Fines and young people (or, all you need to know about the SDRO)

Prepared for Children’s Legal Service Bulletin, April 2004, by Jane Sanders, solicitor, Shopfront Youth Legal Centre

1 Introduction

Fines – and the procedures for recovering them if they are not paid in time – have become a huge problem for young people in New South Wales.

The trouble starts with the alarming number of infringement notices that are issued against young people. With no means to pay and little understanding of their options, many young people are left to deal with a draconian enforcement system.

Enforcement of unpaid fines is governed by the Fines Act 1996 (referred to in this paper as “the Act”). The Act commenced in January 1998 and was accompanied by the creation of the State Debt Recovery Office (SDRO), which has extensive powers to enforce fines.

Under the previous system, it was relatively easy for fine defaulters to turn their unpaid fines into community service or to “cut them out” in prison or detention. Under the current regime, which places more emphasis on revenue collection, the situation is very different.

Young people are particularly affected by the SDRO’s power to impose sanctions on driver licences. This happens at an early stage in the enforcement process and is difficult to reverse without paying the fines in full. It is common for our clients to feel they will never be able to pay off their fines (which often run to thousands of dollars), and to abandon all hope of getting a licence. In these circumstances they are often tempted to drive unlicensed, incurring further fines and lengthy disqualification periods.

Fortunately, there is some good news. The SDRO, formerly very inflexible, is now showing more sensitivity towards people suffering genuine hardship. It is making efforts to educate the public about their options and to establish dialogue with community organisations. However, most young people still find the system virtually impossible to negotiate without competent advice and advocacy.

This paper provides a step-by step guide to the fine enforcement system and some (hopefully useful) tips for negotiating on behalf of your client.

2 The scope of the Fines Act

The Act applies to infringement notices and court-imposed fines.

Court costs, victims compensation levies, court-ordered witness expenses, and amounts payable under costs orders are deemed to be “fines” for the purposes of the Act (s4). There are also provisions for recovery of forfeited bail money (Part 7). The Act does not apply to court-ordered compensation or other civil debts.

Fines that are not paid by the due date (or within such extra time as may be allowed) are referred to the State Debt Recovery Office for enforcement action. This may include driver licence suspension/cancellation, civil enforcement (including garnishee orders and property seizure), community service and (as a last resort) imprisonment.
The Act also provides for fines to be paid by instalments, written off, deferred or annulled.

3 Infringement notices

3.1 Infringement notices and young people: the scope of the problem

No matter how user-friendly the fine enforcement system becomes, there is a fundamental problem with the number of infringement notices which are issued against young people. The fine amounts are often significantly higher than a court would impose and are beyond the means of most young people.

Figures from the NSW Bureau of Crime Statistics and Research show that almost 463,000 infringement notices were issued in 2002 – one fine for every 14 people in NSW. About 35% of these were issued to 14 - 24 year olds. This is a matter of concern, given that this age group represents only about 15% of the population (According to the Australian Bureau of Statistics, 15-24 year olds comprised 14.2% of Australia’s population in 2001).

The 14-24 age group was vastly over-represented when it came to public transport offences, bicycle offences, disobeying police directions, and possession of knives. Fines can range from $49 for riding a bike without a helmet, to a whopping $550 for carrying a knife or blade.

In 2002, almost 27,000 infringement notices were issued to people aged 10-17. This compares to 9,263 police cautions, 1,103 youth justice conferences and 8,547 Children’s Court appearances (NSW Bureau of Crime Statistics and Research, Recorded Crime Statistics 2002 and Criminal Court Statistics 2002).

Most children’s advocates would agree that the heavy use of infringement notices undermines the diversionary philosophy of the Young Offenders Act and the rehabilitative focus of the juvenile justice system in general. Unfortunately, many infringement notices are issued by officials such as transit police and council rangers, who are not police and have no power to warn or caution under the Young Offenders Act.

3.2 Procedures for the issue and enforcement of infringement notices

Procedures for the issue and processing of penalty notices (infringement notices) are set out in ss 19-39 of the Act.

