



Legislative Assembly for the Australian Capital Territory

Standing Committee on Justice and
Community Safety

Inquiry into penalties for minor offences and vulnerable people

Legislative Assembly for the Australian Capital Territory
Standing Committee on Justice and Community Safety

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About the committee

Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety on 2 December 2020.

The Committee is responsible for the following areas:

- ACT Electoral Commission
- ACT Integrity Commission
- ACT Ombudsman
- Gaming
- Minister of State (Justice and Community Safety reporting areas)
- Emergency management and the Emergency Services Agency
- Policing and ACT Policing
- Corrective services
- Attorney-General
- Consumer affairs
- Human rights
- Victims of crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution [on our website](#).

Committee members

Mr Peter Cain MLA, Chair

Dr Marisa Paterson MLA, Deputy Chair

Mr Andrew Braddock MLA

Secretariat

Ms Kathleen de Kleuver, Committee Secretary (until 28 April 2023 and from 14 August 2023)

Ms Kate Mickelson, A/g Committee Secretary (from 1 May 2023 to 11 August 2023)

Ms Anna Hough, Assistant Secretary (from 1 May 2023 until 1 September 2023)

Mr Peter Materne, Assistant Secretary (from 4 September 2023)

Mr Satyen Sharma, Administrative Assistant (from 1 May 2023)

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About this inquiry

Under Standing Order 216, standing committees can self-initiate an inquiry into any subject area it is given responsibility for by the establishing resolution. The Standing Committee on Justice and Community Safety resolved to conduct an inquiry into penalties for minor offences and vulnerable people on 1 March 2023.

The committee informed the Assembly of its intention to conduct this inquiry on 21 March 2023.

Terms of Reference

The Committee will inquire and report on administrative penalties for minor offences in respect of vulnerable people with particular reference to:

- Impacts of fines on vulnerable people;
- Suitability of existing formal government guidelines for considering treatment of vulnerable people in administering penalties;
- Impacts of prosecution for vulnerable people for non-payment of fines;
- Suitability of current ACT Government alternative measures to fines;
- Alternatives to prosecution for non-payment of fines
- How to maximise compliance with legislation, particularly for young people

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Acronyms

Acronym	Long form
ACT	Australian Capital Territory
ACTCOSS	ACT Council of Social Service
ACT HRC	ACT Human Rights Commission
AFI	Advocacy for Inclusion
AFPA	Australian Federal Police Association
ALS	Aboriginal Legal Service
AMC	Alexander Maconochie Centre
ATODA	Alcohol Tobacco and Other Drug Association
ATSI	Aboriginal and Torres Strait Islander
CIN	Criminal Infringement Notice
CISP	Court Integrated Services Program
CLA	Civil Liberties Australia
DASL	Drug and Alcohol Sentencing List
DVP	Domestic and family violence
IMS	Investigation Management Solution
JRI	Justice Reform Initiative
MERIT	Magistrates Early Referral into Treatment
MLA	Member of the Legislative Assembly
NSW	New South Wales
PIN	Parking Infringement Notice
PROMIS	Police Real-time On-line Management System
QON	Question on notice
QTON	Question taken on notice
SCON	Simple Cannabis Offence Notice
SDON	Simple Drug Offence Notice
TIN	Traffic Infringement Notice
WDP	Work or Development Plan

Recommendations

Recommendation 1

The Committee recommends that the ACT Government reviews the impact of penalties for minor offences, particularly public space offences and offensive behaviour offences, as to their current relevancy, use and impacts on vulnerable people, particularly Aboriginal and Torres Strait Islander people.

Recommendation 2

The Committee recommends that the ACT Government explore law reforms with regards to the suspension of a driver's licence only ever occurring based on the substance of a traffic offence rather than on the basis of a failure to pay a fine or penalty.

Recommendation 3

The Committee recommends that the ACT Government explore a system of warning notices for a first offence in the case of minor offences instead of a fine or penalty.

Recommendation 4

The Committee recommends that the ACT Government investigates introducing a cap that can be placed on the total number of infringement notices or financial penalties from a single interaction with police, to reduce financial impacts on vulnerable people.

Recommendation 5

The Committee recommends that the ACT Government investigate adopting fines based on a proportion of income, rather than fixed amounts, together with the setting of a maximum fine amount.

Recommendation 6

The Committee recommends that the ACT Government look at whether fines for minor offences could be reduced for people holding concession cards.

Recommendation 7

The Committee recommends that the ACT Government ensures that: a) the process for applying for waivers for fines for minor offences is simplified, and b) data are collected on the number of applications, the proportion of applications that are successful and the reasons for this.

Recommendation 8

The Committee recommends that the ACT Government ensures infringement notices include information to assist vulnerable people to find the information they need, including alternative options to payment, such as links to the Canberra Community Law webpages.

Recommendation 9

The Committee recommends that the ACT Government expand the availability of, and improve accessibility to Work and Development Programs.

Recommendation 10

The Committee recommends that the ACT Government continue to work with ACT Policing to consider additional hardship options for all infringement notices, modelled off the traffic and parking infringement notice options.

Recommendation 11

The Committee recommends that the ACT Government urgently invests in bail support programs and restorative justice that support people to address underlying issues causing the offending behaviour related to the minor offence and reduce reoffending behaviours.

Recommendation 12

The Committee recommends that the ACT Government provides secure and ongoing funding for the Ngurrumbai Bail Support Program.

Recommendation 13

The Committee recommends that the ACT Government improve Aboriginal and Torres Strait Islander access to funded driver licensing programs as Aboriginal and Torres Strait Islander people continue to be disproportionately disadvantaged in being able to meet the requirements to obtain a drivers licence.

1. Conduct of the inquiry

- 1.1. On 1 March 2023 the committee agreed to conduct a self-referred *Inquiry into penalties for minor offences and vulnerable people* and issued a media release on 6 March 2023 inviting the community to participate in the inquiry by making a submission. Invitations to make submissions to the inquiry were also emailed directly to stakeholders.
- 1.2. The Committee received 13 submissions. These are listed in **Appendix A**.
- 1.3. The Committee held a public hearing on Wednesday, 21 June 2023. Witnesses who appeared at the hearing are listed in **Appendix B**.
- 1.4. The Committee had 11 Questions Taken on Notice and three Questions on Notice from the public hearing. These are listed in **Appendix C**.
- 1.5. A breakdown of witnesses at the public hearing by gender identity is given in **Appendix D**.

2. Introduction

- 2.1. Through the inquiry, the Committee sought to better understand the impact that penalties for minor offences had on vulnerable people, particularly Aboriginal and Torres Straight Islanders (ATSIIs), young people, detainees, welfare recipients, the homeless and people with disabilities and/or mental health issues.
- 2.2. The Committee looked at whether the existing alternatives to fines were suitable and what other options may be available while still maximising compliance with legislation, particularly for young people.

- 2.3. The Committee heard that such penalties impact vulnerable people disproportionately:

Our fines system has not been drawn up with any nuance of the proportional impact of fines on people. For example, a fine of \$3000 may be completely manageable penalty for a person who is on an income of say \$120,000pa. However, if a person is on a very low income, and maybe has a number of dependents and a high ratio of rent costs, that same fine of \$3000 can be a terrifying prospect that is unmanageable to pay.¹

- 2.4. For some people even being required to pay \$10 a week as part of a deferred payment plan could be critical:

The research that we have done on cost of living says that even \$10 is out of reach of some people. We put together some example budgets in our poverty fact sheet last year. We found that a family where both parents are on minimum wage have \$18 a fortnight left over after they pay for their essential expenses.²

- 2.5. The ACT Council for Social Service (ACTCOSS) told the Committee that there are an estimated 38,300 Canberrans living in poverty including approximately 9,000 children.³ They said it is important to prevent a situation where an unaffordable penalty can end up resulting in lifelong harms as a result of that person falling into the criminal justice system rather than dealing with the underlying issues causing the behaviours.⁴
- 2.6. While there are a range of existing measures in place to prevent hardship, the Committee wanted to make sure they were operating as they should and that our administrative penalty system is working as it should for vulnerable people.

