

# Fines and Penalty Notices

## A PEOPLE'S GUIDE



Australian Institute of Administrative Law (AIAL)  
New South Wales Chapter – Sydney

## **Re: How to handle penalty notices – TLC's People's Guide**

I have the pleasure in presenting the report titled "*People's Guide*" along with a Brochure and a Wallet Card.

As you know this project had its genesis in Toongabbie Legal Centre (TLC) clients who found it difficult either to understand the penalty notices regime or to find explanatory material in a user-friendly mode.

TLC is aware that the State Debt Recovery Office (SDRO) has a large amount of explanatory material on its website. Further several community legal centres have also produced material in one form or another. Having seen the material available, TLC felt that information on how to deal with penalty notices should be produced both in a summary form and in a more detailed form. With this in mind, TLC has created three documents: **(a)** a detailed People's Guide, **(b)** a simple DL brochure and **(c)** a short note in the form of a wallet card.

In our attempt to progress this small project, we had the help of two law student-volunteers of TLC, Mr Ani Rao and Ms Natalie Chehade. Mr Rao withdrew from the project to take-up a scholarship to study in Singapore leaving, Ms Chehade to carry through the work until its completion.

A number of legal practitioners were involved in the above project from the beginning in the form of a Committee. In addition to myself, there were many other legal practitioners who were part of the Committee including Ian Phillips, Mark Robinson, Deborah Miles and Susai Benjamin. TLC was also assisted by Adjunct Prof Anne Benjamin.

At the final stage of the project, we had the privilege of Mark Robinson (Barrister), Christopher Outzen (Solicitor), Ken Stewart (Barrister), and Elizabeth Espinosa (Corporate Lawyer, Sutherland Shire Council) reviewing all the three documents.

We thank Mr Kim White who helped us with his editing skills and Datatype for designing the three documents.

As an unfunded community legal centre, run by volunteers TLC is pleased to be able to produce these documents for the benefit of the people of NSW, particularly those who are vulnerable and those who cannot afford private lawyers.

Knowing that the NSW Legal Aid does not provide advocacy assistance for traffic matters generally and possibly many other area covered by Fines Act, I trust that this Peoples Guide, the DL brochure and the Wallet Card will be of assistance and provide a useful contribution to the body of knowledge that already exists.

While TLC hopes to make these documents available on its website, we also plan to seek some funds to cover the costs of printing these documents for use by members of the public who most need them.

Christopher Jurd  
**President, Toongabbie Legal Centre**

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## Introduction

### Background to the TLC Fines Project

When Natalie came to Toongabbie Legal Service (TLC) to get assistance with her fine, she was just one of a growing number of clients who were presenting with issues relating to fines and penalty notices. Clients came to TLC because they did not know how to deal with a penalty notice, or they were unaware of their options in dealing with it or they wished to challenge it. Many of these clients were from a low socio-economic background and/or came from a culturally and linguistically diverse background.

From observing a number of such clients, TLC recognised that there was a need for information which made appropriate information more accessible to a broad group of citizens. In 2007, the State Debt Recovery Office (SDRO) dealt with 2.8 million infringement (Penalty) notices. It should be noted that the website of the Office of State Revenue (OSR) contains certain guidelines and useful information, but the experience of TLC clients indicated that more accessible information was required.

TLC recognised the good work already done in this area by other legal centres, including Redfern Legal Centre and the Inner City Legal Centre ('*Fined Out*') and Illawarra Legal Centre. TLC wished to go further and meet with community members and identify some of the issues for them first hand. Subsequently, a proposal was submitted to the Australian Institute of Administrative Law who provided a small grant for the project in **2009**.

The project was conducted from **2009-2010**. The objectives of the project were:

- (a) To identify key issues with respect to the *Fines Act 1996 (NSW)* that confront community members, especially in Western Sydney, through feedback from targeted organisations in the region, such as community legal centres, migrant resource centres, and other community support organisations;
- (b) To produce a user-friendly resource for general use, dealing with obligations and rights available to those who are caught in the web under the *Fines Act* and what remedies and strategies they should adopt to advance their interests – to be achieved by working closely with other stakeholders, including community legal centres who have done good work in this area;
- (c) To conduct community education seminars in the target area using the resource material which has been developed;
- (d) To contribute to ongoing policy review and development.

The project was monitored by a Reference Group of Solicitors and Administrators who met regularly for the duration of the project (see below.) Two project officers were selected from applicants from TLC's corps of Law Student Volunteers to support the project.

The project involved four stages:

1. Data-gathering from community organisations and individuals about the challenges and difficulties with respect to the *Fines Act* experienced by people in the target area of Western Sydney. This was amplified by a series of focus groups involving community members. A summary of the information and stories gathered in the Focus Groups and individual submissions is at Appendix 1. Summaries of selected cases handled by TLC can be found in Appendix 2.
2. The information and insights obtained through Stage 1 formed the basis of the "people's guide" to complement what had already been available to the community and what is on the website of the OSR. Priority was given to

providing material in plain English, keeping in mind the circumstances of those who may be (i) mentally ill (ii) intellectually disabled (iii) children (iv) young people (v) Aboriginal and Torres Strait Islanders and (vi) people from culturally and linguistically diverse backgrounds.

3. Community education seminars using the material gained.
4. Making recommendations regarding policy review and development of the fines regime from a grass roots perspective.

## **Background to the *Fines Act 1996***

On 30 October 1996, the Hon Fay Lo Po, Minister for Fair Trading and Minister for Women, while introducing the Fines Bill, emphasised the importance of the view of the Bureau of Crime Statistics and Research that “the fine enforcement system should operate with greater certainty and efficiency informing defaulters of their obligations and the consequences which would flow from the failure to meet those obligations”.

One way to improve compliance according to the Minister is “by improving the certainty of the enforcement process and improving the knowledge of the enforcement procedures within the general community”.

The scale of the problem could be better understood when one is aware that “an estimated 7.7 percent of the New South Wales adult population have outstanding warrants for unpaid or un-expiated fines”. This also indicates how inefficient the system was at the time of introducing the Bill.

The Minister went on to say “It is accepted that there will be occasions when some people will have difficulties in paying fines and that people will find themselves in financial circumstances which will make payment difficult. It is proposed to adopt a number of approaches to address the situation”.

The proposed legislation was designed, the Minister said, to strike a balance “between the cost of enforcement, the capacity of the defaulter to pay the fine or undertake an alternative and the maintenance of the integrity of the fine enforcement system”.

In concluding her second reading speech to the Parliament, the Minister said:

“Finally, the Government is very conscious of the need to keep defaulters out of prison as far as possible. The way this is to be achieved in the first instance is by encouraging offenders to pay their fines in the first place. This in turn is to be achieved by having an enforcement process which is clearly understood by the public and which is seen to be enforced in a timely manner”.

Numerous changes have occurred since 1996. However there is much room for continuous effort to refine the fine regime.

## Fines imposed by penalty notice

### Introduction to penalty notices

A penalty notice is a written notice advising you that you have committed an offence and as a result you have to pay a fine. There are about 230 Government and private organisations that are authorised by NSW legislation to issue penalty notices for any one of about 12,000 offences. The amount of a particular fine is generally prescribed in Regulations.

Options available to you if you receive a penalty notice

If you receive a penalty notice, you may choose to do one of the following things:

1. You can pay the fine within the time allowed.
2. If you receive Centrelink payments, you can ask the State Debt Recovery Office (SDRO) to issue a Penalty Notice Enforcement Order so that you can make instalment payments using Centrepay.
3. You can complete a Work and Development Order instead of paying the fine if you are homeless, or have a mental or intellectual disability, or have a serious drug addiction or are experiencing acute economic hardship.
4. You can elect to have the penalty notice offence referred to a Local Court for determination by a Magistrate.
5. You can ask the SDRO to review the penalty notice.
6. You can apply to the Hardship Review Board if the SDRO refuses to write off the fine or won't agree to extend the time for you to pay.
7. You can nominate another person as the driver of your car or boat if you weren't in charge of the vehicle (if the fine is for a traffic or boating fine or a parking fine that carries driver demerit points).

If you do not (or cannot) pay the fine and the SDRO issues an Enforcement Order, there are some additional options available to you, but you may have to pay additional enforcement costs of \$65 for each enforcement action taken by the SDRO.

You can find out more information about the SDRO's fine enforcement procedures in the TLC's Penalty Enforcement Procedures brochure.