Section 53 of the Act provides that the penalty notice procedure does not apply to children who were less than 10 years old at the time of the alleged offence. This of course is consistent with the minimum age of criminal responsibility. In practice, the NSW Police Handbook directs officers not to issue infringement notices to children under 14.

Infringement notices are processed by the Infringement Processing Bureau (IPB), formerly a part of the NSW Police, but now a division of the Office of State Revenue.

If the fine remains unpaid after 21 days (and no court election has been made, as to which see below) the IPB will issue a Penalty Reminder Notice. This affords a further 28 days to pay the fine or to make a court election.

Apart from the extra time provided when a Penalty Reminder Notice is sent, the IPB does not grant extensions of time to pay and does not allow payment by instalments. Those
who can’t afford to pay are faced with the dilemma of waiting till the fine goes to the SDRO (and incurring a further $50) or electing to go to court in the hope they can get time to pay and maybe a reduction in the fine.

If the fine is still not paid, the IPB refers the matter to the SDRO for the issue of a penalty notice enforcement order.

3.3 Contesting an infringement notice

There are several options for people who wish to contest an infringement notice:

(a) Submit the court election form which is on the back of the infringement notice. We often advise clients to complete the court election even if the offence is admitted. In our experience, the court will usually reduce the fine considerably, or impose another option such as a caution (or, for adults, a section 10 dismissal). There are of course some risks associated with this strategy. Firstly, the fine may be increased (although this is unlikely for young and disadvantaged people). Secondly, older children and adults risk a conviction being recorded.  

(b) It is also possible to make representations to the Infringement Processing Bureau for the withdrawal of the infringement notice. In our experience, these representations are rarely successful, as the IPB has very limited discretion. Representations are much more likely to succeed if submitted to prosecutors after making a court election.

(c) For parking or camera-detected traffic fines, if the owner was not in control of the vehicle at the time, he or she may submit a statutory declaration nominating the driver.

All of these options must be exercised before the matter is referred to the SDRO. If a fine defaulter wishes to contest a fine that has already gone to the SDRO, an annulment application must be made (see below).

4 Court-imposed fines

When imposing a fine, the magistrate or judge must take into account the offender’s capacity to pay (s6), but has no power to allow more than 28 days to pay (s7). Written notice of the fine is to be given to the offender (s9).

The offender may apply the registrar of the court for further time to pay (ss 10, 11). In practice this means going to the court counter and filling in a form with details of the offender’s financial circumstances. Most Local and Children’s Courts will readily grant time to pay by instalments.

If the fine remains unpaid after time to pay has expired, the court refers the fine to the SDRO for the issue of a court fine enforcement order (ss 12, 14).
5 SDRO referral and enforcement orders

5.1 Issue of enforcement orders

It can take about 3 months after the due date (sometimes even longer) for an unpaid fine to reach the SDRO. Once it arrives, an enforcement order is made and a further $50 enforcement cost is added to each fine (or, if several fines are referred together, to each set of fines).

There are two types of enforcement order: court fine enforcement orders (which are covered by ss 12-18) and penalty notice enforcement orders (ss 40-52). The effect is substantially the same.

The procedure for issue and service of enforcement orders is covered by ss 59-64. The SDRO will send out a notice advising the fine defaulter of:

(a) the fact that an enforcement order has been made;
(b) the amount now payable;
(c) the due date for payment (generally 28 days after the issue of the enforcement order);
(d) possible enforcement action (and further costs) that may ensue if payment is not made in time;
(e) some limited information about the fine defaulter’s options (eg applying for time to pay).

There are various options available to a person who has received an enforcement order. Most of these options can be exercised even after the matter has progressed through several stages of enforcement action. However, it is in the fine defaulter’s interests to take action as soon as possible to avoid further enforcement costs being incurred.

5.2 Time to pay

A fine defaulter may apply to the SDRO for time to pay at any time after a fine enforcement order is made and before a community service order is issued (s100).