¹ Justice Reform Initiative, *Submission 013*, p 19.

² Dr Gemma Killen, Head of Policy, ACT Council of Social Service, *Committee Hansard*, 21 June 2023, p 6.

³ ACT Council of Social Service, *Submission 005*, p 1.

⁴ ACT Council of Social Service, *Submission 005*, p 2.

3. Minor offences and vulnerable people

Impacts on vulnerable people

3.1. The Committee examined the impacts of penalties for minor offences on vulnerable people, noting that vulnerable people can be more susceptible to receiving fines, and that fines can have cascading impacts on these people.

3.2. In their submission the Justice Reform Initiative (JRI) stated that people who experience homelessness are highly vulnerable to law enforcement processes related to public space offences and offensive behaviour due to homelessness itself:

The very publicness of their living arrangements, their increased use of public space and their lack of access to appropriate support services make them highly vulnerable to law enforcement processes given their public visibility. Behaviour or conduct which would not come to the attention of police if they had safe and secure accommodation place them at increased risk of being subject to policing attention.⁵

3.3. Street Law (Canberra Community Law) told the Committee that their clients face significant difficult living and financial situations, and often Centrelink benefits are their only source of income. Receiving a fine can increase difficulties in paying for accommodation, obtaining stable income and paying other debts.⁶

3.4. Street Law told the Committee that many of their clients faced difficulty in interacting with authorities. This could include dealing with various stresses, not having an address to receive mail, not being able to keep electronic devices charged, low literacy and therefore being unable to deal with the fine. They also spoke of clients applying for waivers and then being referred for medical assessments resulting in their licence being suspended.⁷

3.5. At the public hearing, Street Law discussed the example of a person who was homeless and sleeping in his car being charged with camping in a public place. Street Law noted that example ‘certainly raises some concerns’ and appeared to be a ‘heavy-handed’ approach by police.⁸

3.6. Legal Aid ACT told the Committee that an inability to pay fines can have a cascading effect, including a \$34 cost on receipt of a reminder notice, and possible suspension of the person’s drivers licence, registration or right to drive in the ACT. In some cases, it can also lead to prosecution in the courts. This can create further problems including imprisonment if the individual continues to drive unlicensed.⁹

⁵ Justice Reform Initiative, *Submission 013*, p 8.

⁶ Street Law (Canberra Community Law), *Submission 011*, p 3.

⁷ Street Law (Canberra Community Law), *Submission 011*, pp 1-2.

⁸ Mr John Alati, Supervising Solicitor, Street Law, Canberra Community Law, *Committee Hansard*, 21 June 2023, p 29.

⁹ Legal Aid ACT, *Submission 009*, pp 2-3.

Impacts for Aboriginal and Torres Strait Islander (ATSI) people

- 3.7. Several submissions highlighted how ATSI people can be particularly negatively impacted by penalties.
- 3.8. The JRI's submission also noted that ATSI people are disproportionately more likely to receive infringement notices for or be charged with offensive language or public nuisance offences.¹⁰
- 3.9. The ACT Human Rights Commission (ACT HRC) said in their submission that research across Australia has often shown that Criminal Infringement Notices (CINs) are disproportionately issued against ATSI people.¹¹
- 3.10. ACTCOSS also noted the disproportionate impact on people from these communities given that while they only make up two percent of the population the percentage of indigenous detainees in the Alexander Maconochie Centre was 25.2 percent in 2022.¹²

Committee comment

- 3.11. The Committee is concerned that penalties for minor offences and for the non-payment of fines have a disproportionate impact on vulnerable people, including people who are homeless, people experiencing mental health issues, and ATSI people. The Committee believes an ACT Government review of minor offences, and of their impact on vulnerable people, is warranted.

Recommendation 1

The Committee recommends that the ACT Government reviews the impact of penalties for minor offences, particularly public space offences and offensive behaviour offences, as to their current relevancy, use and impacts on vulnerable people, particularly Aboriginal and Torres Strait Islander people.

Traffic offences and cascading impacts

- 3.12. The Committee looked at how for vulnerable people, traffic offences can escalate from having minor penalties to having more serious impacts.
- 3.13. The Attorney-General told the Committee that Access Canberra does not initiate prosecutions for failure to pay fines.¹³ However, failure to pay or act on a Parking Infringement Notice (PIN) or Traffic Infringement Notice (TIN) could result in driver licence

¹⁰ Justice Reform Initiative, *Submission 013*, p 12.

¹¹ ACT Human Rights Commission, *Submission 006*, p 6.

¹² ACT Council of Social Service, *Submission 005*, pp 2-3.

¹³ Mr Shane Rattenbury, Attorney-General, *Committee Hansard*, 21 June 2023, p 56.

suspension actions following a reminder, meaning that the person will not be able to drive or operate their vehicle.¹⁴

- 3.14. Advocacy for Inclusion (AFI) cited examples of fines for minor offences (including traffic and parking, behaviour and public order, and public transport infringements) leading to harsh consequences for vulnerable people. If fines are either not received or not paid, escalating actions can include accumulation of debt, licence suspension and even imprisonment.¹⁵
- 3.15. Street Law stressed how a drivers' licence is often essential for vulnerable people to secure/keep employment, comply with Centrelink mutual obligations and meet with health and support services. Licence suspension only serves as an additional obstacle and decreases the ability for vulnerable people to improve their circumstances.¹⁶
- 3.16. Street Law described the need to change the justice system regarding penalties for minor offences, noting the suspension of a driver's licence may impose a double burden on vulnerable people. They may choose to drive while a licence is suspended to attend appointments, such as with community corrections, and face even harsher penalties if caught.¹⁷
- 3.17. The Australian Federal Police Association (AFPA) provided testimony how New Zealand and Canada have invested extensively in other therapeutic or diversionary options in the case of non-payment of driving fines. Police have been given broader discretionary powers to judge whether an offence is assigned to the courts or not, lessening court appearances. They said that according to research, these alternative approaches seem to be working.¹⁸
- 3.18. In regard to license suspensions or cancellations, the AFPA said that while there needs to be a strong deterrent from dangerous driving, the penalty for someone who has not paid a parking ticket because they cannot afford it should be appropriate. However, there needs to still be a deterrent in some form to prevent traffic and parking offences.¹⁹

Committee comment

- 3.19. Committee members expressed their concern how a vulnerable person can have their driver's licence suspended through failure to pay a fine, then through a subsequent driving offence, this can lead to appearing before the criminal justice system and facing a possible term of imprisonment. A better approach may be that a driver's licence should only be suspended based on the substance of an offence.

¹⁴ ACT Government, Access Canberra, *Traffic and parking infringements*, [Traffic and parking infringements \(act.gov.au\)](https://www.act.gov.au/act/transport-and-infrastructure/traffic-and-parking-infringements), (accessed 20 September 2023).

¹⁵ Advocacy for Inclusion (AFI), *Submission 003*, p 3.

¹⁶ Street Law (Canberra Community Law), *Submission 011*, pp 1-2.

¹⁷ Street Law (Canberra Community Law), *Submission 011*, pp 1-2.

¹⁸ Mr Alex Caruana, President, Australian Federal Police Association, *Committee Hansard*, 21 June 2023, pp 49-50.

¹⁹ Mr Alex Caruana, President, Australian Federal Police Association, *Committee Hansard*, 21 June 2023, p 47.

Recommendation 2

The Committee recommends that the ACT Government explore law reforms with regards to the suspension of a driver's licence only ever occurring based on the substance of a traffic offence rather than on the basis of a failure to pay a fine or penalty.