## **More information about your options if you receive a penalty notice**

### **1. You can pay the fine.**

*Paying* the fine does not mean you admit to breaking the law, and there will be no other consequences unless it is an offence which attracts driver demerit points. For example, you will not have a criminal record.

*If* the fine is for a traffic offence, or a parking offence which is regarded as dangerous to public safety, payment of the fine will result in driver “Demerit Points” being recorded against your driver licence. If you have an unrestricted driver licence, your licence may be suspended once you reach or exceed 13 demerit points, or in the case of a professional driver, 14 demerit points. If you are the holder of an unrestricted driver licence you do not have any right of appeal against such suspension for demerit points. However you can avoid suspension of your licence by obtaining a “good behaviour licence”, which requires you to drive for a period of 12 months from the date of issue of such licence without incurring 2 demerit points or more. If you incur 2 demerit points or more during the 12 month period, your licence is automatically suspended for double the original period of licence suspension e.g. a 3 month suspension period becomes 6 months suspension and there is no right of appeal.

*If* you have a Provisional Licence – Red “P”, the suspension period automatically starts when you incur 4 or more demerit points. For a Green “P” Provisional Licence holder, the licence is automatically suspended after 6 demerit points or more are incurred. All holders of Provisional driver licences have a right of appeal against a demerit points suspension by the RTA.

*If* you don't pay the fine by the due date stated on the penalty notice you will receive a second notice, called a Penalty Reminder Notice, giving you a second chance to pay the fine before other action is taken by the SDRO to enforce the fine. The Penalty Reminder Notice will specify another due date for payment of the fine.

*If* you don't pay the fine by the new due date, the SDRO will take enforcement action to try to make you pay (see “Enforcement action”). The first enforcement action taken by the SDRO is to send you a Penalty Notice Enforcement Order. As soon as a Penalty Notice Enforcement Order is issued, demerit points will be recorded against you if the offence is of a type that carries demerit points. An additional Enforcement Cost of \$65 is also payable.

You can pay a fine on line, by mailing your payment to SDRO by telephone using MasterCard or Visa, by using Bpay or at a Post Office. You can find information on how to pay at the SDRO Website.

### **2. If you receive Centrelink payments you can arrange to pay the fine by instalments deducted from your fortnightly Centrelink payment.**

Centrepay is a voluntary bill paying service provided by Centrelink, which is easy and convenient to use. You can start, change or cancel Centrepay deductions at any time to suit your own personal circumstances.

You can arrange to pay your fines by filling out an SDRO application form and sending it to the SDRO. You can find a copy of the form on the SDRO Website.

You can also fill out a Centrelink application form which you can find on the Centrelink website.

The minimum payment you can make using Centrepay is \$10 per fortnight. As a safeguard to ensure you do not over-commit your Centrelink payments to pay off debts, there is a maximum amount that you can nominate to be paid out of your Centrelink payments.

You can vary or cancel your Centrepay instalments at any time by:

- Phoning Centrelink
- Using Centrelink's on-line service
- Filling out another Centrepay form and posting it to Centrelink

### 3. You can ask the SDR0 to review the penalty notice.

You can write a letter to the SDR0 asking for a review of the Penalty Notice but you must explain your reasons in detail and provide as much evidence as possible to support your request. You should complete an application form which is available on the SDR0 website.

After reviewing your request, the SDR0 may decide to withdraw the penalty notice and you will not have to pay the fine. If the offence carries demerit points, none will be recorded against you.

There are a number of reasons why the SDR0 may decide to withdraw the penalty notice:

#### **i. You provide evidence which proves you did not commit the alleged offence for which the Penalty Notice was issued.**

#### CASE STUDY

Jenny was a University student, and received a penalty reminder notice for travelling on a train without having the correct ticket. The notice indicated that the real offender had presented a student concession card to the transit officer, but she did not have a student concession card. Another person had used her stolen driver licence and pretended to be Jenny.

Jenny presented evidence to the SDR0 which proved she was a long way from Sydney at the time the penalty notice was written. The evidence she presented included her mobile phone bill showing the location of calls she made at the time the offence was committed, a signed statement from a friend who was travelling with her, and evidence that she had reported the theft of her driver's licence to the police.

The SDR0 withdrew the fine after consulting State Rail.

#### **ii. Your application meets guidelines approved by the Attorney-General which permit the law enforcement officer who issued you with the penalty to caution you instead.**

The Attorney General's Guidelines are published on the Attorney General's Department website.

The guidelines allow the SDR0 to withdraw a fine if the circumstances justify the issue of a caution, such as:

- a. The offending behaviour did not involve risks to public safety, damage to property or financial loss, or have a significant impact on other members of the public; or
- b. The person is homeless; or
- c. The person has a mental illness or intellectual disability; or
- d. The person is a child (under 18); or
- e. the person has a special infirmity or is in very poor physical health; or
- f. The offending behaviour is at the lower end of the seriousness scale for that offence; or
- g. The person did not knowingly or deliberately commit the offence; or
- h. The person is cooperative and/or complies with a request to stop the offending conduct; or
- i. It is otherwise reasonable, in all the circumstances of the case, to give the person a caution.

If you believe any of these factors apply to your circumstances, you should explain this in your application, and attach written evidence to support you. You should read the Guidelines on the website when completing your application form to make sure you address all of the relevant factors mentioned in the guidelines.

### **iii. The circumstances in which the penalty notice was issued are within guidelines under which the SDRO may withdraw the fine.**

The guidelines are published on the SDRO website.

The guidelines describe the circumstances in which the SDRO may agree to withdraw your penalty notice. If it is withdrawn, you won't have to pay the fine, and in the case of a traffic offence you also won't have demerit points recorded against you.

The guidelines don't describe every possible circumstance in which relief may be granted. They describe some of the general principles that will be applied, such as:

- You were involved in a medical emergency.
- You have a very good record and have not received a similar fine for a long time.

Some typical examples include:

- You were fined for a traffic offence that carries demerit points other than an offence that occurs in a school zone, and you have a clear driving record in Australia for at least 10 years.
- You forgot to display a parking permit, such as a Mobility Parking or Resident's Permit, provided you have not been fined before for the same offence.

Each case is judged on its merits. In some cases, your request for a review may have to be referred by the SDRO to the authority which imposed the fine.

The SDRO will only consider a request for review of a fine if your application is received before enforcement action has commenced. Enforcement action normally commences after you have failed to pay the fine by the due date specified on the penalty reminder notice.

**You should apply to the SDRO if you think you should not have been fined.**

#### **CASE STUDY**

Anna was shopping in Parramatta during her school holidays. When returning home on the train a transit officer asked to see her ticket. She had purchased a student ticket but she had left her student ID at home and so she was fined. When Anna got home she looked at the penalty notice and realised it was written in pencil. Anna had trouble reading the writing and rang the SDRO to ask them how much she had been fined and what her options were. She wrote a letter to the SDRO explaining that she was a full-time student but had left her ID card at home. She attached a copy of her student card. The SDRO replied by letter telling her that she didn't have to pay the fine.

But don't ignore a penalty notice or you will pay more and you may be severely inconvenienced by action the SDRO is able to take against you.

## 4. You can elect to have the penalty notice offence referred to a local court.

You may decide to elect to go to court if:

- You did not commit the alleged offence and you want to defend the charge. You may have been wrongly issued with the penalty notice for a variety of reasons. It is possible that there was a breach of the legal requirements applying to the offence by the person who issued the penalty notice. For example, in the case of an offence of speeding in a school zone, the signs warning motorists may not have complied with the legal requirements.
- You committed the offence but you believe the circumstances would convince a magistrate to reduce or waive the penalty.
- You committed the offence but it is your first offence, and you can plead guilty but then ask the Magistrate to record no conviction or to put you on a good behaviour bond instead of imposing a fine.
- The penalty notice contains an error which means it cannot be enforced against you.

### CASE STUDY

Nathan was 20 years old and had an unrestricted motor bike licence when he had an accident on his motor bike. He ran into the back of a car which had misjudged the chicane which was designed to slow traffic, and had become stuck on the chicane structure. He received a \$330 penalty notice. He had received 2 previous penalty notice fines for minor traffic offences.

Nathan admitted to the magistrate that the accident was his fault, but he didn't realise the car had stopped until it was too late. He presented references from his employer and a long-time family friend, with both people indicating they were aware of the charge of negligent driving, but attesting to Nathan's good character. The magistrate imposed a reduced fine of \$100 plus court costs of about \$80. He also incurred the mandatory 3 demerit points.