The fine defaulter must fill in a form which includes an affidavit of financial circumstances and a proposal as to how much he or she wishes to pay each week, fortnight or month.

The SDRO will accept the fine defaulter's proposal if they think it is reasonable. This depends on the fine defaulter’s financial situation and the number and value of fines outstanding. According to the SDRO, a reasonable period for paying off a fine might extend up to 18 months or 2 years (although some of our clients have been allowed to enter time-to-pay arrangements stretching over several years). The SDRO says that there is a minimum instalment amount they will accept, but they do not publicise this figure.

If a time-to-pay arrangement is made, the SDRO will send the fine defaulter a payment book and will expect payment to be made in regular instalments.

Payments can be made by cheque or money order, by credit card, in person at the SDRO or at the post office. There is currently no facility for direct debit but we understand that the SDRO is exploring this.
5.3 Annulment of penalty notice enforcement orders

A person may wish to contest an enforcement order because they believe they are not guilty of the alleged offence or that the fine is otherwise unreasonable. In some cases a person may not even know that a fine has been imposed until they receive an enforcement order. In other cases, the person may have been aware of the fine but have not had the opportunity to do anything about it.

A person may apply to the SDRO for annulment of a penalty notice enforcement order, within 12 months of the enforcement order being issued (this procedure is covered by s48-52). There is a prescribed form and a non-refundable fee of $50. We are usually able to get the fee waived for our clients on the grounds of financial hardship by submitting an affidavit of financial circumstances.

Annulment will be granted if the fine defaulter can show he or she didn’t know about the fine until the making of the enforcement order. The SDRO may also annul enforcement orders for young people who knew about their fines but were not in a position to do anything about them due to homelessness, poverty, mental illness, etc.

If the SDRO refuses to annul an enforcement order, this decision may be appealed to the Local Court (s50).

If more than 12 months have elapsed since the making of the enforcement order, the fine defaulter may apply to the Minister responsible for the Fines Act (the NSW Treasurer) for annulment. Annulment will be granted if the Minister is satisfied that a question or doubt has arisen about the applicant’s liability for the fine (s48(2)).

We understand from the SDRO that the Minister may also annul an enforcement order if it would be “unfair to enforce the fine”. This appears to have no legislative basis, but it has been suggested that the Act may soon be amended to provide for this.

If a penalty notice enforcement order is annulled, the matter will proceed as if the person has made a court election.

5.4 Withdrawal of court fine enforcement orders

There is no procedure allowing the SDRO or the Minister to annul a court fine enforcement order. However, the SDRO must withdraw the enforcement order if directed to do so by the court (s17).

A person who wishes to contest a court-imposed fine (whether or not it has reached the SDRO) may:

(a) apply for an annulment, if the fine was imposed in the defendant’s absence by a Local or Children’s Court within the preceding 2 years (Crimes (Local Courts Appeal and Review) Act s4); or

(b) exercise the usual appeal rights, if still within time.

5.5 Deferral and cancellation of fines

The SDRO has powers to write off unpaid fines for people who do not have the means to pay and are unable to undertake community service work (s101). There is provision for the making of guidelines for writing off fines, but these do not have to be made public (s120). Although the SDRO does not publish its guidelines, there is an information sheet
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Although the Act used the term “write off”, the SDRO no longer uses this term due to confusion as to its meaning. Instead, the SDRO literature refers to “deferral and cancellation”.

Fines may be deferred for five years if the fine defaulter can demonstrate extreme financial hardship, usually combined with a serious illness or disability. During this period, no payments need to be made and enforcement action is stayed. As long as the person does no incur further enforcement orders, and their circumstances do not change significantly for the better, the fines will be cancelled (written off entirely) after 5 years.

It is not easy to obtain a 5-year deferral, but it is possible if the applicant’s financial hardship is combined with a serious illness or disability. Applications must be in writing (there is no prescribed form) and should be accompanied by supporting documents such as psychiatric/medical reports, support letters and an affidavit of financial circumstances. When considering a deferral application, the SDRO does not take into account any issues about the person’s liability for the fine.