4. Reforms to fines

- 4.1. The Committee looked at ways to reduce the disproportionate impact that penalties for minor offences have on vulnerable people.
- 4.2. Infringement notices are on the spot fines issued by a public servant or a police officer that requires a fixed amount to be paid to the Government to avoid prosecution. Infringement notices are used only where the offence is a strict or absolute liability (i.e., the defendant has done the prohibited act, but it is not necessary to establish fault such as intention or recklessness). There is a 'yes or no criteria' in regards to whether the offence occurred rather than having complex legal distinctions. Strict liability offences are usually only used for regulatory offences where the person would be expected to be aware of the regulatory obligation placed on them.²⁰ In these cases, the ACT has a long-standing policy that the nominal amount on an infringement notice must be no more than 20 percent of the maximum fine.²¹
- 4.3. The ACT Government told the Committee that the smaller administrative penalty amount was intended to be an early intervention to deter further offending without involving a prosecution.²²

Warning notices

- 4.4. Various witnesses expressed support for warning notices for first offences as an alternative to a fine.
- 4.5. The JRI recommended informal or written cautions or warnings as alternatives to fines, particularly for vulnerable or disadvantaged people because they can divert people away from fine enforcement systems.²³
- 4.6. Street Law suggested that written or verbal cautions should be used for minor offences where possible to divert vulnerable people away from the criminal justice system noting that for these people, fines can exacerbate their financial difficulties, can prolong their homelessness, and punishes them for behaviour that can be a consequence of their homelessness. They also noted that some of the behaviours that may lead to fines are also a result of mental health issues where a more appropriate action could be warnings or to seek intervention from health professionals.²⁴
- 4.7. The AFPA also told the Committee that education (in the form of a warning) is better than incarceration or a court outcome for lower-level offences.²⁵ At the hearing they told the Committee that it is important that this remains a discretionary power for police because it

²⁰ ACT Government, *Guide for Framing Offences 2010*, [report_GuideforFramingOffences_LPB_2010.pdf \(act.gov.au\)](#) p 37.

²¹ ACT Government, *Guide for Framing Offences 2010*, [report_GuideforFramingOffences_LPB_2010.pdf \(act.gov.au\)](#) p 38.

²² ACT Government, *Submission 008*, p 2.

²³ Justice Reform Initiative, *Submission 013*, p 22.

²⁴ Street Law (Canberra Community Law), *Submission 011*, p 3.

²⁵ Mr Alex Caruana, President, Australian Federal Police Association, *Committee Hansard*, 21 June 2023, p 49.

can be ‘very difficult to judge a situation until you are in that particular situation.’²⁶ In their submission they spoke of the use of warnings in Canada and New Zealand.²⁷

- 4.8. The ACT Policing said in their submission that they look to alternative options (i.e., warnings, cautions, or charges) to issuing a fine to vulnerable people and as part of exercising this discretion, they will consider a range of factors. These factors include age, if they are an ATSI person, experiencing financial hardship and/or poverty, first time offenders or a recidivist offender.²⁸
- 4.9. ACT Policing said that while their officers have a discretion to provide verbal warnings –it would be difficult to collate these for the purposes of tracking whether it was a first instance for which a warning would be the appropriate course of action.²⁹ However, where there is a formal caution, CIN (Criminal infringement notice), or a judicial process is about to start there would be a record.³⁰
- 4.10. While ACT Policing have a discretion and are able to provide warnings, the Attorney-General told the Committee that PINs and TINs are strict liability offences and therefore just get ‘implemented’.

Committee comment

- 4.11. The Committee noted that there was general support amongst witnesses for warnings for first instances of offences for vulnerable people and that ACT Police already have a discretion to provide verbal warnings in such cases. However, there is no process for issuing warnings in lieu of fines which are issued as part of an automated process such as through speeding cameras or parking tickets.

Recommendation 3

The Committee recommends that the ACT Government explore a system of warning notices for a first offence in the case of minor offences instead of a fine or penalty.

Caps on infringement notices

- 4.12. The JRI recommended a cap be placed on the total number of infringement notices or financial penalties from a single interaction with police.³¹ They told the Committee that while fines can be a less harsh penalty for many people than prosecution, the impact is disproportionately felt by people on low incomes and socio-economically disadvantaged backgrounds. They noted that sometimes multiple offences relating to a single incident

²⁶ Mr Alex Caruana, President, Australian Federal Police Association, *Committee Hansard*, 21 June 2023, p 48.

²⁷ Australian Federal Police Association, *Submission 004*, pp 4-5.

²⁸ ACT Policing, *Submission 012*, p 4.

²⁹ Mr David Williams, ACT Policing Acting Superintendent, Family Violence and Vulnerable People, Australian Federal Police, *Committee Hansard*, 21 June 2023, p 19.

³⁰ Mr David Williams, ACT Policing Acting Superintendent, Family Violence and Vulnerable People, Australian Federal Police, *Committee Hansard*, 21 June 2023, p 20.

³¹ Justice Reform Initiative, *Submission 013*, p 4.

can be disproportionate to the actual offence.³² There can then be consequences if such a person cannot pay such as suspension of a driver's licence which can further entrench the disadvantage. In particular, the disproportionate impacts on ATSI people were noted.³³

- 4.13. In putting forward an income-based system of penalties, the AFPA were also open to a cap based on income, however, they considered it was necessary to ensure that the cap was sufficiently high enough to be a deterrent to further offending.³⁴

Recommendation 4

The Committee recommends that the ACT Government investigate introducing a cap that can be placed on the total number of infringement notices or financial penalties from a single interaction with police, to reduce financial impacts on vulnerable people.

Income based penalties

- 4.14. Many submissions noted that current fine or penalty structures meant that fixed or flat fees for minor offences had a disproportionate impact on vulnerable groups and called for a person's capacity to pay to be a factor in determining the amount of the penalty.

Impacts of current fine structures

- 4.15. While administrative penalties for minor offences are generally fixed or flat, there was some support for the amount of such fines to be based on ability to pay or the income of a vulnerable person who is the recipient of the infringement notice.
- 4.16. The ACT HRC told the Committee that infringement notices apply penalties fixed in legislation and do not allow an authorised officer imposing the penalty any discretion to take into account factors such as the seriousness of the offence and mitigating circumstances.³⁵

In this regard, we consider it a flawed assumption that, irrespective of individual circumstances or capacity to pay, every recipient of a CIN will be capable of paying a fine, disputing their liability or duly applying for the CIN to be withdrawn or serviced in instalments. For some, the imposition of such fines will instead compound significant hardship and lead to flow-on consequence.³⁶

- 4.17. Hardship provisions apply in respect of administrative penalties issued in the ACT, most notably in respect of the *Road Transport (General) Act 1999* which covers parking and

³² Justice Reform Initiative, *Submission 013*, p 22.

³³ Justice Reform Initiative, *Submission 013*, p 10.

³⁴ Mr Alex Caruana, President, Australian Federal Police Association, *Committee Hansard*, 21 June 2023, p 46.

³⁵ ACT Human Rights Commission, *Submission 006*, p 3.