### How you can elect to go to court

You can elect to have the charge against you heard in court by advising the SDRO in one of the following ways:

- You can complete the "Court Election" form on your penalty notice and return it to the SDRO by post.
- You can download a "Court Election" form from the SDRO website and email it to the SDRO.
- You can write a letter to the SDRO stating that you wish to have the alleged offence heard by a court.

The SDRO will list the matter at a local court near the location of the alleged offence, and will notify you by sending you a Court Attendance Notice telling you where and when the charge will be heard.

## **Presenting your case in court**

You may represent yourself.

And you may elect to have a friend assist you in presenting your case.

Or you may be represented by a lawyer. You may be eligible for legal aid to pay for a lawyer, depending on your personal circumstances and the type of offence. You can obtain contact details for the Legal Aid Office on its website.

If you don't attend the court hearing, you will normally be found guilty and the fine will be determined by the Magistrate in your absence. If you wish to plead guilty without having to attend the court, but you also want to explain something which might convince the magistrate to reduce the fine, you can send a written submission to the Registrar. You should contact the Registrar of the Local Court where your case is being heard to find out what you are required to do.

## **If you elect to go to court, be aware of the following possible outcomes**

- You will be given a date and time to attend court but you may have to wait around for several hours for your case to be heard.
- If the court finds you guilty, the maximum fine that the magistrate imposes on you may be higher or lower than the fine specified in the penalty notice.
- If you are found guilty, you may have to pay court costs as well as a fine. If the magistrate decides not to record a conviction or requires you to pay a bond, you may still have to pay a fine and court costs. You will also be liable for a further fee called the "Criminal Compensation Levy".
- The evidence you wish to produce in court to defend the charge may be rejected by the magistrate unless it is relevant to the alleged offence, and is in admissible form. The Magistrate may refuse to consider hearsay evidence, even though you may believe it is relevant to your case. You should therefore seek legal advice even if you decide to defend yourself.

## **5. You can apply for relief from the Hardship Review Board.**

This option is available to you if you are facing serious financial, medical and/or personal hardship. However you cannot apply to the Board unless you have applied to the SDRO to have the fine written off, or asked for time to pay and the SDRO has refused to grant your request.

You can find a Fact Sheet about applying for hardship relief on the SDRO website.

If you want to apply to the Hardship Board, you will have to fill out an Application Form. You can find the form on SDRO's website.

You will also have to fill out a form called a "Statement of Financial Circumstances", which you can also find on the SDRO website.

You can get a friend to help you talk to the SDRO about your case, but you will have to sign another form called an Authority to Act, which gives your permission for the SDRO to disclose your personal information to your friend when he or she talks to the SDRO. You can find a copy of this form on the SDRO website.

## 6. You can nominate another person as the driver.

If you received a penalty notice because you are the registered owner of a motor vehicle or boat, and you were not in charge of the vehicle at the time of the alleged offence, you are required by the law to lodge a statutory declaration nominating the person who was in charge of the vehicle. These offences are called “owner-operator” offences.

Demerit points are allocated to penalise an offending driver for certain offences that are regarded as a breach of road or boating safety rules. It is important for road safety purposes that the driver and not the registered owner is penalised. If you don't nominate the driver and the SDRO finds out, you will receive another penalty notice for failing to do so. If you nominate someone else as the driver but you were actually the driver, you may be charged with the offence of making a false nomination. This is a serious offence that carries a possible gaol sentence as well as a fine.

A statutory declaration form is attached to each penalty notice, or you can download a copy from the SDRO Website.

### CASE STUDY

A senior Judge in NSW lodged a false statutory declaration nominating someone else as the driver of his car when he committed a speeding offence. He was convicted of an offence and was sentenced to a lengthy gaol sentence. This can happen to you if you falsely nominate someone else as the driver of your car when you were actually the driver who committed the offence.

## Enforcement of Fines

If you don't pay a penalty notice fine by the due date stated on a penalty reminder notice, and you haven't elected to have the matter referred to a court, or you haven't requested the SDRO to review the fine, or applied to the Hardship Review Board for relief from the fine, the SDRO will commence enforcement action shortly after the due date passes.

The SDRO will also commence enforcement action if you don't pay a fine imposed by a Court.

### Enforcement Orders

Serving you with an Enforcement Order is the first step by the SDRO to enforce a fine. There are two types of enforcement orders, a Penalty Notice Enforcement Order and a Court Fine Enforcement Order, but the actions which may be taken afterwards by the SDRO to collect the fine if you don't pay are the same.

If you are unable to pay a Court fine, it is advisable to contact the Registrar of the Court and ask for an instalment arrangement before the due date for payment. If you are granted an instalment arrangement by the Registrar, you will avoid having to pay enforcement costs which are imposed when an unpaid fine is referred by the Court to the SDRO to take enforcement action.

### Demerit points for traffic offences

If the fine is for a traffic or parking offence that carries demerit points, the demerit points will be recorded against you when the Enforcement Order is issued.

## Limitation Period

The SDRO must issue an Enforcement Order within a certain time after an alleged offence was committed. This time limit is called the “limitation” period. The minimum time is 1 year after the date of the offence, but it may be longer for more serious offences. If an Enforcement Order is not issued within the limitation period, the SDRO cannot take enforcement action, and you don’t have to pay the fine.

Time limits are set by the Limitation Act 1969, and vary from 6 months to 3 years after the offence was committed. However, if the Limitation Act set a limitation period of less than 12 months, the Fines Act extends the period to 1 year after the offence was committed.

Once an Enforcement Order is issued, there are no further time limits on SDRO enforcement action. This means if an Enforcement Order for a particular Penalty Notice fine has been issued within the applicable limitation period, the SDRO can continue to take enforcement action against you indefinitely, until the fine is paid.

## Types of Enforcement Action which may be taken by the SDRO

The Fines Act authorises the SDRO to take several different actions to either recover the fine or punish the offender. There are 4 categories of action available to the SDRO, but these actions can only be taken in a particular order. The first action is RTA restrictions, such as suspension of your driver licence or car registration.

If RTA restrictions do not make you pay the fine, or if restrictions cannot be applied because you do not have a licence or a car registration, the SDRO can take civil action through the courts.

If civil action is unsuccessful, the SDRO can require you to do community service to work off the fine.

Finally, if all else fails, the SDRO can issue an arrest warrant and have you imprisoned.

## CASE STUDY

Adam failed to vote at the local council elections in 2009 and received a penalty notice from the State Electoral Office, fining him \$20. A form was attached to the penalty notice which he could fill out and return to the Electoral Office, explaining why he didn’t vote. If he had provided a reasonable explanation, the penalty notice would have been withdrawn.

Adam threw the penalty notice in the bin, and he also threw away the penalty reminder notice sent to him by the State Debt Recovery Office when he didn’t pay the \$20 fine by the due date. Shortly afterwards, Adam received a Penalty Notice Enforcement Order which required him to pay the \$20 fine plus an enforcement fee of \$50 but he still didn’t pay. Adam then purchased a second hand car, but when he tried to transfer the registration at the RTA he discovered that his driver licence had been suspended for failing to pay the fine. In addition, the RTA refused to transfer his car’s registration into his name until he paid the fine, and he also discovered that he had been charged a second enforcement fee of \$50. He had to then pay a total of \$120 to have his driver licence restored and to transfer the car registration into his name.

## More information about SDRO enforcement

### 1. RTA restrictions

If a fine imposed by a penalty notice has not been paid by the due date, the SDRO may advise the RTA to suspend your driver licence and your vehicle registrations. The RTA may also refuse to do business with you until the fine is paid. For example, if you buy a car, the RTA may refuse to transfer the registration into your name. This type of action may be taken against you even if the fine is not for a traffic offence.

### 2. Civil action

If RTA restrictions are unsuccessful in making you pay the fine, or cannot be used against you (for example, because you don't have a driver licence and you don't own a car which is registered in NSW), the SDRO may:

- a) Issue a Property Seizure Order which permits the NSW Sheriff's Office to enter your house and seize and sell your property, including your house if the unpaid fines are large enough;
- b) Issue a Garnishee Order to your employer, bank or anyone who owes you money, requiring them to pay your money to the SDRO in satisfaction of your fine;
- c) Register a charge (which has the same effect as a mortgage) with the Registrar-General at the Department of Lands, against any land you own;
- d) Send you an Examination Summons requiring you to appear in Court, in front of a Magistrate, to answer questions about your financial circumstances and assets. This may enable the SDRO to identify your assets which can be seized and sold, with the proceeds being used to pay your fine.

