



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

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Standing Committee on Justice and Community Safety
ACT Legislative Assembly

Via email only: LACommitteeJCS@parliament.act.gov.au

21 April 2023

Dear Committee Secretary

Street Law submission to Standing Committee on Justice and Community Safety Inquiry into Penalties for Minor Offences and Vulnerable People

Introduction

Street Law welcomes the opportunity to provide a submission to the Standing Committee on Justice and Community Safety's Inquiry into penalties for minor offences and vulnerable people.

About Street Law

Street Law (a program of Canberra Community Law) provides outreach and legal assistance to people who are experiencing or are at risk of homelessness.

Street Law assists clients with a range of legal issues, including but not limited to providing advice in relation to minor offences and infringements. Many of our clients have had experience with the justice system and would be considered vulnerable people as per the terms of reference. This submission considers the experiences of our clients, and our understanding of the laws that affect them.

Terms of Reference

Impacts of Fines on Vulnerable People

The majority of our clients face problems in relation to fines which exacerbate their already difficult living situations and place significant financial pressures on their limited, or non-existent, incomes (often their sole source of income is Centrelink benefits). If clients are fined, this increases the difficulties they face in trying to find affordable accommodation, stable employment, and repayment of other debts such as housing debts.

A typical situation experienced by our client group is where a client receives a fine or infringement notice for a driving offence and is unable to pay. This can result in the client incurring a significant debt. Our clients are commonly dealing with many stresses which can result in them not taking action to deal with the fine or infringement notice immediately.

Many of our clients are 'sleeping rough', either on the streets, in their cars, couch surfing, or in refuges or other shelters. This affects their ability to interact with issuing authorities. For example, they may not have a current address at which to receive mail, and face difficulties keeping their electronic devices charged.

Many of our clients have challenges with literacy and interactions with issuing authorities, such as written documents, which assume a fairly high level of literacy. We are not aware of any supports in place for people with low literacy levels in dealing with these issues. This may lead to them not appearing to deal with infringements, when in reality, they are unable to adequately deal with them because of their living circumstances or literacy levels.

For many of our clients the fine or infringement notice may increase due to late fees, and may lead to suspension of their drivers' licence or other penalties. A drivers' licence is often essential for our clients to secure employment, comply with their Centrelink mutual obligations and meet with their respective health and support services. This only serves as a further obstacle for the client and decreases their ability to improve their circumstances. It is also not unusual for our clients to be facing a number of fines at one time amounting to tens of thousands of dollars. The psychological impact of this situation is enormous.

Suitability of existing formal government guidelines for considering treatment of vulnerable people in administering penalties

Under the existing guidelines, individuals can apply for their traffic or parking infringements to be waived under very limited circumstances¹. We have seen clients referred for medical assessments as a result of making such an application, and their licence is then suspended. Broader compassionate grounds should be a relevant consideration when determining an applicant's eligibility for a waiver. Family situations such as whether the applicant is a single parent or a sole-carer should be relevant in determining their eligibility for a waiver.

Applicants should also not have to risk consequences, such as the loss of their driver's licence, in order to be granted a waiver. Policies such as these discourage applicants who may otherwise be eligible for a waiver from applying for one because they fear possible repercussions. We recommend a system where waivers can be applied for without the risk of an applicant being referred to the Driver Licence Medical Monitoring team where medical grounds are not relevant.

Policing

We also recommend training for police in interacting with people with mental ill health and other complex issues to avoid 'over policing' and the unnecessary criminalisation of homelessness. For example, we are aware of a recent case where a person with complex health issues was sleeping in his car as he had no alternative. He was charged with 'camping' in an unauthorised area. We submit that in circumstances such as these, alternatives exist to simply charging people with criminal offences. This starts with police recognising the complex circumstances many people face. Social supports could be accessed before a person is charged.

¹ <https://www.legislation.act.gov.au/View/di/2019-212/current/html/2019-212.html>

Further, many people with mental ill health may experience disinhibition which makes them appear 'rowdy' or makes them swear or yell in public. This may attract an infringement for a public order offence. In circumstances like these, police can exercise discretion not to charge people, but to simply speak to them or warn them about their behaviour, or seek intervention from relevant health professionals.

Impacts of prosecution for vulnerable people for non-payment of fines

The impacts of prosecution for the non-payment of fines have a disproportionate effect on the most vulnerable of people in the community. Many of our clients are unable to pay the fines they have been issued with and the current guidelines make it unlikely their fines could be dealt with in other ways. As a result, their matters would likely be referred to the Magistrates Court for prosecution. This only exacerbates their financial difficulties and possibly prolongs their time on the streets, and, in effect, punishes them for behaviour that would be a consequence of their homelessness. It also places an additional burden on criminal justice system. It creates further stress for clients having to attend court. As a result of court action, generally people will end up liable for additional fees.

Alternatives to prosecution for non-payment of fines

While we acknowledge that fines and infringement notices are an important and effective law enforcement mechanism, we recommend that penalty schemes for the non-payment of fines be amended to allow for those with 'exceptional circumstances' such as severe financial hardship, those with mental ill health or other complex grounds be able to apply for waiver or reduction of fines, or suspension of fines pending good behaviour, or a system of cautions before a fine is issued.

This would recognise that there is little value in imposing fines on extremely vulnerable people, and that extending some grace to them can actually assist them to correct their behaviour.

We recognise community expectations that 'all people will be treated equally', but the simple reality is that this rarely works for extremely vulnerable people. Some discretion should be exercised, and some exceptions should be made to take into account the disproportionate effects of extreme disadvantage.

Recommendations

Our broad approach is that people, particularly the young and the vulnerable, should be given every opportunity to be diverted from the criminal justice system, and every opportunity to avoid the burden of heavy fines. Most heavy fines start as minor fines and compound from there.

People who are on the streets and whose behaviour is therefore much more public are particularly susceptible to coming to the attention of law enforcement. We do not suggest that anyone is not subject to the law, or 'above the law', but we suggest there is a middle ground where minor offences can be dealt with by way of written or verbal cautions. Where people are obviously in circumstance of extreme disadvantage, their circumstances should be taken into account before any action is taken for minor offences.

A range of cautions may be made available as an alternative to fines, fines could be discounted or suspended pending good behaviour where people demonstrate extreme disadvantage and complex circumstances.

Please contact us on 6218 7900 or at [REDACTED] if you have any questions or would like further information.

Yours faithfully

A solid black rectangular box redacting the signature of John Alati.

John Alati
Supervising Solicitor
Street Law
Canberra Community Law