³⁶ ACT Human Rights Commission, *Submission 006*, p 3.

traffic infringements being the most common penalties. These will also be available for infringement notices issued under the *Magistrates Court Act* from February 2024.³⁷

- 4.18. AFI also noted that people with disability, particularly intellectual disabilities are more vulnerable to receiving fines, accruing multiple fines and being less able ‘to negotiate the processes to contest them or mitigate their impact’. This includes not understanding or receiving correspondence or being unable to use online systems involving complex forms.’³⁸

Alternative penalty or fine structures

- 4.19. AFPA told the Committee that penalties should be a deterrent from further offending but not result in an unaffordable penalty. They recommended reforms to penalties based on the offenders weekly take-home pay and the number of re-offences:

- First reoffence – a maximum of 1% of their weekly earnings
- Second reoffence – a maximum of 5% of their weekly earnings
- Third reoffence – a maximum of 20% of their weekly earnings

If the person continues to recommit the same offence more than three times or defaults on payment at any of these three stages of financial penalty, the next step should be to assess appropriate escalation.³⁹

- 4.20. The JRI recommended applying a sliding scale to infringement notice fines based on a person’s ability to pay.⁴⁰ They said that this could be based on the day fine structure used in countries in Europe (Germany, Estonia, Finland, France, Sweden and Switzerland). Day fines are worked out according to a ‘formula where the seriousness of the offence is indexed to the offender’s average daily income or the surplus remaining after daily expenses. Fines are then expressed according to the number of days it would take that particular offender to pay off the fine.’⁴¹ At the public hearing, Mr Humphries told the Committee that in those countries, the authority imposing the fine has access to income declared for taxation purposes. He went on to say that to implement such a system in Australia, it might involve people making declarations about their income, although he might not recommend it as an alternative to using third party data sources.⁴²
- 4.21. ACTCOSS called for income-based fines noting that the current flat rate penalties were regressive and inconsistent with the Government’s principles of horizontal equity (taxes applied equally to people in similar financial circumstances) and vertical equity (taxes that increase with income).⁴³

³⁷ ACT Government, *Submission 008*, p 2.

³⁸ Advocacy for Inclusion, *Submission 003*, p 4.

³⁹ Australian Federal Police Association, *Submission 004*, p 6.

⁴⁰ Justice Reform Initiative, *Submission 013*, p 10.

⁴¹ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples 2018*, p 399.

⁴² Mr Garry Humphries, Co-Chair, ACT Chapter, Justice Reform Initiative, *Committee Hansard*, 21 June 2023, p 34.

⁴³ ACT Council of Social Service, *Submission 005*, pp 2-3.

- 4.22. The Committee heard that there was evidence from the Robodebt experience that unanticipated debt had significant impacts on vulnerable people and there may be some learnings that may be of benefit in considering new initiatives to more appropriately apply penalties to vulnerable people:

While not fines, the Australian Governments failed “Robodebt” program is an important lesson in the human consequences in circumstances where levying unanticipated debt, complicated messaging and administrative processes converge for highly vulnerable people on very low incomes.⁴⁴

Committee Comment

- 4.23. The Committee considers that the current system of flat penalties for minor offences has a disproportionate impact on vulnerable people compared to the general population and considers that a system that can adjust the fines according to a person’s capacity to pay should be investigated further.

Recommendation 5

The Committee recommends that the ACT Government investigate adopting fines based on a proportion of income, rather than fixed amounts, together with the setting of a maximum fine amount.

Income data

- 4.24. Access to income data would assist in applying a sliding scale or reduced penalties for vulnerable people based on their income or ability to pay. The ACT Government told the Committee that while there is not a routine process for collecting demographic data on recipients of administrative penalties, such recipients can provide personal information to support a request for a waiver or an extension of time to pay.⁴⁵
- 4.25. ACT Policing advised the Committee that they do not routinely collect or collate demographic data on the recipients of infringement notices apart from age (this would generally be available from the driver’s licence). They noted that information about the recipient being a vulnerable person would only be available if the person told them.⁴⁶
- 4.26. The JRI noted that in pursuing reforms in this area, the ACT Government has previously responded by saying such data is only available to the Commonwealth Government.⁴⁷ Such data is collected by Federal government agencies such as Services Australia for the purposes of establishing eligibility for government assistance or the Australian Taxation Office for the purposes of processing income tax liabilities and is subject to confidentiality

⁴⁴ Mr Craig Wallace, Head of Policy, Advocacy for Inclusion, *Committee Hansard*, 21 June 2023, p 7, Advocacy for Inclusion, *Submission 003*, p 4.

⁴⁵ ACT Government, *Submission 008*, p 2.

⁴⁶ ACT Policing, *Submission 012*, p 6.

⁴⁷ Justice Reform Initiative, *Submission 013*, p 19.

requirements under the laws underpinning the social services⁴⁸ and taxation systems⁴⁹ and the Privacy Act 1988.

- 4.27. Street Law raised concerns about use of tax data for this purpose in terms of how it is perceived culturally in Australia and how accurately taxable incomes might represent actual incomes.⁵⁰
- 4.28. The JRI suggested alternative ways to establish a person's income is to seek evidence of a Healthcare card or the previous year's tax statement.⁵¹
- 4.29. At the public hearing, the Attorney-General told the Committee that while he was interested in the idea of having income-based penalties, access to reliable income data was the main barrier due to privacy issues and because the ACT Government does not have the legislative power to access taxation data held by the Federal Government.⁵²
- 4.30. The Attorney-General when asked about income information such as pay slips raised concerns about accessibility and administration:

Clearly, these days, I am not sure whether everyone gets a payslip anymore. I understand the idea. There is an administrative load to that; the government would need to consider that as well.⁵³

- 4.31. In comparison to arrangements applying for penalties, people who have limited financial means may be eligible for a reduction in licence fees using concessional cards as evidence. Access Canberra allows reductions for the fee for a driver's licence for the following concession cards:
- a) Centrelink Health Care Card displaying an ACT residential address (must also have a good driving record, be unemployed for six months or more, receiving a Centrelink unemployment benefit, one year licence only, does not apply to learner, probationary, restricted or five year licences);
 - b) Centrelink Pension Concession Card displaying an ACT residential address – for issue or renewal of a provisional, full or national heavy vehicle licence;
 - c) Department of Veteran's Affairs (DVA) Pension Concession Card – for the issue of a provisional, full or national heavy vehicle licence
 - d) DVA Gold Card – for the issue of a provisional, full or national heavy vehicle licence⁵⁴

⁴⁸ Services Australia, *Your right to privacy*, [Your right to privacy - Services Australia](#) (accessed 29 August 2023)

⁴⁹ Australian Taxation Office, *Your privacy*, [Your privacy | Australian Taxation Office \(ato.gov.au\)](#) (accessed 29 August 2023)

⁵⁰ Mr John Alati, Supervising Solicitor, Street Law, Canberra Community Law, *Committee Hansard*, 21 June 2023, p 35.

⁵¹ Justice Reform Initiative, *Submission 013*, pp 19-20.

⁵² Mr Shane Rattenbury, Attorney-General, *Committee Hansard*, 21 June 2023, p 56.

⁵³ Mr Shane Rattenbury, Attorney-General, *Committee Hansard*, 21 June 2023, p 57.

⁵⁴ ACT Government, Access Canberra, ACT driver licence information [ACT driver licence information](#) (accessed 12 October 2023)

Committee comment

- 4.32. The Committee agrees with the suggestion that income-based penalties would be an 'attractive proposition' but also acknowledges that this is currently limited by the ability to obtain reliable information about a person's income in an appropriate and timely manner.
- 4.33. Allowing use of income tax data from the Australian Taxation Office or income data from Centrelink would assist in the implementation of income-based penalties for minor offences. However, in the absence of that data being available, an alternative indicator of a person's ability to pay could be if they hold a concession card.

Recommendation 6

The Committee recommends that the ACT Government look at whether fines for minor offences could be reduced for people holding concession cards.