### 3. Community service orders

If civil action is unsuccessful in getting you to pay a fine, the SDRO may issue a Community Service Order requiring you to perform community service. For each hour of community service that you perform, your fine will be reduced by \$15.

You cannot appeal against the issue of a Community Service Order. If you are an adult you can be required to work for up to 300 hours under a single order, but you can be required to perform work under more than one Order at the same time. If you are a child, the maximum is 100 hours for a single order.

The SDRO must be satisfied that you are capable of undertaking the work before it issues an Order. The SDRO will authorise the Sheriff's Office or a Court Bailiff to personally give you the Order plus another 3 copies. The person who hands the Order to you must explain it to you in a language that you understand. If you don't understand English, it must be explained in another language that you do understand.

If you don't complete the work that the Order requires you to perform, or if the SDRO believes you cannot do the work required, the Order can be cancelled.

You can pay the balance of the fine at any time. If you do pay the balance of the fine, you don't have to complete any more work required by the Order.

## 4. Prison

If your Community Service Order is cancelled because you didn't fulfil the conditions, the SDRO may issue a warrant requiring the police to arrest you, and send you to gaol.

The period of imprisonment you will be required to serve will be 1 day for each \$120 in unpaid fines and costs. You may pay the remaining fine at any time, and you will be released from prison immediately.

If you are sent to prison, you can apply to the Commissioner of Corrective Services to serve your sentence under an Intensive Correction Order (ICO). An ICO is served in the community under strict supervision rather than in full time custody in prison. However, an ICO will not be made if:

- You have been remanded to, or imprisoned in a correctional centre,
- You have failed to comply with a previous Periodic Detention Order, or the period of imprisonment is shorter than 1 day,
- Your fine is for an offence committed while you were serving a prison sentence under an Intensive Correction Order,

No fine defaulters have been gaoled for failing to pay a fine since the Fines Act commenced in 1996, but many people have ended up in gaol for repeated offences of driving while their licences were suspended for failing to pay a fine.

### Your options when you receive an Enforcement Order

If you receive an Enforcement Order, you still have some options open to you to avoid having to pay the fine or to have the fine reduced. The options are similar to the options you had if or when you received the penalty notice, but some options have different conditions.

The options which may be available to you are:

1. You can pay the fine. If you are guilty of the offence this is the best option unless there are extenuating circumstances or an administrative error has been made by the authority which is responsible for enforcing the law. For example, in most cases the SDRO must issue the Penalty Notice Enforcement Order within 12 months after the offence. If it takes longer than 12 months, the fine can't be enforced, which means you don't have to pay.
2. You can apply to have the Enforcement Order cancelled and then challenge the original penalty notice or, in the case of "owner/operator" offences, such as traffic offences, you can nominate the person who was in charge of the vehicle as the actual offender.
3. You can ask the SDRO to review the Enforcement Order. The SDRO will either refer your request to the authority responsible for administering the legislation to review the circumstances, or conduct the review itself, applying guidelines approved by the responsible authority.
4. You may be eligible to participate in the Work and Development Order (WDO) program. This program is available to people who are disadvantaged by health problems, mental health issues, homelessness or severe financial problems. A WDO allows you to work for an approved community group, or attend a training course, or undertake health treatment under the direction of a doctor, instead of paying the fine.

## 1. Paying the fine

You can pay the fine plus any enforcement fees. You can ask the SDRO for permission to pay by regular instalments if you cannot afford to pay the whole amount immediately. You will normally have to pay at least one enforcement fee of \$65 (or \$25 if you are under 18) in addition to the fine. You can apply for an instalment arrangement by lodging a “Time To Pay” application form which you can download from the SDRO website.

If you receive a Centrelink benefit, you can authorise Centrelink to make payments out of your benefit to SDRO to pay off your fine using “Centrepay”. You can authorise the SDRO to make the necessary arrangements with Centrelink on the “Time To Pay” application form.

Even if you pay the fine you will not have a criminal record, but the SDRO will have a record of your fines. In the case of an offence which attracts driver demerit points, the points will be allocated to you when the Enforcement Order is issued. The Order will record this fact.

### Methods of payment

You can pay a fine by telephone using MasterCard or Visa, or by mailing your payment to SDRO, or by using Bpay or at a Post Office. You can pay by telephone using a credit card for payments up to \$7500, but you will be charged a card payment fee of 0.5%. You can find information on how to pay at the SDRO Website.

## 2. Applying for cancellation of the Penalty Notice Enforcement Order

After you receive a Penalty Notice Enforcement Order, you can apply to the SDRO to have the Notice cancelled (called “annulment”). If a Penalty Notice Enforcement Order is annulled, you still have to deal with the original penalty notice.

You would usually only apply for annulment of a Penalty Notice Enforcement Order if you want to:

- Challenge the validity of the fine in the local court by making a “court election”.
- Ask the Local Court to impose a lower fine, or no fine at all because it is your first offence.
- Nominate someone else as the person who committed the offence (this option is available in the case of fines for vehicle, boating and parking fines where the person in charge of the vehicle at the time of the offence must pay the fine).
- Ask the SDRO to review the fine under guidelines which allow it to waive or write off the fine.

Your application to the SDRO must be in writing, and you must provide evidence to support your application, but the SDRO normally charges an application fee of \$65. If your application is approved, the SDRO may refund the fee.

Before it cancels (annuls) an order, the SDRO may have to refer it to the agency that issued it to conduct the review.

If your application is rejected by the SDRO you have 28 days to appeal to the Local Court. You will pay another \$65 fee to the Local Court when you apply, but the Court may refund the fee if it decides to annul the Penalty Notice Enforcement Order.

You can download an SDRO Fact Sheet and a form to apply for annulment of a Penalty Notice Enforcement Order on the SDRO website.

If you can prove that the following circumstances apply to you, the SDRO must cancel the Penalty Notice Enforcement Order:

- a. You were not aware that a penalty notice had been issued to you until you received the Enforcement Order. But you have to apply for cancellation of the Order within a reasonable time after you receive it.
- b. You were hindered by accident, illness, misadventure or similar reason, which meant you were unable to deal with the Penalty Notice before the Penalty Notice Enforcement Order was issued.
- c. The Penalty Reminder Notice, or both the Penalty Notice and Penalty Reminder notice were sent to an incorrect address. But you can't rely on this excuse if you supplied the incorrect address to the issuing authority, or if you should have changed your address at the RTA but you failed to do so.

The SDRO may (but is not required to) cancel a Penalty Notice Enforcement Order if either of the following two sets of circumstances apply to you:

- a. There is doubt about whether you were the offender and you did not have an opportunity to ask the SDRO to review the Penalty Notice, or
- b. You can convince the SDRO that there is just cause (a good reason) which justifies granting your application.

### **3. You can ask the SDRO to withdraw the penalty notice enforcement order**

You can ask the SDRO to withdraw the Order because it was issued to you due to an error, such as:

- The fine has already been paid;
- You have documentary evidence to prove that you were not at the location when the offence took place. For example, you may have been overseas or in hospital;
- The penalty notice was issued to you because you are the current owner of the vehicle involved in the offence, but you were not the owner when the offence was committed.

### **4. You may be eligible to participate in the Work and Development Order program**

This program allows you to complete a program consisting of any of the following activities:

- Voluntary work,
- A training program,
- Medical or mental health treatment supervised by a health practitioner,
- Drug or alcohol treatment,
- Counselling e.g. about your financial position,
- Undergo a mentoring program if you are under 25.

When you start a Work and Development Order program, if your driver licence or car registration has been suspended because of your unpaid fines, the suspensions will be lifted as long as you continue to participate until you have completed the program.

If you complete the program, you won't have to pay the fine. For each hour of an approved program your fine is reduced by a specified rate or amount which varies depending on the program, e.g. \$30 per hour for voluntary work, or \$1000 per month for health or drug treatment.

### **People who can undertake a Work & Development Order**

You must be having trouble paying a fine for one or more of the following reasons:

- Homelessness, or
- Mental illness, or an intellectual disability, or a cognitive impairment, or
- Drug or alcohol addiction, or
- Severe economic hardship.