5.6 Stay of enforcement

For people who are in serious financial difficulty, but do not meet the criteria for a 5-year deferral, the SDRO may be prepared to stay enforcement for up to 12 months. The fine defaulter does not have to pay anything, and no enforcement action will be taken, during this period. At the end of the period the fine defaulter will have to submit a further affidavit of financial circumstances and the SDRO will reconsider the situation.

The SDRO will readily grant stays to young people who are trying to get their lives in order and gain employment. Although it doesn’t make the fines disappear, it gives the young person a bit of breathing space.

The SDRO routinely grants stays to people who are serving prison sentences – usually until three months after the inmate’s release date.

5.7 Enforcement action

If the fine defaulter ignores an enforcement order or fails to make regular payments under a time-to-pay arrangement, the SDRO proceeds to enforcement action. There are four stages, which are set out below.

6 Enforcement action stage 1: referral to the Roads and Traffic Authority (ss 65-70)

If the fine is not paid by the due date (and the fine defaulter has not applied for time to pay or one of the other options discussed above) the fine is referred to the Roads and Traffic Authority. [This is a change from the old system, when only traffic fines went to the RTA.]

Various “RTA sanctions” may be imposed, and a cost of $40 is levied for each sanction imposed.
6.1 Suspension and cancellation of licences and registrations

If the RTA can match the fine defaulter’s details against a licence or vehicle registration, it will suspend the licence or registration without notice. The suspension will be lifted if the fine defaulter pays the full amount or the SDRO so directs.

If the fine remains unpaid for 6 months, the RTA will cancel the licence or registration. The cancellation remains until the fine is paid or the SDRO directs that it should be lifted.

During the period of any suspension or cancellation, the RTA may refuse to deal with the fine defaulter regarding such things as issuing or renewing licences or registrations, transferring registrations, issuing number plates and licence testing – but not proof of age cards. This “customer business restriction” will apply to fine defaulters even if the RTA does not hold a licence or vehicle registration in the name of the fine defaulter.

6.2 Special provisions for under 18s

The Act provides that “enforcement action with respect to a fine defaulter’s driver licence is not to be taken” if the fine defaulter was under 18 and had never had a licence when the fine was imposed (s65(3)).

The SDRO interprets this to mean that if the fine defaulter has obtained a licence after incurring the fine, but before the fine is referred to the SDRO, cannot suspend, cancel or refuse to renew it. However, the RTA can still refuse to issue a new licence for a young person who has not obtained one in the interim period between incurring the fine and referral to the SDRO. [This interpretation is apparently based on Crown Solicitors’ advice.]

This is an anomalous and unacceptable situation which needs to be remedied. Submissions have been made on this issue and we believe that an amendment to the Act may be forthcoming.

6.3 Lifting of RTA sanctions

Although the “official line” is that fines must be paid in full before RTA sanctions can be lifted, the SDRO is now prepared to lift sanctions if:

(a) a person has made a number of regular payments (usually 6 or more);

(b) can demonstrate a compelling need for a licence (eg employment or domestic circumstances); or

(c) needs to sell their car to pay off the fines.

We have succeeded in having RTA sanctions lifted for many of our clients. We write a letter to the SDRO outlining the client’s circumstances and need for a licence, accompanied by an affidavit of financial circumstances and (if possible) a support letter from a youth service, employer or employment agency.

If the SDRO grants a stay or deferral (discussed above), they are usually prepared to lift licence sanctions if asked to do so.

If the SDRO agrees to lift the sanctions, suspended licences and registrations will be restored automatically (unless they have expired in the interim). If the licence or registration has been cancelled, the person will have to re-apply at the RTA.
Even if the SDRO has advised that sanctions have been lifted, a person should not attempt to drive until they have checked with the RTA to make sure everything is in order.

If the lifting of sanctions is linked to a time-to-pay agreement, the sanctions will be swiftly re-imposed if the fine defaulter falls behind with payments.