5. Financial hardship options for penalties for minor offences

Penalty Waivers

- 5.1. According to Access Canberra, an individual can apply for a waiver when they are financially unable to pay the infringement and unable to complete an infringement notice management plan or apply to complete an approved community work or social development program. The objective behind this is that it will assist vulnerable people deal with the financial aspect of an infringement notice but other penalties such as demerit points may still apply.⁵⁵
- 5.2. There are currently no provisions for withdrawing ACT Policing TINs (issued for offences such as speeding, unregistered vehicles, negligent driving) on the basis of financial hardship or compassionate grounds. However, it is possible to apply through Access Canberra for a payment plan or for the penalty to be waived.⁵⁶
- 5.3. The Committee heard from a number of witnesses that the process for seeking a waiver is complex, and therefore problematic for many vulnerable people. There also appears to be a lack of awareness for vulnerable people that they might be able to apply for a waiver.
- 5.4. According to the ACT Government, in the 2021-22 financial year, there were only 485 waivers issued – out of 221,070 parking and traffic infringement notices.⁵⁷

Process for seeking a waiver

- 5.5. It is necessary to provide evidence of financial hardship. This may include showing evidence such as

"relevant circumstances, of a person, means any of the following circumstances that relate to the person and significantly affect the person's ability to pay an infringement notice penalty:

 - (a) mental or intellectual disability or mental disorder;
 - (b) physical disability, disease or illness;
 - (c) addiction to drugs, alcohol or another substance;
 - (d) being subjected to domestic violence;
 - (e) homelessness, or living in crisis, transitional or supported accommodation;
 - (f) anything else prescribed by regulation
- 5.6. The Minister for Business and Better Regulation told the Committee that individuals should provide evidence in regards to financial circumstances, relevant circumstances (substance

⁵⁵ ACT Government, Access Canberra, *Traffic and parking infringements*, [Traffic and parking infringements \(act.gov.au\)](https://act.gov.au) (accessed 30 August 2023)

⁵⁶ ACT Policing, *Traffic Fines*, [Traffic fines | Australian Capital Territory Policing \(act.gov.au\)](https://act.gov.au) (accessed 18 September 2023).

⁵⁷ ACT Government, *Submission 008*, p 2.

abuse, domestic violence, physical/mental disability or impairment, homelessness etc) and inability to complete a work or development plan.⁵⁸

Complexity experienced by people in seeking waivers

- 5.7. ACTCOSS told the Committee that the processes to apply for a waiver of a penalty is difficult and highly involved. It is necessary to make the initial application, provide documentation, and this may involve internal review processes and applications to the ACT Civil and Administrative Tribunal.⁵⁹ At the hearing, they told the Committee that the website is very difficult to navigate.⁶⁰
- 5.8. The JRI told the Committee that some people seeking a waiver would need legal support due to the complexity involved.⁶¹
- 5.9. The Committee noted that in NSW it was possible to apply over the phone for a 50 percent reduction for certain fines if the offender was receiving a government assistance payment at the time of the offence (for a full waiver, it is necessary to complete a form).⁶²
- 5.10. The importance of using design principles and practice in improving access and participation of hardship options such as waivers was also highlighted by several witnesses. AFI said that universal design would be of benefit for people with disability to ensure that their needs were taken into account in the development of systems and make people more aware of other alternatives to paying fines.⁶³ This was supported by the ACT HRC⁶⁴ and ACTCOSS who spoke to the benefits of co-design to improve the process and to expand options.⁶⁵
- 5.11. Some witnesses also noted that the circumstances in which it was possible to seek a waiver were too narrow.
- 5.12. The JRI suggested a waiver for exceptional circumstances, citing an example of a woman whose abusive ex-partner had accrued a number of fines involving her vehicle and she had accepted to pay the fine rather than interact with her ex-partner as part of seeking a waiver.⁶⁶
- 5.13. Street Law told the Committee that the current circumstances for seeking a waiver for traffic or parking infringements are very limited and can result in a person being referred for medical assessments and subsequently having their licence suspended. Their view was

⁵⁸ Ms Tara Cheyne MLA, *answer to QON No.1, Access Canberra questions*, 3 July 2023, (received xxx).

⁵⁹ ACTCOSS, *Submission 005*, p 4.

⁶⁰ Dr Gemma Killen, Head of Policy, ACT Council of Social Service, *Committee Hansard*, 21 June 2023, p 3.

⁶¹ Justice Reform Initiative, *Submission 013*, p 22; Ms Lee, JRI, *Committee Hansard*, p 37.

⁶² NSW Government, *Apply for a fine reduction*, [Apply for a fine reduction | NSW Government](#) (accessed 12 September 2023)

⁶³ Advocacy for Inclusion, *Submission 003*, p 5.

⁶⁴ Mr Kevin Campbell, Human Rights Legal Adviser, ACT Human Rights Commission, *Committee Hansard*, 21 June 2023, p 15.

⁶⁵ Ms Susan Helyar, Interim Chief Executive Officer, Alcohol, Tobacco and Other Drug Association ACT, *Committee Hansard*, 21 June 2023, pp 2-3.

⁶⁶ Mr John Alati, Supervising Solicitor, Street Law, Canberra Community Law, *Committee Hansard*, 21 June 2023, pp 36-37.

that the grounds should include broader compassionate grounds such as being a single parent and should not have to risk losing their licence as a result of seeking a waiver.⁶⁷

Better data to monitor effectiveness

- 5.14. The JRI recommended that data should be collected on numbers of applications and how many were successful and why.⁶⁸
- 5.15. The ACT HRC also called for access to disaggregated demographic infringement notice information, noting that the lack of this data means it is difficult to assess if the infringement notice schemes are operating equitably.⁶⁹

Committee Comment

- 5.16. The Committee heard evidence that the process to apply for a waiver is complex. The Committee notes that Access Canberra website refers people to a legislative instrument rather than a simple guide when seeking a waiver for a traffic or parking infringement.
- 5.17. In addition, due to a current lack of data it is difficult to effectively monitor the effectiveness of the current system.

Recommendation 7

The Committee recommends that the ACT Government ensures that:

- a) the process for applying for waivers for fines for minor offences is simplified, and
- b) data are collected on the number of applications, the proportion of applications that are successful and the reasons for this.

Understanding and awareness of hardship options

- 5.18. Various witnesses spoke about lack of awareness, the difficulty of applying for and finding out about processes for applying for hardship options and alternatives to penalties.
- 5.19. Options that are available for those who cannot pay their fines and are eligible are setting up a payment plan, a work and development program or a waiver (in extreme circumstances).⁷⁰
- 5.20. The JRI told the Committee that the ACT Policing website said that there were no hardship provisions under the Road Transport (General) Withdrawal of Infringement Notices Guidelines 2019 (No 1) (DI2019-2011), although it was possible to enter into a payment plan or waive the penalty via Access Canberra.⁷¹

⁶⁷ Street Law (Canberra Community Law), *Submission 011*, p 2.

⁶⁸ Justice Reform Initiative, *Submission 013*, pp 18-19.

⁶⁹ ACT Human Rights Commission, *Submission 006*, p 6.

⁷⁰ ACT Government, Access Canberra, *Traffic and parking infringements*, [Traffic and parking infringements \(act.gov.au\)](https://www.accesscanberra.act.gov.au/traffic-and-parking-infringements) (accessed 18 September 2023).

⁷¹ Justice Reform Initiative, *Submission 013*, p 18.

- 5.21. The ACT HRC told the Committee at the public hearing that some people are unaware that it is possible to seek a waiver.⁷² While hardship provisions are available, these must be pursued by the recipient of the fine, who many not be aware that these are available, or may not have the capacity to engage with them.⁷³ In their submission they suggested that hardship options and consequences of non-payment should be communicated at the time that a penalty is issued with officers trained to engage and understand reasons for minor offending when deciding to issue a fine.⁷⁴
- 5.22. ACTCOSS observed that online information and application processes for community service programs is difficult to access.⁷⁵ AFI also noted that people with disability, especially intellectual or cognitive disabilities are less able to negotiate the processes to contest fines or mitigate their impact and that official correspondence and online information can be difficult to understand.⁷⁶
- 5.23. Dr Killen from ACTCOSS told the Committee that she had looked at the process for applying for waivers or alternatives to fines online and had found it to be difficult to work out, including finding out what kind of programs to apply for.⁷⁷ AFI also noted that they had received feedback that the application process is difficult especially for people with a cognitive or intellectual disability.⁷⁸ The Alcohol and Tobacco and Other Drug Association (ATODA) suggested a co-design process with the community sector and people with lived experience to design a more accessible process.⁷⁹
- 5.24. ACT Policing noted if an individual receiving a TIN indicated or made some comment that they were a vulnerable person and where possibly unaware of their options to seek a waiver, they would explain the options. However, they would generally not know if the recipient was a vulnerable person.⁸⁰
- 5.25. ACT Policing advised the Committee that information about people who self-identify as being vulnerable may be identified in their system however, it can be challenging to filter data sets. They are developing new software (Investigation Management Solution - IMS) which interacts with their Police Real-time On-line Management System (PROMIS) may enhance the investigative management functions.⁸¹
- 5.26. The JRI noted there is simplified information on the Street Law (Canberra Community Law) website including an easy English version factsheet. It explains that to apply for a waiver, it

⁷² Mr Kevin Campbell, Human Rights Legal Adviser, ACT Human Rights Commission, *Committee Hansard*, 21 June 2023, p 15.