### **Obtaining approval to participate in the program**

You have to be supported by an organisation or a medical practitioner who has been approved by the Department of Attorney General and Justice to supervise your Work and Development Order Program.

The list of approved organisations can be found on the SDRO website.

If your doctor or health professional is willing to supervise you, they can apply for approval by lodging an application with the Department of Attorney General and Justice. A copy of the application form can be found on the SDRO website:

## **Web Contacts**

<http://www.sdro.nsw.gov.au>

<http://www.centrelink.gov.au>

<http://www.lawlink.nsw.gov.au>

<http://www.legalaid.nsw.gov.au>

<http://www.lawlink.nsw.gov.au>

<http://www.hrb.osr.nsw.gov.au>

## Appendix 1



**Report:**  
**SUMMARY OF INFORMATION GATHERED FROM FOCUS GROUPS**  
**Toongabbie Legal Centre**

Natalie Chehade 29/9/2010

## Introduction

Four focus groups have been conducted in the duration of Toongabbie Legal Centres (TLC) 'Fines Act Project'. Two focus groups have been held by TLC, one by Holroyd Migrant Resource Centre, and one by the Guildford Youth Group under Holroyd Council. Other Centres have also expressed an interest in setting up focus groups. The following summary of information is based on the stories gathered at focus groups held at TLC and Holroyd MRC and Individual submissions. The stories gathered by Anne at the Guildford Youth Group were mostly regarding public transport fines and have not been included in the summary.

The following is based on 41 people's submissions. The age group of people include those in the under 18 bracket to those who are over 60.

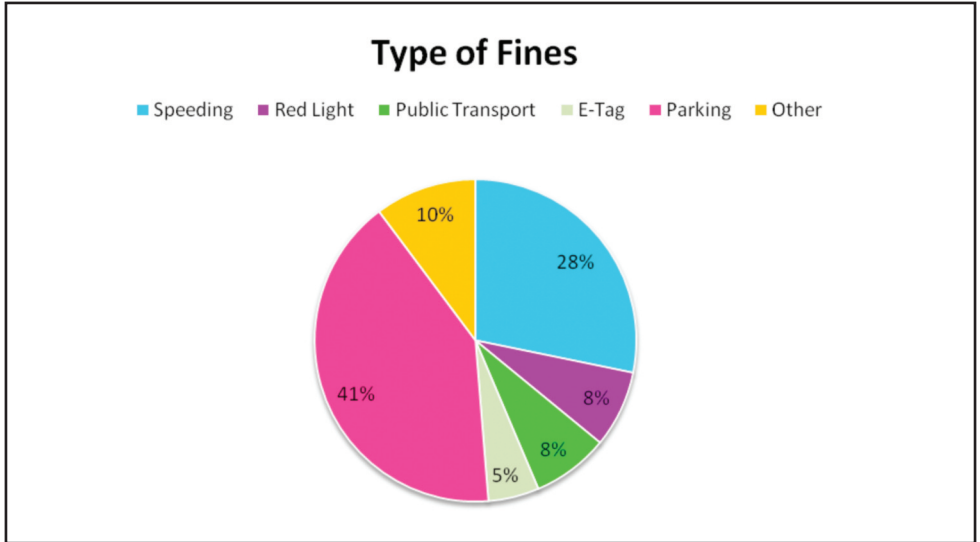
Most of the women (plus the one male) who attended the Holroyd MRC focus group were from CALD (culturally and linguistically diverse) backgrounds and had experienced language barriers. The main issues they faced included; not being aware of how fast the yellow light changed to red, not realising that you could not stop the car where a sign said 'bus stop', and not being fully aware of the road laws. Some migrants have come from trauma backgrounds and when they have a run in with the police this can trigger psychological symptoms associated with past trauma events. Another issue raised was that in the Sudanese community many women were purchasing the \$5 photography deals from Myer but were unable to read the fine print. They would receive notices in the mail from the SDRO asking for payments of large sums of money which they could not afford. These women would then experience domestic violence from their husbands who were angry about having to pay large sums of money. This case highlights the language barrier that many people from non-English speaking backgrounds experience which prevents them from fully comprehending their responsibilities.

There were a number of males under 21 who attended the TLC's focus groups who had speeding, public transport fines and fines for driving with a suspended licence. The main issues they faced included: not knowing how to access information, not understanding the fines process and, not realising the consequences of not paying a fine.

Most of the people who I talked to were not aware of NSW laws or how to access information about the laws, and felt that the system was unjust and far too strict. They believed themselves to be law abiding citizens who would not purposely break the law. However, due to a number of different issues and barriers they found themselves being penalised with limited avenues for recourse. Many people who received a fine and could've contested it because of surrounding circumstances, chose not to. This is because they felt the court process would be too time-consuming, costly, thought it would be too difficult to go through the paperwork, or couldn't be bothered.

The following summary is based on the information gathered by the three focus groups and other Individual submissions.

## What Types of Fines are people receiving?



## Main Issues

### Signage:

- Signage isn't clear e.g. people get fined for parking where a bus stop sign is posted, however it is not clear that people can't park there because there is no sign saying 'no parking'.
- Signage has often fallen down, hidden behind trees, unable to be clearly seen by drivers.
- Signage is erected in spots where previously people have been allowed to park. There is no warning to drivers so they often get caught parking in a spot they had been parking in for years.
- On main roads 'No parking' signs are often removed then put back up throughout the week,. This inconsistency is unfair as drivers aren't aware of the change.
- Often there are no signs saying 'no parking' or any yellow lines, so people don't know they can't park there.
- Signage is often faded, hard to see when it's raining and dark, and therefore not clear or legible.
- If driving in the right hand lane it is hard to see school zone and other signs.

## **Parking Tickets/Fines**

- Parking tickets are often found on the ground next to the car, in the gutter, or have been rained on, making it difficult for the driver to be aware of and read the notice.
- Many people aren't aware that you can receive a fine if someone gets out of the car while you are at a crossing road or waiting in traffic near the station.
- Many people get parking fines for failing to move their car before the specified expiry time. Often there are unavoidable circumstances that prevented them from moving their car earlier, including being caught up in a job interview, being at hospital/doctors etc.

## **Public Transport**

- Young people are often unaware of the consequences of not paying a fine for not having a train ticket.
- They may also be unaware that they could be fined for buying a student ticket without having a valid student card on their person.

## **T-Way**

- Many people use the nav-man to direct them to new places while driving. People are not aware that they have to update the nav-man, as sometimes it will take the driver through a T-way.
- If people are unfamiliar with the area they are driving in it is often a possibility that they will drive in a bus lane without realising and are caught by a camera.

## **Limited Parking**

- There are limited parking spaces available at train stations in areas like Penrith, Parramatta, Granville and Liverpool. If the NSW government is encouraging people to use public transport they should make it easier for the public by providing parking spots near the train stations.
- Another finding is that time parking restrictions are fairly limited and often do not give people enough time to do what they need to. Many people have been stuck in a job interview or hospital appointment.

## **Lack of information about people's rights and the Law**

- Many people are not aware of where and how to access information. Many adults and migrants are computer illiterate and do not know how to use the Internet, so this avenue is closed off to them.
- Young people often do not realise the consequences of not paying a fine, believing it will just 'go away'.
- Some notices have not been written clearly; the notice does not contain contact details and so makes it hard for people to follow-up on the penalty notice or access information.
- People who do not understand English very well cannot read the fine print on the penalty notice and so do not understand all the terms.

## **Mobile Phones**

- People accused of using a mobile phone, when they were not, feel intimidated by the police accusation. Additionally, those who are unable to speak English cannot defend themselves against the Police.

## Complicated Process

- Many people are not aware of how to contest the fine and what that entails. The process is seen as too complicated, time consuming and hard to follow.
- The time delays make it very difficult for people to properly deal with fines/penalty notices.
- In one particular case a man had his penalty notices withdrawn by the SDRO for various reasons. Then, nearly 6 years later he received an Enforcement Order from the SDRO claiming \$120 (being the \$70 fine + \$50 fee) for an infringement Notice of 2004. What had happened was that the withdrawal of the Notice had not been properly recorded at the earlier time and had been incorrectly reissued when the SDRO was 'chasing-up' old enforcement orders.