7 Enforcement action stage 2: civil enforcement (ss 71-77)

If the fine remains unpaid after licence/registration cancellation, or the RTA was unable to match the fine to a licence or registration, the next stage is civil enforcement.

There are several types of civil sanctions, which are outlined below. A $50 cost is added to the fine at each stage of civil enforcement. Sheriff’s costs may also be added if applicable.

It is rare to see civil enforcement being pursued against children, but it is not beyond the realm of possibility.

7.1 Property seizure order

A property seizure order allows the Sheriff to repossess assets such as furniture, electronic equipment or vehicles within certain guidelines.

The Sheriff, or another person executing the order, may require a person whom they reasonably suspect to be the fine defaulter to give their name and address, and to produce identification. Failure to do so without reasonable excuse is an offence (maximum penalty: $1,100). The Sheriff must first warn the person that failure to give details is an offence.

7.2 Garnishee order

A fine defaulter’s wages or bank account may be garnisheed. A certain amount of money must be left to cover the person’s living expenses (this amount changes from time to time).

Centrelink benefits generally cannot be garnisheed. However, if a Centrelink payment is left untouched in the person’s account for more than 4 weeks, it is considered “savings”. If a payment is withdrawn from the account and then re-deposited, it is considered a “miscellaneous deposit”. In both of these cases, the amount may be garnisheed.

7.3 Charge on land

The fine enforcement order may be registered as a charge on land where the amount exceeds $1,000.

7.4 Examination summons

An examination summons may be issued, requiring the fine defaulter to go before a Local Court to provide information about their assets and income.
8 Enforcement action stage 3: community service order (ss 78-86)

8.1 Eligibility
A Community Service Order (CSO) will be made by the SDRO if it is satisfied that:

(a) civil enforcement has not been successful, or is unlikely to be successful; and

(b) the fine defaulter is capable of performing work under the CSO (this assessment will be made by the Probation and Parole Service or the Department of Juvenile Justice).

8.2 Performance of work
The work to be performed is calculated at the rate of 1 hour for every $15, up to a maximum of 300 hours (for an adult) or 100 hours (for a child) on any one order. It is the person's age at the time of the CSO being imposed (not at the time the fine was imposed) that is relevant. Adults perform their fine-default CSOs cumulatively; children do them concurrently (s81).

Instead of completing the work, the fine defaulter may pay the full amount outstanding under the CSO at any time.

8.3 Revocation
If the fine defaulter fails to comply with the CSO, the SDRO may revoke the order and notify the fine defaulter, who may apply to have the revocation reversed.

If a CSO is revoked, this will normally mean a warrant is issued and the fine defaulter faces imprisonment.

8.4 Expedition of CSOs
A commonly asked question is “Can I apply to turn my fines into community service instead of paying off my fines?” The answer is, generally, no.

The SDRO has the power to decide that civil enforcement is unlikely to be successful, and progress to the issue of a CSO. However, this is rarely done – except in a couple of places (mainly Aboriginal communities) where the SDRO is piloting the issue of fine default CSOs.

The reluctance to expedite the issue of CSOs stems partly from the revenue-collection objective of the fine enforcement regime. There is also a lack of community service work available in many areas, and the Probation and Parole Service already has difficulty placing people on court-ordered CSOs.

9 Enforcement action stage 4: imprisonment (ss 87-97)

9.1 Issue of warrant
If a CSO is revoked, the SDRO may then issue a warrant of commitment for the imprisonment of the fine defaulter.
A person will not be imprisoned for defaulting on juvenile fines only, or if they have a disability which makes them ineligible for a CSO.

9.2 Execution of warrant

Under the old fine enforcement regime, police were required to give a fine defaulter seven days’ notice before executing a warrant. This is no longer the case. However, in some circumstances, police may delay the execution of the warrant to enable the fine defaulter to pay the fine or seek cancellation of the warrant.

A police officer executing a warrant may require a person whom they reasonably suspect to be the fine defaulter to give their name and address, and to produce identification. Failure to do so without reasonable excuse is an offence (maximum penalty: $1,100). The police officer must first warn the person that failure to provide details is an offence (s104).