⁷³ Mr Kevin Campbell, Human Rights Legal Adviser, ACT Human Rights Commission, *Committee Hansard*, 21 June 2023, p 15.

⁷⁴ ACT Human Rights Commission, *Submission*, 006, p 5.

⁷⁵ ACT Council of Social Service, *Submission* 005, p 3.

⁷⁶ Advocacy for Inclusion, *Submission* 003, p 4.

⁷⁷ Dr Gemma Killen, Head of Policy, ACT Council of Social Service, *Committee Hansard*, 21 June 2023, p 3.

⁷⁸ Mr Craig Wallace, Head of Policy, Advocacy for Inclusion, *Committee Hansard*, 21 June 2023, p 3.

⁷⁹ Ms Susan Helyar, Interim Chief Executive Officer, Alcohol Tobacco and Other Drug Association ACT, *Committee Hansard*, 21 June 2023, p 3-4.

⁸⁰ ACT Policing, *Submission* 012, p 6.

⁸¹ Mr Peter Whowell, Executive General Managers – Corporate, ACT Policing, *answer to QTON 2: Self-identification of vulnerable people*, 29 June 2023 (received 29 June 2023)

is necessary to show that an individual does not have the financial ability to pay, has special circumstances (e.g., disability or homelessness), enforcement action is unlikely to result in payment of the fine and it is not possible to complete approved community work or social development programs.⁸² During the public hearing, ACTCOSS mentioned that ActewAGL has a process for engaging community sector groups to provide assistance to vulnerable people:

ActewAGL, for example, has a mechanism by which they can ask the consumer if they want to be referred to a community sector organisation and they do the referral process for them, whereas other retailers might tell them about what supports are available but the person has to self-refer. We find that the ActewAGL model works a lot better for connecting people to support services. I would recommend some sort of similar model.⁸³

Committee Comment

- 5.27. People may need more accessible, clearer and easier to understand information of hardship options available to them in respect of fines. People may find accessing information on websites difficult or may not have enough awareness to understand that they might even have options.
- 5.28. Website information should provide an optimal customer experience, with universal design principals used in the design of Access Canberra web interfaces and applications in respect of fines and infringements.

Recommendation 8

The Committee recommends that the ACT Government ensures infringement notices include information to assist vulnerable people to find the information they need, including alternative options to payment, such as links to the Canberra Community Law webpages.

Work and Development programs

- 5.29. Work and development programs (often referred to as community service programs) may be available to people who are unable to pay fines in order to reduce their debt in the following circumstances:
- Mental or intellectual disability or mental disorder.
 - Physical disability, disease or illness.
 - Addiction to drugs, alcohol or another substance
 - Being subject to domestic violence.
 - Homelessness, or living in crisis or transitional or supported accommodation.

⁸² Canberra Community Law, Street Law, *Apply for a waiver of a fine*, [Apply for waiver of a fine - Canberra Community Law](#) (accessed 30 August 2023).

⁸³ Dr Gemma Killeen, Head of Policy, ACT Council of Social Service, *Committee Hansard*, 21 June 2023, p 8.

- 5.30. It is necessary to show serious financial hardship and provide detailed evidence to support this claim. It is also necessary to obtain support of a provider of a work and development program in making an application.⁸⁴ The following table describes the types of activities and the value that can be applied to reduce the debt undertaken in such a program.

Activity	value
Unpaid work for or on behalf of an approved program provider	\$37.50 per hour worked
Educational, vocational or life skills course	\$50.00 per hour or \$350 per full (7 hour) day to a maximum of \$1000.00 per month
Financial or other counselling (including attending case management meetings)	\$50.00 per hour or \$350 per full (7 hour) day to a maximum of \$1000.00 per month
Participation (as a mentee) in a mentoring program	\$1000 per month for full compliance (or a proportion for partial compliance)
Medical or mental health treatment in accordance with a practitioner's treatment plan	\$1000 per month for full compliance (or a proportion for partial compliance)
Drug or alcohol treatment	\$1000 per month for full compliance (or a proportion for partial compliance)

⁸⁵ ACT Government, Access Canberra, Work and development programs, [Traffic and parking infringements \(act.gov.au\)](https://act.gov.au/traffic-and-parking-infringements) (accessed 18 September 2023)

- 5.31. In the 2021-22 financial year there were 90 Work or Development Plans (WDPs) finalised.⁸⁶ The ACT Government have 36 organisations that provide services under the work and development program.⁸⁷
- 5.32. The JRI told the Committee that while they had not seen an evaluation of the ACT program, the NSW program had found that 94 percent of sponsors had agreed that the program was highly successful.⁸⁸ They considered that it was necessary to expand the number of providers to increase the accessibility of the program.⁸⁹
- 5.33. AFI outlined how people with disabilities face disproportionately higher impacts associated with fines and said that the ACT Government should maximise opportunities for alternatives to fines including community service.⁹⁰
- 5.34. Legal Aid ACT told the Committee that while they support the work and development programs for people who are unable to pay fines, the application process for applying for

⁸⁴ ACT Government, Access Canberra, Work and development programs, [Traffic and parking infringements \(act.gov.au\)](https://act.gov.au/traffic-and-parking-infringements) (accessed 18 September 2023)

⁸⁵ ACT Government, Access Canberra, Work and development programs, [Traffic and parking infringements \(act.gov.au\)](https://act.gov.au/traffic-and-parking-infringements) (accessed 18 September 2023)

⁸⁶ Ms Tara Cheyne MLA, Minister for Business and Better Regulation, *answer to QTON 11: Successful completion rate for payment plans*, 29 June 2023, (received 30 June 2023)

⁸⁷ Mr Josh Rynehart, Executive Branch Manager, Fair Trading and Compliance, Access Canberra, Chief Minister, Treasury and Economic Development Directive, *Committee Hansard*, 21 June 2023 p 53.

⁸⁸ Justice Reform Initiative, *Submission 013*, p 20.

⁸⁹ Justice Reform Initiative, *Submission 013*, p 22.

⁹⁰ Advocacy for Inclusion, *Submission 003*, p 4.

such a program is very difficult for vulnerable people who might be facing homelessness, mental health problems or have literacy issues. The application form is 15 pages long and involves collecting a significant amount of data.⁹¹

- 5.35. ACTCOSS noted that community service programs have been scarce since the start of the COVID pandemic and asked for more and clearer information to be provided about these programs including making the online process easier.⁹² ATODA told the Committee that there were problems around awareness, availability and accessibility.⁹³ Both ACTCOSS and ATODA said there should be co-design in this area.

Recommendation 9

The Committee recommends that the ACT Government expand the availability of, and improve accessibility to Work and Development Programs.