## FAQs:

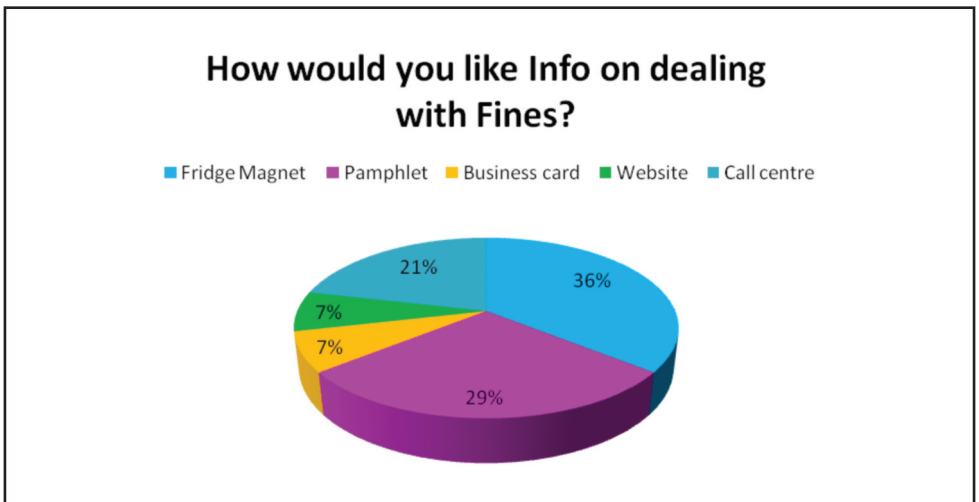
- Q.** Can you lose demerit points for parking fines?
- A.** Yes – certain types of illegal parking are treated as a danger to public safety and these offences can result in loss of demerit points. Parking offences which are not considered a danger to public safety do not incur the loss of demerit points.
- Q.** If you're overtaking and you go over the speed limit, what happens then?
- A.** You can be 'booked' (fined) for exceeding the speed limit, regardless of whether you were doing so in order to overtake another vehicle.
- Q.** If you go 1km over the speed limit can you still get booked?
- A.** Legally, any speed in excess of the limit is an offence for which you could be booked.

## What can be done to help people?

- Clear and easily accessible information regarding new laws, existing laws and what is an offence in NSW.
- More leniency – there is LIMITED information out there to help people know their options when they receive a fine, nor is there a sufficient way to dispute the fine if there are extenuating circumstances.
- For a lot of non English speaking people, such as refugees, they are already struggling. Many are struggling on Centre link (Youth start allowance), are transient from place to place and unemployed. If someone was lucky enough to own a car and they received a fine they wouldn't understand it or be able to pay the extra cost.
- A helpline that people could call when they receive a fine. Many young people have no one to talk to about their fine and do not know how to access information. People who are not computer literate would have problems accessing information on the internet and so need another avenue through which to access info.
- Clear and better signage is needed.
- Many people have said that if they knew their act was illegal they wouldn't have done it. E.g. parking in a no parking space. Many people try to be careful on the road and don't want to break the road rules, but driving in a bus lane and similar offences are purely accidents, therefore from the public's perspective requires greater leniency.

- Information distributed on the T.V, radio, and in pamphlets would help keep the community up to date on current legislation.
- Perhaps submissions should be made to the Minister and Cabinet for a much shorter Limitations Period of 6 months between date of the Enforcement Order and any collection (as in other minor Traffic matters).
- Making the parking times longer, e.g. instead of 15 minutes allow people to park for 40 minutes.
- Clear information printed on the penalty notice.
- If there was a sign warning people to beware that signs had been put up and to take extra care when parking, this would prevent many parking fines.

### How should information about Fines be presented?



- A segment on TV about NSW laws concerning Fines/Penalty notices. This would enable the information to go out to a wider audience. Also, a DVD about Fines and how to contest them. This could be shown to the seniors in High School as many would have started driving.
- A fridge magnet with the important details of how to access information and who to contact. It is easily accessible to the whole family.
- Easy to read and simple information on a website or pamphlet.
- Pamphlets about fines given out at the station would help school students who catch trains be made aware of the penalties of not having a student card/correct ticket.
- A helpline that you could call and ask questions about their fine options, etc.
- Some people mentioned that going on the internet would be too complicated and would prefer a brochure that they could keep in their car's glove box.

## Appendix 2



## Appendix 2: Toongabbie Legal Centre Experience – Examples of Actual Cases

(names have been changed for privacy reasons)

### PARKING FINES

**Sarah** is a mother of two children and drops her kids off at Seven Hills station every morning so that they can catch the train to school. One morning on the way to the station Sarah stopped at a crossing to let school kids cross the road. As she was waiting at the crossing her daughter got out of the car. A camera nearby took a picture of Sarah's car at the crossing. A few weeks later Sarah received a \$253 fine and one demerit point off her licence. Sarah was shocked and upset. If she had known that her daughter couldn't get out of the car at a crossing she would have warned her. Sarah felt like it was unfair because she wasn't aware that what she had done was against the law. Sarah wasn't good with computers so she didn't know how to challenge the fine and just paid it.

**Andy** takes his children to school every day. In the mornings and afternoon school zones are very busy and everyone is in a hurry to drop their kids off. There are hardly any places to park and Andy has already gotten two parking fines for parking illegally on Darcy Road in Westmead. One day when Andy was taking his seven year old to primary school, his son opened the door to get out of the car. The police saw this and fined Andy \$190 and took 2 demerit points off his licence. Andy was angry because there were no signs telling him that his son couldn't get out of the car. He did not park illegally but was just stopping in traffic.

**Tom** was going out clubbing one night and decided to drive his friends and himself to Darling Harbour. He found a parking spot near the club and checked the area for 10 minutes to make sure there were no signs saying 'No Parking'. When Tom was ready to go home he went back to his car and noticed a sheet of paper near his tyre. It was a penalty notice for \$150 for parking in a taxi zone. Tom was shocked and after looking around again, saw a 'taxi only' sign hidden behind a tree. Tom went home and wrote a letter to the SDRO but they still issued him the penalty notice. Andy reluctantly paid the fine and when he goes out now, he catches a train.

**Tasha** is a social worker and catches a train from Penrith to Parramatta every day for work. She always parks her car in the commuter car park at Coreen Avenue in Penrith. The car park there is always flooded with cars and it's sometimes impossible to find a spot. Tasha has parked in the same spot on the side of the road for the last five years. A year before Tasha started noticing signs that were warning about future changes to parking. One evening when Tasha came back to her car she noticed a penalty notice for \$200 on her windscreen. She felt angry and wanted to challenge the fine but couldn't find contact details on the penalty notice. Driving is now stressful for Tasha because she has to find a parking spot near the station so she can get to work. She ended up paying the fine because she was so busy at work there was no time to go to court.

**Mick** was driving his son to school one morning when the driver in front of him braked suddenly and he had to stop as well. A little bit of the tip of his car (about 25%) went into the 'no parking section' and he was caught on camera. Mick received a \$200 parking fine and was ready to pay it but then decided to challenge it because he felt it wasn't his fault. Mick went to court but the police didn't appear that day so the magistrate dropped the case.

**Luke** was looking for work and had a job interview in a large office in the city. He drove there and parked in a 1 hour parking spot. While he was in the meeting Luke realised he would overstay the parking limit, but there was nothing he could do about because he was still stuck in the interview. When he finally got outside he had a fine for \$84 and had only parked 10 minutes over the limit! Luke felt guilty when he got the fine; he felt like he was a criminal. He didn't challenge the fine because he thought it would be pointless. Luke ended up paying the fine but every time he thinks about how he was stuck in the meeting and not able to move his car he gets frustrated.

**Geoff** was going into Centrelink at Penrith and parked in a laneway with 30 minute parking. Once in Centrelink he got caught waiting in the line for 40 minutes. When he came back to the car he found a penalty notice on his window. Geoff felt it was unfair because he was doing what he was supposed to do. He felt like it wasn't his fault that he got caught in line and that it wasn't possible for him to run out and move his car. He also felt very frustrated because there is limited parking in Penrith and around Centrelink, making it hard to get to important places.

**Ian** operates a hardware store in Pendle Hill and his business isn't doing so well. A couple of years ago Ian had noticed that 'loading zone' signs in Purdie Lane had been taken down so he wrote a letter to Holroyd Council. The council said that they would put the signs back up. A week ago Ian was loading his truck in Purdie Lane and was fined \$197 by the police. Ian felt frustrated because he didn't have any extra money to pay for the fine and the Council had told him that they had re erected the loading zone signs. He didn't want to pay the fine because he had evidence that the Council told him they would put the loading zone sign back up. Ian has elected to go to court and hopes his fine is dismissed.

