable to pay their fine or take action to transfer/request an extension within 28 days, a reminder notice will be served, which applies an additional cost of \$34 to the responsible person, further increasing the financial burden incurred.² Following further non-payment, the Road Transport Authority is required to provide notice that it will either suspend the person's driver's license, registration, or right to drive in the ACT.³ A person may also be prosecuted for their infringement offence in court. Though we note that any unpaid infringement may be taken to court, this largely only occurs where a person disputes their legal liability – in 2020-21, 739 parking and infringement notice matters involved a mention in court, and of these only 52 reached the hearing stage.⁴ Instead, most traffic or parking infringements unpaid in the ACT are addressed through the actions of the Road Transport Authority mentioned above - suspension of license, registration or the right to drive in the ACT.⁵

We note that continuing to drive unlicensed may cause an individual to come into contact with the criminal justice system. If a person drives in the ACT with a disqualified or suspended license, they

¹ *Crimes (Sentencing) Act 2005* (ACT) s 33(1).

² *Road Transport (Offences) Regulation 2005* s 7.

³ *Road Transport (General Act 1999* s 44.

⁴ Shane Rattenbury MLA, 'Non-payment of fines – penalties for minor offences – response to assembly resolution of 24 March 2022' (Government response, 21 September 2022) 4.

⁵ *Ibid* 3-4.

can be imprisoned for up to 6 months. This increases to a 1 year if they are a repeat offender.⁶ We are concerned that there are inequitable repercussions from criminal prosecution and imprisonment, particularly for Aboriginal and Torres Strait Islander Peoples. A NSW initiative to reduce ATSI overrepresentation in the criminal justice system noted that driver license offending or reoffending was the second-most common reason Aboriginal people are found guilty.⁷ The Commission suggests similar efforts should be taken in the ACT to divert ATSI offenders from the courts, reduce time in custody and create clearer pathways to resume safe and legal driving.

We suggest that there will be inequities for financially disadvantaged people where they are unable to pay fines, and that it is crucial that alternative sanctions are available. Loss of license has different ramifications for someone who is disadvantaged as they are more likely to need their license for employment and this increases the risk that people will drive unlicensed to keep their employment. Secondary offending out of necessity prompts cumulative license disqualifications that can collect to the point they promote rather than deter reoffending – this is because, as Magistrate Theakston recently noted, “without an ability to drive, it is much more difficult to effectively engage in remunerative work, care for children and otherwise participate productively in the community.”⁸

Penalties suspending the driving license of already financially disadvantaged individuals for non-payment may lead to a “runaway feedback loop involving disqualifications, driving and further disqualifications.”⁹ Moving away from mandatory disqualifications in favor of increased discretion earlier in the penalty process could prove helpful in avoiding this inequitable outcome.

One essential option currently provided to impecunious people to avoid this type of inequity is the Work and Development programs (WDP). These programs offer individuals an alternative way to ‘work off’ their fines through participation in individually and socially beneficial programs. It should be noted that these programs are often of limited availability, with the guidelines restricting the circumstances a person must be in to participate.¹⁰ A person who is suffering severe financial disadvantage, without an accompanying circumstance in the guidelines, is unable to access this diversion program.

Further, we are concerned that individuals may not always be aware of the existence and nature of these programs. Even where they become aware, the process is burdensome, as the 15-page application pack, and requirements for documented evidence in the Guidelines, reveal. The Commission suggests that to be effective, this diversionary pathway should be more broadly available to people with different types of disadvantages, should be more visible to those eligible to participate, and should be more accessible in its application process.

Where a person is in a circumstance of disadvantage and unable to participate in the WDP programs, administrative discretion to waive an infringement for a vulnerable person is set out in the *Road Transport (General) Waiver of Infringement Notice Penalties Guidelines*. We note that in 2020-2021, out of the 152,498 parking and traffic infringements that were issued, only 15 were waived.¹¹ This could suggest the guidelines bar for this discretion is also too high, and that discretionary powers are underutilized. It may be worth reviewing the WDP, and Waiver guidelines to better capture the needs of vulnerable people in the ACT community. This includes broadening the circumstances which make

⁶ *Road Transport (Driver Licensing) Act 1999* s 32(1), 32(2).

⁷ ‘Reducing Aboriginal Overrepresentation in the Criminal Justice System 2018-2021’, 5.

⁸ *Robens v Sproule* [2021] ACTMC 8 [20].

⁹ *Ibid* 22.

¹⁰ *Road Transport (Approval to participate in an approved Community Work or Social Development Program) Guidelines 2019 (No 1)* (ACT) Sch 1.

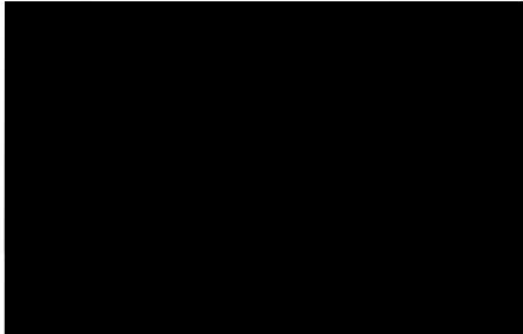
¹¹ Shane Rattenbury MLA (n 4) 2.

a person eligible for a waiver or WDP (including financial disadvantage alone), simplifying the application process for each program, and requiring that more information about their availability is required to be provided to potentially eligible individuals. The continued provision of alternative sanctions is crucial to ensure vulnerable and disadvantaged people do not suffer further inequities.

We urge the committee to underline the importance of alternative sanctions, including options to avoid license suspension and undue financial hardship.

Should you have any questions in relation to the above submissions, please do not hesitate to contact me at [REDACTED]

Yours sincerely

A large black rectangular redaction box covering the signature area of the letter.

Legal Aid ACT

