

# Fines and Traffic Law Working Group Report to NLAF

Second Quarter - May 2018

The working group met on 16 May 2018.

On behalf of the Fines & Traffic Law Working Group (FTLWG), I would like to thank Nadine Miles for her ongoing support, commitment and leadership for the FTLWG as she steps down from her role as the Chair.

Below is a summary of the key issues discussed.

## **Fairer Penalty Notice System Project and Issuing Authorities**

A subcommittee of members from the FTLWG prepared a letter for NLAF to the Commissioner of Fines Administration who chairs the Fairer Penalty Notice System (FPNS) Steering Committee. FPNS is a joint project of Revenue NSW and DFSI to recommend measures that will reduce the disproportionate impact and social cost of the fines system on vulnerable people.

NLAF (represented by FTLWG members) met with representatives of Department of Finance, Services and Innovation (DFSI) and Revenue NSW, to discuss draft proposals before they go to cabinet. NLAF also provided detailed comments with the assistance of FTLWG members.

Unfortunately, the practices of issuing agencies were outside the scope of the FPNS review. Recommendations from the NSW Law Reform Commission *Penalty Notices* (2012) Report No 132, including better use of cautions, have not yet been adopted. The FTLWG strongly believes that reform in this area should remain a priority

A considered and measured approach to issuing fines by police and other authorities would not only lessen the impact on vulnerable people, it would also minimise the administrative burden on government. The FTLWG is working with its members and DFSI to find ways to address this issue.

## **Victims Restitution Orders and Work Development Orders in Prison**

Following the amendment of the *Fines Act 1996* (NSW) in March 2017, unpaid VRO debts are now enforced through Revenue NSW. These, at times very large, debts can be cleared through participation in a Work and Development Order (WDO) if the debtor meets certain eligibility criteria. Revenue NSW also considers partial write-offs when prisoners commit to clearing a portion of their debt by WDO. While Corrective Services NSW, as a WDO sponsor, allows prisoners to undertake WDOs while in custody to pay off fines owing to Revenue NSW, it has a policy that excludes prisoners from undertaking a WDO to pay off a VRO debt owed to Revenue NSW.

Since a restitution order (which can lead to a VRO debt) will only accrue for an offence once an individual has served their custodial sentence for that offence, individuals in prison can only undertake WDOs for VRO debts once they have subsequently returned to prison for another

unrelated offence. The FTLWG members have assisted the Chair of the Prisoners Forum to draft a letter for NLAf to send to the Commissioner of Corrective Services.

The Correctives Services *Policy for supporting offenders to manage fine-related debts through work and development orders* is under review. The FTLWG anticipates that the current position on VRO debt will be considered.

### **Driver Disqualification Reform Implementation**

The WDO Service, CLSD and the Driver Reform Implementation teams within Legal Aid NSW have been working collaboratively to plan and support joint outreach services. As a result, clients' driver sanctions for fines debts are being addressed at the same time as removal of disqualification periods. As of 16 May 2018, disqualification removal matters are the 11<sup>th</sup> highest matter type for advice by the Criminal Division of Legal Aid (90% by the Driver Reform Implementation Team). Approximately 35% of advice sessions are being provided to Aboriginal people.

There are currently two key challenges:

1. In relation to applications to quash Habitual Traffic Offender declarations, some courts accept applications on the basis that the *Savings and Transitional* provision in the Act which preserves the courts' power to quash declarations applies to new applications being made. While other courts refuse to consider these applications because they interpret the same provision as only preserving the courts' power to quash applications that were 'on foot' as of 28 October 2017, but not thereafter. It was anticipated that this issue would be clarified through regulation, but no timetable for when that regulation might arrive.
2. There have been varying interpretations of the legislation about when the offence-free period is taken to have commenced. Legal Aid takes the view that the period commences from the date of the last offence, whereas the Roads and Maritime Services are of the view that it commences from the date the conviction was imposed for their last offence. This question could be considered by the Supreme Court should a suitable case presents itself.

The next FTLWG meeting will be held on Wednesday 15 August 2018.

### **Meredith Osborne**

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Incumbent Chair, NLAf Fines and Traffic Law Working Group