

Fines and Traffic Law Working Group Report Quarter 4 | October to December 2021

1. Meeting of the Fines and Traffic Law Working Group (FTLWG)

The Fines and Traffic Law Working Group met on 10 November 2021.

2. NSW Electoral Commission (NSWEC) presentation (Cameron Whalan - Media & Campaigns Advisor)

Voting fines have been flagged as a priority for the FTLWG in 2021-22. With the impending Local Government elections, we invited Cameron Whalan, Media & Campaigns Advisor NSW at the NSW Electoral Commission to present on the voting process and to consider how we might work together with Revenue NSW to address the scale and impact of voting fines, particularly in remote communities.

The NSWEC website is the single source of information for both the public and stakeholders, including community specific resources in areas where voting fines are prevalent. The NSWEC has also launched an advertising campaign to “Be Vote Ready”, encouraging people to vote early, through COVID-19 safe measures.

The NSWEC confirmed that people do not need to be vaccinated to vote, however the public will need check in via QR code, wear a mask and bring their own pen. There is an online voting system available to people with disabilities via a registration process. The general public can vote early or by post.

Issues raised by the group included auto enrolment, the fines issuing and recovery process and concerns around mandatory identification.

Cameron confirmed that enrolment is managed at the Federal level through the Australian Electoral Commission (AEC). Any changes to the enrolment process would require a top-down approach from the AEC.

The penalty amount for failure to vote is \$55 and the fine is referred to Revenue NSW after 450 days if it is not paid. If a person has a sufficient reason for not voting they can seek recourse within 50 days after the fail to vote notice is issued, however “I did not know” is not a valid excuse. In response to a question raised on review options under the Attorney General’s Guidelines, Cameron advised he was not aware this was being utilized and would refer back to the NSWEC Legal Counsel. Questions also arose around “not knowing” and that in some circumstances this would be a reasonable excuse, including auto enrolment. It was noted that voting fines will have an added impact in communities already affected by PHO fine debt.

Members asked for clarification on the issue of mandatory identification and noted concern that this may discourage people from voting in the Local Government elections. Cameron confirmed that ID was not a requirement and the NSWEC does not intend to adopt this strategy moving forward. The current media campaign will address voter perceptions on this issue.

3. Unauthorised driving data presentation - BOCSAR (Nicholas Chan – Analyst)

The BOCSAR presentation highlighted trend data on driving offences and Aboriginal people looking at geographic patterns and the impact of the Driver Disqualification reforms.

The top four (4) driving offences that proceed to court for all persons are:

- Drive whilst licence suspended or disqualified
- Exceed the Prescribed Content of Alcohol
- Presence of an Illicit Drug
- Drive without a licence

Noticeable changes have included a significant drop in alcohol limit offences in the first quarter of 2019 across the board, following legislative changes which saw the issuing of penalties for low range alcohol offences. There was a spike in quarter two (2) 2020 for drive whilst disqualified offences, followed by a dip in quarter three (3), resulting from the impact of COVID-19 lockdown restrictions.

The data on matters finalised in court for Aboriginal people also showed the impact of COVID-19, with a dip in quarter two (2), and a spike in quarter three (3), due to a delay in the issue of court attendance notices by three (3) months. The spike for drive whilst disqualified/ suspended was substantial. The data does confirm however that Aboriginal people remain over-represented for these offences: drive without licence 32%, drive disqualified or suspended and DUI around 20% and PCA 10%. Overall, the data has remained relatively stable across driving offences over the past five (5) years, except in those quarters highlighted.

Geographic data was provided for the four (4) offences highlighted across Greater Sydney and the 'rest of NSW', focused on the rate per 1000 population of proven offences for Aboriginal people.

For drive whilst disqualified/ suspended the rates were substantially higher in the 'rest of NSW' compared to Greater Sydney. Within the Greater Sydney region South West Sydney and Blacktown were the frontrunners for this offence. This was again reflected in the drive unlicensed offence rates and similarly for PCA and DUI offences, although the top Greater Sydney Regions were Ryde and Inner City.

The key findings of the BOCSAR research paper were provided showing:

- A drop in the disqualification period by 10.9 months for Aboriginal people compared to 9.6 months for all offenders. Nicholas noted the likelihood of receiving a disqualification remained the same with no difference pre or post reform.
- A reduction in prison sentences by 1.6 months for Aboriginal people which was similar overall at 1.7 months.
- The likelihood of receiving a custodial sentence for Aboriginal people dropped by 3.7% which was a significant decrease for unauthorised driving offences post reform, with it being 1.7% overall. However Aboriginal people still remain more likely to receive a custodial sentence for unauthorised driving.

The full paper will be available on the BOCSAR website by 30 November 2021.

4. Update on Cross Agency discussion on PHO fine and WDO initiatives Progress report on Fairer Fines amendments

Jonathon Hunyor CEO PIAC confirmed that PIAC, CLCNSW, RLC and ALS had written to the Attorney General Mark Speakman, the Minister for Finance Damien Tudehope and Minister for Customer Service Victor Dominello, requesting a stay on PHO fines to give recipients more time and consider options such as cautions for all one-off interactions with Police. Noting that if there is more than one offence, options to

exclude limited categories from the cautioning process would be accepted and reviews determined on a case by case basis. Jonathon noted the resource impact for the sector if PHO fines are dealt with on a case by case basis and concerns for clients who do not engage with legal assistance services.

The likely impact on the court system which is already backlogged was discussed with reference to the recent BOCSAR data to support a broader approach.

https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/BB/BB157-Summary-COVID-breaches.aspx

It was noted that collective concerns have been voiced to the Covid Fines Cross Agency Working Group convened by Revenue NSW, however to date there has been no announcement on mitigation or an extended stay response. FTLWG members are concerned that matters are starting to proceed to enforcement, outreach to communities is still limited and the processes for review are resource intensive.

The group agreed to support a letter mirroring the recommendations voiced by PIAC, CLCs, RLC and ALS.

5. Transport concessions and fare eligibility

Discussions continued around the initiatives of the Hardship Support Program and work being done by members of the FTLWG group in this area.

Revenue NSW advised that while this work is still in its infancy, options being considered include a free travel card or a free travel program to an allocated amount This could be provided through a credit stored travel card, with Transport NSW looking at an option that would utilise the tap on / off system already in place.

Details of a pilot program in Victoria were shared by the NLAF Program Manager that will be discussed with Revenue offline.

The FTLWG will continue to work with Revenue NSW to support these initiatives including any submissions to Treasury.

Next meeting

The **next meeting** of the FTLWG is TBA.

Meredith Osborne

Chair, Fines & Traffic Law Working Group

November 2021