Additional hardship options for all infringement notices

- 5.36. Existing hardship options for TINs and PINs include waivers, payment plans and approved community work or social development programs (where an individual is unable to pay).⁹⁴
- 5.37. ACT Policing told the Committee that infringement notices are administrative penalties or fines that are to be dealt with by way of payment rather than through the criminal justice system. ACT Policing issue the following infringement notices:
- a) Criminal Infringement notices (CINs)
 - b) Traffic Infringement notices (TINs)
 - c) Parking infringement notices (PINs)
 - d) Simple Cannabis Offence Notice (SCONs). From October 2023, police will also be able to issue a Simple Drug Offence Notice (SDON) following enactment of the Drugs of Dependence (Personal Possession) Amendment Bill 2022.
- 5.38. The Committee heard that for TINs and PINs issued by ACT Police, there were detailed provisions dealing with hardship options which are administered by Access Canberra as part of management of the payment of fines.⁹⁵
- 5.39. A person can either pay a CIN or dispute it in court, apply for an extension of time to pay a disputed liability or apply to have it withdrawn.⁹⁶ ACT Policing are responsible for

⁹¹ Ms Tamzin Lee, Head of Criminal Practice, Legal Aid ACT, *Committee Hansard*, 21 June 2023 p 30.

⁹² ACT Council of Social Service, *Submission 005*, pp 3-4.

⁹³ Ms Susan Helyar, Interim Chief Executive Officer, Alcohol Tobacco and Other Drug Association ACT, *Committee Hansard*, 21 June 2023 p 1.

⁹⁴ Mr Peter Whowell, Executive General Manager – Corporate, ACT Policing, *QTON 6: Magistrates Court Infringement Notices Amendment Act 2020 impact on TINs and PINs*, 29 June 2023 (received 29 June 2023)

⁹⁵ ACT Government, *Submission 008*, p 1.

⁹⁶ ACT Policing, *Submission 012*, pp 2-3.

payments and non-payment of CINs.⁹⁷ ACT Policing advised that the introduction of the *Magistrates Court (Infringement Notices) Amendment Act 2020* will mean that additional hardship options modelled on those available in respect of TINs and PINs will be available for CINs issued for offences in accordance with the *Magistrates Court Act 1930*.⁹⁸

- 5.40. There are also administrative penalties applied for some miscellaneous offences under the *Magistrates Court Act 1930*. The Attorney-General advised that under changes to commence from February 2024 under the *Magistrates Court (Infringement Notices) Amendment Act 2020*, new hardship options would apply that will be based on these offences in line with those that are available for TINs and PINs. He further advised that the government was currently in the process of developing systems as part of implementing those changes.⁹⁹
- 5.41. The ACT Government said that for penalties imposed under the *Drugs of Dependence (Personal Use) Amendment Act 2022* commencing from October 2023, a person could either pay a \$100 penalty or attend an assessment and harm reduction session which may lead to a referral for voluntary treatment.¹⁰⁰ ACT Policing are responsible for payments and non-payment of SCONs.¹⁰¹
- 5.42. The ACT Government told the Committee that administrative penalties can be issued for a failure to vote, noting that this will follow multiple notices, and the penalty can be withdrawn if a valid and sufficient reason is given, and extensions to pay are available.¹⁰²

Recommendation 10

The Committee recommends that the ACT Government continue to work with ACT Policing to consider additional hardship options for all infringement notices, modelled off the traffic and parking infringement notice options.

⁹⁷ Mr Peter Whowell, Executive General Manager – Corporate, ACT Policing, *QTON 6: Magistrates Court Infringement Notices Amendment Act 2020 impact on TINs and PINs*, 29 June 2023 (received 29 June 2023)

⁹⁸ Mr Peter Whowell, Executive General Manager – Corporate, ACT Policing, *QTON 6: Magistrates Court Infringement Notices Amendment Act 2020 impact on TINs and PINs*, 29 June 2023 (received 29 June 2023)

⁹⁹ Mr Shane Rattenbury, Attorney-General, *Committee Hansard*, 21 June 2023, p 61.

¹⁰⁰ ACT Government, *Submission 008*, p 3.

¹⁰¹ Mr Peter Whowell, Executive General Manager – Corporate, ACT Policing, *answer to QTON 6: Magistrates Court Infringement Notices Amendment Act 2020 impact on TINs and PINs*, 29 June 2023 (received 29 June 2023)

¹⁰² ACT Government, *Submission 008*, p 1.

6. Justice System

Justice reinvestment and bail

- 6.1. The JRI said that that vulnerable people can be remanded in custody for relatively minor offences, therefore it is important that there are sufficient and effective bail support programs to support people at this time. By investing in bail support programs, the underlying issues of vulnerable people can be addressed, reducing reoffending behaviours.^{103 104}
- 6.2. The JRI proposed a range of options for expanding bail support programs which have many benefits and outcomes in relation to reduction in reoffending rates. In addition to continuation of funding for the only existing bail support program (Ngurrumbai for First Nations people), JRI recommends introduction of a generic bail support program for non-Indigenous defendants.^{105 106}
- 6.3. Legal Aid ACT noted the positive impacts of using restorative justice programs and diversionary programs to support vulnerable people, especially younger people before they enter the adult criminal justice system. However, current significant timeframes required for referrals, assessments and conferences are a concern and impediment to providing successful support.¹⁰⁷
- 6.4. ACTCOSS recommended a justice reinvestment approach to penalties that addressed underlying socioeconomic factors including alcohol and other drug misuse.¹⁰⁸ ATODA told the Committee that people vulnerable to alcohol, tobacco and other drugs face poor health, are at risk of homelessness, and more likely to interact with the criminal, legal and justice systems.¹⁰⁹ They said that imposing fees and penalties can increase the disadvantages leading to prison terms and criminal records.¹¹⁰ In relation to drug offences, they noted that a referral to a diversion program through the health sector as a way of discharging the fine is the better response in line with the approach taken under the ACT *Drugs of Dependence (Personal Use) Amendment Act 2022*.¹¹¹

Recommendation 11

The Committee recommends that the ACT Government urgently invests in bail support programs and restorative justice that support people to address underlying

¹⁰³ Justice Reform Initiative, *Submission 013*, p 16.

¹⁰⁴ Justice Reform Initiative, *Submission 13 (Recommendation 7)*, p 4.

¹⁰⁵ Justice Reform Initiative, *Inquiry QToN #8 Response – Bail Support Programs*, p 2.

¹⁰⁶ Ms Indra Esguerra, ACT Campaign and Advocacy Coordinator, Justice Reform Initiative, *Committee Hansard*, 21 June 2023, p 38.

¹⁰⁷ Ms Tamzin Lee, Head of Criminal Practice, Legal Aid ACT, *Committee Hansard*, 21 June 2023, p 34.

¹⁰⁸ ACT Council of Social Service, *Submission 005*, p 2.

¹⁰⁹ Alcohol Tobacco and Other Drug Association ACT, *Submission 007*, p 2.

¹¹⁰ Alcohol Tobacco and Other Drug Association ACT, *Submission 007*, p 3.

¹¹¹ Alcohol Tobacco and Other Drug Association ACT, *Submission 007*, pp 4-5.

issues causing the offending behaviour related to the minor offence and reduce reoffending behaviours.

- 6.5. The Ngurrumbai Bail Support Program run by the Aboriginal Legal Service (NSW/ACT) provides support, treatment, monitoring and supervision to ensure that bail conditions are successfully completed.¹¹² The program can be mandated as a bail condition or participation can be on a voluntary basis, and is only available to ATSI people.¹¹³
- 6.6. At the public hearing, the JRI told the Committee that the results of the Ngurrumbai Bail Support program have been 'very good'.¹¹⁴
- 6.7. However, the JRI told the Committee that there may be funding issues:
- We understand that there have at times been issues in ensuring adequate staffing in the ALS to operate this program effectively, which is of great concern to the JRI.¹¹⁵
- 6.8. The Committee believes the ACT Government should continue to fund the Ngurrumbai Bail Support Program.

Recommendation 12

The Committee recommends that the ACT Government provides secure and ongoing funding for the Ngurrumbai Bail Support Program.

¹¹² Justice Reform Initiative, *Submission 013*, p 16.