## T-WAY

**Liz** was using the nav-man (GPS) to get to her friend's BBQ in Lalor Park. She didn't know the roads, so when the nav-man instructed her to turn left she got into the left lane. Liz was about to turn left when she realised she would be driving on the T-Way. There was a long line of cars behind her so she couldn't reverse or turn around. Liz had to turn onto the T-way and started driving really slow trying to find a way off. A camera caught her and she was booked. Liz felt helpless. It was the nav-man that directed her onto the T-way; she had no idea of the roads. Liz had no idea how to get information about what she could do to challenge the fine and didn't have enough money to go to a solicitor. She ended up writing a letter to the SDRO asking to waiver the fine. They rejected the letter and Liz ended up paying \$253 and lost 3 demerit points.

## E-TAG

**Paul** is a young adult and drove to a club in Oxford Street Sydney, for a birthday celebration. He accidentally took a wrong turn and ended up in the cross city tunnel where he had to pay \$5. Paul paid the money in order to take the next exit. A week later he received a fine of \$15 for not having an E-Tag and his dad was angry at him for doing the wrong thing. Paul was confused about why he even got the fine. He felt like it was unfair because he had to pay three lots of moneys; firstly to get through the cross city tunnel, then the admin. Fees, and finally the fine. Paul didn't dispute the fine because he didn't have enough time to go through the process. He didn't think it was worth it for \$15 even though he felt he had a valid case.

## PUBLIC TRANSPORT

**Anna** was shopping in Parramatta on her school holidays. When she was on the train home the transit officers asked her for a concession card. She felt intimidated by the transit officers who stood looking over her shoulder. Anna had forgotten her student ID at home and so she was fined \$200. When Anna got home she looked at her fine and realised it was written in pencil. Anna had trouble reading the fine and had to ring the SDRO up to ask them how much she had been fined and what her options were. Anna didn't pay the fine but wrote a letter to the SDRO explaining that she was a full-time student but had lost her ID. She ordered another student card and faxed it to the SDRO who then told her that she didn't have to pay the fine. Anna was happy because the fine for not having a student ID had been dismissed and all it took was for her to write a letter explaining what had happened.

**Muhammad** is 17 and catches a train to Granville to get to TAFE. One afternoon he purchased a student ticket but carried an out-of-date concession card. So when the transit officer checked his ticket on the way home he was fined \$50 for not having a valid concession card. Muhammad didn't challenge the fine because he was intimidated by the transit officer and thought it would be best to leave it. Muhammad put his fine aside and forgot about it for one year and a half. A couple of months from the time he got the fine his driver licence was suspended and he couldn't go for his P's. He received five letters in the mail but thought they were scams. Muhammad didn't really believe that the SDRO could take his licence off him and that they were bluffing. Muhammad's fine did not go away. He ended up paying \$120, instead of the original fine of \$50. If he had known before how serious the matter was he would have paid the fine instead of putting it aside.

## MOBILE PHONE

**Jess** was driving on Butu Wargun Drive and was scratching her ear. The police pulled her over and fined her for using a mobile phone while driving. When Jess got home she wrote a letter to the police explaining what had happened. She printed off her outgoing calls and showed this as evidence. The police claimed that she was answering an incoming call and so Jess filled out a court application to challenge the fine.

**Lee** parked his car while visiting Westmead Hospital in an area where parking was allowed for only a short period of time. Lee exceeded the time allowed and was fined \$84. He did not realise that he had exceeded the time allowed and couldn't help it as he was engaged in the hospital. He is able to obtain documents from the hospital to explain that he was critically ill and had heart problems, infected lungs, infected kidneys which were failing and high blood pressure. Lee wishes to go to court as he doesn't think it's fair he has to pay a fine when he was ill in hospital.

**Sal** was driving back from Cammeray to her home in Coogee on a rainy night. She usually takes the Eastern Distributor home but on this night the tunnel was closed and so she was forced to take another unfamiliar route to the Eastern Suburbs. Sometime later Sal received a penalty notice for having driven in a bus lane. She was amazed by the fine as she was totally unaware that she had even driven in a bus lane. With some effort Sal was able to find the area referred to in the penalty notice and found that the signage was very faded on the roadway. It was also a wet night, so the rain and darkness made it hard for her to see the sign. Sal explained these circumstances when she challenged the offence and was told that it is up to her to be familiar with the area. Sal was angry as driving in a bus lane did not endanger public safety, nor was it a dangerous driving practice, yet she felt like she was treated as a criminal. It was also hard for her to be familiar in an area which she was not supposed to be travelling through and believes it's the responsibility of the Government to ensure that signage is clearly seen and legible. Sal didn't bother to take the matter to court as she thought it would be a waste of time because the SDRO had already made the decision. She believed that any challenge to the fine would just be another way for the government to get revenue, so just paid her fine.

## FAILING TO VOTE

**Sully** failed to vote at the local council elections in 2009 and received a penalty notice from the State Electoral Office, fining him \$20. A form was attached to the penalty notice which he could fill out and return to the Electoral Office, explaining why he didn't vote. If he provided a reasonable explanation, the penalty notice would have been withdrawn. Sully threw the penalty notice in the bin, and he also threw away the penalty reminder notice sent to him by the SDRO when he didn't pay the \$20 fine by the due date. Shortly afterwards, Sully received a Penalty Notice Enforcement Order which required him to pay the \$20 fine plus an enforcement fee of \$50, but he still didn't pay. Sully then purchased a second hand car, but when he tried to transfer the registration at the RTA, he discovered that his driver's licence had been suspended for failing to pay the fine. In addition, the RTA refused to transfer his car's registration into his name, and he also discovered that he had been charged a second enforcement fee of \$50. He had to then pay a total of \$120 to have his driver's licence restored and to transfer the car registration into his name.

## DRIVING WITH A SUSPENDED LICENCE

I've had a history with losing my licence and have lost it a lot of times for stupidity on my part. Eight months ago I lost my licence because I committed a hit and run. I went to court, paid my fines and got a letter from the RTA which said I could drive again at a specified time. I honoured the letter and didn't drive again until the date specified. A week and a half into my new period of having a licence I got pulled over on Victoria Road for a random breath test. The police officer looked me up on the books and told me that I was still suspended. I told him that I wasn't suspended but had received a letter. He told me that I was still suspended in the police records. I ended up being fined because I hadn't renewed my licence. I employed a solicitor and disputed this. I went to court four times and each time the court adjourned the case. I ended up winning the case however, because the police never told me I had to renew my licence. Through this whole process I was off the road for approximately 11-12 months. It had a big impact on my life. It was costly, time consuming and because I couldn't drive I had to catch public transport to and from work. I'm an apprentice bricklayer and this affected my job severely. I'm remorseful about committing the crime which made me lose my licence but when I got my licence back I didn't know I had to renew it.

**Renee** was in a car accident on her way to Uni and during this time her P plates fell off her car. Later on that afternoon she was pulled over by the police and asked why she had no P plates on. The police didn't accept her explanation and so she received a \$195 fine and two demerit points off her licence. Renee thought the police had made a mistake and that the demerit points would not be taken off. She paid the fine and the police notified her that it was OK to drive. She thought that the matter was finalised until she received another letter from the RTA that her Red P plate licence would be suspended for 3 months. Renee was confused and upset when she got this letter and wishes to challenge the decision in the Local Court on the grounds that she needs a car for her work as she is self employed. Her work requires duties such as phone card sales and distribution. Renee has hired a solicitor and her court case is pending.

## SPEEDING

**Mikhail** has health problems and had to drive to Westmead Hospital for a medical appointment. One month after this day he received a letter in the mail saying that he had been driving 51km per hour in a school zone during school times. When Mikhail was driving he had not known it was school time and had thought he was able to drive at 60 km, which was the speed limit at any other time. Mikhail wrote a letter to the SDRO informing them that he was at Westmead Hospital and did not know much English. He ended up still having to pay the fine, but was allowed to do so by monthly payments. Mikhail accepted that he was in the wrong but has learnt to be careful around school zones for next time.