¹¹³ Justice Reform Initiative, *Submission 013*, p 16.

¹¹⁴ Ms Indra Esguerra, ACT Campaign and Advocacy Coordinator, Justice Reform Initiative, *Committee Hansard*, 21 June 2023, p 38.

¹¹⁵ Justice Reform Initiative, *Submission 013*, p 16.

7. Treating underlying causes

- 7.1. The Committee looked at ways to help people comply with legislation by addressing underlying causes of behaviour.

Aboriginal Legal Service Driver Licensing Program

- 7.2. The JRI raised concerns about the potential for unpaid traffic fines to lead to suspension of a person's drivers' licence or imprisonment, especially for ATSI people where there can be disproportionate impacts. They noted statistics for NSW showed that the number of ATSI people suspended for fine default is over three times the rate of non-indigenous people and in the ACT for the 2016-17-year, 277 indigenous people were charged by police for traffic offences compared to 163 in 2012-13, a 69 percent increase. The JRI also noted that ATSI people in the ACT are more likely than anywhere else in Australia to have traffic offences as their most serious offence.¹¹⁶
- 7.3. The JRI also noted that the ACT Government previously funded an Aboriginal Legal Service (ALS) program to assist people get their licence, but this has not been operational due to COVID. This program had been successful in helping 50 people obtain their provisional licence in a culturally safe environment due to flexible case management.¹¹⁷
- 7.4. However, the ACT Government told the Committee that they do not plan to reinstate the ALS program. They said that it was no longer viable due to the Graduated Licensing Scheme reforms introduced in 2020 which included the 100 minimum driving hours for learners under 25 years old. Instead, there is funding for a new four-year Learner Driver Mentor Program which will be delivered by the Salvation Army. It will provide 30 participants per year access to 10 hours of lessons, with a further 100 participants gaining free access to the Safer Driver Course (theory and practical driving which can account for 20 hours credit to the minimum driving hours).¹¹⁸
- 7.5. At the public hearing the JRI told the Committee that there can be major impediments for someone getting a driver's licence especially due to the requirement for 100 hours of supervised driving. It can be difficult for people who do not have a family member to drive them around or afford lessons.¹¹⁹

Committee Comment

- 7.6. The Committee is supportive of better access specifically targeted to ATSI people to driving lessons as a means of reducing the likelihood of these vulnerable people incurring traffic fines. The Committee notes that these people are more likely to be charged for driving

¹¹⁶ Justice Reform Initiative, *Submission 013*, pp 10-11.

¹¹⁷ Justice Reform Initiative, *Submission 013*, pp 11-12.

¹¹⁸ Response to Question taken on notice No. 10, Minister for Transport and City Services, Chris Steel, MLA, (received 30 June 2023).

¹¹⁹ Ms Indra Esguerra, ACT Campaign and Advocacy Coordinator, Justice Reform Initiative, *Community Hansard*, 21 June 2023, pp 32-33.

offences, can be disproportionately affected by traffic fines and are also likely to find it difficult to access lessons.

Recommendation 13

The Committee recommends that the ACT Government improve Aboriginal and Torres Strait Islander access to funded driver licensing programs as Aboriginal and Torres Strait Islander people continue to be disproportionately disadvantaged in being able to meet the requirements to obtain a drivers licence.

8. Conclusion

- 8.1. The Committee has made 13 recommendations in its Inquiry into Penalties for minor offences and vulnerable people.
- 8.2. The Committee would like to thank all those who participated in this inquiry including those who made submissions and appeared at the public hearing.

Peter Cain MLA
Chair
18 October 2023

Appendix A: Submissions

No.	Submission by	Received	Published
1	Rod Pitcher	15/03/23	05/04/23
2	Civil Liberties Australia	04/04/23	14/04/23
3	Advocacy for Inclusion	14/04/23	19/04/23
4	Australian Federal Police Association	14/04/23	19/04/23
5	ACTCOSS	14/04/23	19/04/23
6	ACT Human Rights Commission	14/04/23	19/04/23
7	Alcohol Tobacco and Other Drug Association ACT (ATODA)	14/04/23	19/04/23
8	ACT Government	14/04/23	19/04/23
9	Legal Aid ACT	21/04/23	28/04/23
10	Family and friends for drug law reform	21/04/23	28/04/23
11	Street Law	21/04/23	24/05/23
12	ACT Policing	21/04/23	24/05/23
13	Justice Reform Initiative	16/05/23	24/05/23

Appendix B: Witnesses

Wednesday 21 June 2023

Advocacy for Inclusion

- Mr Craig Wallace, Head of Policy – via Webex

ACT Council of Social Service

- Dr Gemma Killen, Head of Policy
- Ms Avan Daruwalla, Policy Officer

Alcohol Tobacco and Other Drug Association

- Ms Susan Helyar, Interim CEO

Human Rights Commission

- Dr Helen Watchirs, President and Human Rights Commissioner
- Mr Kevin Campbell, Human Rights Legal Adviser

Australian Federal Police

- Mr Peter Whowell, ACT Policing Executive General Manager – Corporate
- Mr Dave Williams, Acting Superintendent Family Violence and Vulnerable People

Legal Aid ACT

- Ms Tamzin Lee, Head of Criminal Practice

Street Law

- Mr John Alati, Supervising Solicitor

Justice Reform Initiative

- Ms Indra Esguerra, ACT Campaign and Advocacy Coordinator
- Mr Gary Humphries, Co-Chair Patrons

Families and Friends for Drug Law Reform

- William Murdoch Bush, President

Australian Federal Police Association

- Mr Alex Caruana, President
- Mr Troy Roberts, Media and Government Relations Manager

Attorney- General

- Mr Shane Rattenbury MLA
- Mr Daniel Ng, A/g Executive Group Manager, Legislation Policy and Programs- Justice and Community Safety Directorate
- Ms Robyn Hakelis, Executive Branch Manager, Legislation Policy and Programs, Justice and Community Safety Directorate
- Mr Josh Rynehart, Executive Branch Manager, Fair Trading and Compliance, Access Canberra

Appendix C: Questions on notice and taken on notice

Questions on notice

No.	Date	Asked of	Subject	Response received
1	22/06/2023	Ms Cheyne	TIN notices Access Canberra Serve	04/07/2023
2	22/06/2023	Mr Gentleman	People caught driving without licence	30/06/2023
3	22/06/2023	Mr Gentleman	Detainees at AMC have driving licence	30/06/2023

Questions taken on notice

No.	Date	Asked of	Subject	Response received
1	21/06/2023	ACT Human Rights Commission	Payment plans for infringement notices	30/06/2023
2	21/06/2023	Mr Whowell	Self-identification of vulnerable people	29/06/2023
3	21/06/2023	Mr Whowell	CINs - types of Offences	29/06/2023
4	21/06/2023	Mr Whowell	Education programs	29/06/2023
5	21/06/2023	Mr Whowell	Referral services	29/06/2023
6	21/06/2023	Mr Whowell	Magistrates Court Infringement Notices Amendment Act 2020 impact on TINs and PINs	29/06/2023
7	21/06/2023	Mr Alati	Licence suspensions	23/06/2023
8	21/06/2023	Ms Esguerra	Bail support programs	27/06/2023
9	21/06/2023	Ms Cheyne	List of organisations	30/06/2023
10	21/06/2023	Mr Steel	Funding for the Aboriginal Legal Service Drivers Licence Program	30/06/2023
11	21/06/2023	Ms Cheyne	Successful completion rate for payment plans	30/06/2023

Appendix D: Gender distribution of witnesses

Beginning in April 2023, in response to an audit by the Commonwealth Parliamentary Association, Committees are collecting information on the gender of witnesses. The aim is to determine whether committee inquiries are meeting the needs, and allowing the participation of, a range of genders in the community. Participation is voluntary and there are no set responses.

Gender indication	Total
Female	5
Male	10
Non-binary	0
Gender neutral	0
No data	5