**Natalie** was driving out of her work car park and onto Dunmore Street in Wentworthville. As she was coming out from the driveway she dropped her wallet and it fell near the accelerator. She leaned down to pick it up but her foot pressed on the accelerator and Natalie took off down the street. There was an unmarked police car behind her car and they pulled her over. They charged Natalie for speeding, but also accused her of talking on the phone. Natalie was shocked and felt that this was not right. Her immediate thoughts went to the people who could not speak English and defend themselves against the police. She accepted the fine for speeding but did not agree with the police wrongly accusing her of using a mobile phone.

**Sharon** was going overseas to India and dropped her car off at the airport. Two months later when she returned to Australia she noticed her licence plates were missing from her car. She informed the police immediately and they told her that the person who stole the licence plates had also robbed three banks. Sharon began receiving a lot of fines for speeding in the mail after her return home. She had to go through copious amounts of paper work and go to court to prove her case. Sharon finally settled everything, but only after experiencing much inconvenience. Sharon was the victim of a crime, but instead felt guilty by association because she had to appear in court and prove her case.

Ten years ago **Nichole** was driving her family to Queensland for a holiday. As she passed through a small town the police caught her speeding in a 60kph zone. They issued her with a \$285 fine. After Nichole came back to Sydney from her holiday she did not pay her fine, but elected to go to court because she thought she was being treated unfairly by the police officer who did not listen to her explanation. She wrote a letter to the SDRO and explained that she was driving the speed limit of 90k's and as she entered the town the 60 kph sign was only 200 metres away, which did not give her and the other cars enough time to slow down. Nichole received a reply informing her that she did not have to pay the fine and wouldn't lose any points off her licence. The letter also said that she could elect to take the officer to court if she still wasn't happy. Nichole felt that she was targeted by the police because she drove a four wheel drive. Receiving a penalty notice on the way to QLD made her feel angry and ruined her whole holiday. She also felt like she was powerless when the police officer was rude to her.

While considering a penalty notice received, one needs to think about a number of issues.

- Whether or not the penalty notice had been properly issued?
- Did I actually commit that offence?
- Did someone else commit that offence?
- Depending on the nature of the offence, one should recollect the day, time, and location of the offence.
- Try and revisit the site of the offence and draw on your memory – (site visit is useful if it is feasible).
- If it was a traffic matter, sketching the scene is a good idea so that you are able to properly explain to others (including legal professionals) your situation.
- Once you are reasonably sure as to what had occurred and why the penalty notice was issued, then we need to prepare the defence.

In matters where there is merit, one could write to the State Debt Recovery Office, which is responsible for the collection of most outstanding debts.

## Case 1

### Compassionate Grounds

**Mr X** is a young man in whose family there was tragedy. His father had died unexpectedly. His last offence meant that his driving licence was suspended.

While he had progressively lost his demerit points due to several traffic offences, he felt that he had betrayed himself in another way. The reason for this was that he had failed to challenge a penalty notice issued to him in circumstances where he had more than a reasonable chance of having the notice quashed.

Now that he had lost that opportunity, he needed to deal with the suspension of his driving licence. It was a three month suspension. He came for help.

A Toongabbie lawyer represented him before the Local Court in Parramatta. There was no defence, as the time for the challenge in the earlier matter was time-barred.

The Magistrate considered the situation of the fact that this young man's driving licence was critical for him to go to work and earn his salary. The family members, his mother, he and younger brother depended on Mr X's income to manage their life.

This was his first 'driving licence' suspension.

Considering all the circumstances, the Local Court Magistrate in Parramatta waived the suspension.

While it is prudent to accept the mistake or offence and pay the fines and lose the demerit points, it is equally important to take into account all aspects of the offence and challenge it each time and not panic when you are about to lose your driving licence.

## Case 2

### Sign-Board-Lack of Visibility

**Mr Y** received a penalty notice for turning right where there is a restriction on doing so. While heading towards the corner, there is a signboard showing the restriction. However, that sign was not visible due to overgrown tree branches. The bad luck for this driver was that the additional sign placed in the actual corner where he was to turn right was also not visible due to a long truck blocking his view.

It was too late for him when he had already made the turn as he not only then saw the sign-board, but also a Police Officer who was there to issue him with a Penalty Notice.

Mr Y naturally was frustrated and elected to go before the Parramatta Local Court. Having visited the site with a legal practitioner, he was well prepared with his submission to the Magistrate.

His Penalty Notice was set aside.

## Case 3

### Sign-Board – Lack of visibility

**Mr S** received a penalty notice for speeding in a School Zone. He paid this amount as he was not bothered to examine how, where, why and when, the infringement might have occurred. To this man's shock, he received one more the following week. He started to wake up, but slowly. He then received one more the following week and then one more the next week. The successive notices made Mr S realise that he was driving in the morning through the School Zone and that although he was driving at below 60 kms per hour, he was above the 40Kms limit for this zone at that time of the day.

He sought and received the help of a pro bono Solicitor. Mr S elected to take the matter to Court. The matter came up before the Local Court in the Downing Centre. The "Government's" case was run by an RTA Expert.

Mr S had done his research and found that the problem was the School Zone/Speed limit signs were blocked by over-grown tree branches. Subsequent to receiving his four penalty notices, he noticed there were letters to the Editor and other articles in the local newspapers about this and the lack of action on the part of the Council. Shortly after these articles appeared, the branches were removed.

Mr S also learned that a number of persons had made representations about the issue to the local State Member of Parliament. The MP intervened on their behalf, with the result that the tree growth which had blocked the view, was fully removed

The RTA has a duty to ensure that the signs are visible at all times. The Magistrate mentioned that while the signs are essential, they have to be able to be seen by drivers. It is not possible for a driver to comply with a sign that cannot be seen.

The RTA expert was asked to take the witness box and was questioned both by the Solicitor and the Magistrate.

On hearing the arguments, the Magistrate set aside all of Mr S's penalty notices.

## Case 4

### Vandalism – Sign-Board

**Mr X** and his family decided to go out for dinner. The restaurant was a little dark and the driver could not see any sign restricting parking in the area where he left the car .

However, when the family returned to the car Mr X saw a penalty notice on his car. The family was very upset. Mr X again looked around and confirmed that there was no sign against parking.

His community solicitor at TLC asked Mr X to visit the site again immediately. This time, Mr X found a 'no parking' sign was flat on the ground against the wall. It appeared that the steel pipe which bore the sign was cut from the bottom and left flat on the ground at a location a few metres away.

Mr X's community solicitor wrote a letter on his behalf to the General Manager of the Parramatta City Council, with copies to the Mayor and the local councillor. The Council, whose ranger issued the penalty notice, has the authority under the Local Government Act, to withdraw the notice .

The penalty notice was duly withdrawn and the matter settled. The Council also went one step further by introducing a Fines review process at the council level.

At the present time no other council in NSW has this 'in-house' review process. The only review process that is currently generally available to the public is the one under SDRO.

Nevertheless, the ability to write a polite and rational letter and explain your situation clearly to the issuing authority could help lead to the authority reviewing the situation and withdrawing the penalty notice.

## Case 5

### Fined Twice for a Single Offence

**Miss X** travelled to the beach to catch up with friends. She parked her car and returned after a few hours. Although she had paid for a certain number of hours, she forgot all about the time limit for parking. When she returned she found a brown envelope imposing a fine for parking without paying the necessary fees. She paid the amount requested in the infringement notice.

But she was pursued for the fine for parking without paying the fee again at the same location and on the same day and time. She was confused. She then realised that the first penalty notice must have blown away from the windshield and the possibly the second ranger issued the new penalty notice.

Her pro bono solicitor issued a letter explaining the circumstances of the case, SDRO withdrew the second penalty notice.

One cannot be punished twice for the same offence.

## Case 6

**Mr Y** is taking the children to school one morning at almost 9am. He wanted to buy fruit for the children to take to school. As he did not find any parking spot near the fruit shop, he double parked. He purchased the fruit and returned to the car. He saw a Police Car pull up a short distance in the front. A police officer walked to him and reminded him that he was double parked and he could issue a penalty notice. Listening to the gentle and calm explanation Mr Y gave to the police and seeing the primary school children in the back seat, the officer warned Mr Y that next time he would issue the penalty notice without any questions asked. Mr Y thanked him and the Police car left the area.

After a week Mr Y received a penalty notice in the mail. Mr Y who was under the impression that the matter had closed, was upset and wrote to the then Infringement Processing Bureau (now SDRO) explaining the facts and circumstances of the matter. The Bureau wrote back and told him that he had to pay the fine. Mr Y elected to take the matter to the local court and the Magistrate set aside the penalty notice and the matter was dismissed.



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