The fine defaulter can avoid execution of the warrant by paying the full amount outstanding.

9.3 Term of imprisonment

The term of imprisonment may be served by full-time imprisonment or by periodic detention. The current rate is one day’s imprisonment for every $120 owing.

Multiple terms of fine default imprisonment are served consecutively, but are concurrent with any term of non-fine default imprisonment. This means that, in theory, people can still cut out their fine default warrants while they are serving a sentence. However, this is only possible if a warrant has already been issued. As far as we know, it is not possible to get the SDRO to expedite the issue of a warrant so a person can conveniently cut out their fines.

9.4 Special provisions for under 18s

If the fine defaulter was under 18 at the time of the offence (and under 21 when charged or issued with a penalty notice) they cannot generally be imprisoned or detained for defaulting on the fine.

However, if a person also has warrants for defaulting on adult fines, it appears they will serve time in an adult prison for the juvenile as well as the adult fines (s92).

10 Future developments

10.1 Fines Act review

The Office of State Revenue conducted a review of the Act in 2002. Submissions were received from, and consultations undertaken with, a range of people and agencies. The report was tabled in Parliament in November 2002. Copies may be obtained from the Office of State Revenue (as far as I know, it is not available on-line).

The review report does not make recommendations, although it does discuss (and impliedly endorse) various suggestions raised in submissions and consultations. These suggestions include more flexibility in waiving fees and enforcement costs, an
amendment of the provision concerning licence sanctions and under 18s, and a total prohibition on imprisonment for juvenile fines.

We understand that some legislative amendments may go before Parliament in the current session, but we have no information as to the nature of these amendments.

10.2 Relocation of SDRO

The SDRO is in the process of relocating to Lithgow and are currently recruiting staff. It is too early to tell whether this is going to have a significant impact on the way they operate. We believe the SDRO will lose some of its more experienced staff who do not wish to relocate. On the positive side, it has been suggested that the move to Lithgow will mean the employment of more permanent staff, and fewer casuals, in the call centre and administrative areas. This will hopefully mean better-trained and more helpful staff.

11 Contact details and further information

11.1 Infringement Processing Bureau

Address: PO Box 999, Hunter Region MC 2310 (general correspondence)
         PO Box 777, Hunter Region MC 2310 (court elections)
Phone: 1300 138 118
Fax: 4937 9088
Website: www.infringements.nsw.gov.au

In our experience, the IPB is very inefficient. The website warns that delays can be experienced due to peak periods on the 1300 number. It is common to experience delays of 15-20 minutes, or find the line engaged. The IPB can also take several months to answer correspondence.

The website provides basic information about their procedures, downloadable court election and statutory declaration forms, and facilities for payment of fines by credit card.

11.2 State Debt Recovery Office

Address: Level, 5, 130 Elizabeth Street Sydney NSW 2000
         PO Box A2571, Sydney South 1235
Phone: 9277 6370 or 1300 655 805
Fax: 9277 6363
Website: www.sdro.nsw.gov.au

As mentioned above, the SDRO is in the process of relocating to Lithgow. Their address (and presumably their phone and fax numbers) will change in the next few months, but for the time being they will be contactable at the addresses and numbers listed above.

The SDRO is now part of the Office of State Revenue, having been transferred from the Attorney-General’s Department a couple of years ago. It is a large and very busy organisation which has approximately 900,000 “customers” (fine defaulters) on its books at any time.
The SDRO deals with up to 11,000 phone calls per day. Not surprisingly, callers are often kept waiting on hold for some time, but the automated system does callers the courtesy of telling them where they are in the queue!

Most of the call centre staff are relatively junior and inexperienced, and are not in a position to deal with complex requests or inquiries. They are likely to give fine defaulters standard information (which is along the lines of “pay up or else”) rather than fully explaining their options.

The SDRO has set up a very useful “hotline” arrangement for legal and community organisations. This means we have a direct phone line to an experienced staff member who is able to answer a range of queries. We have found this of great benefit and would recommend a similar arrangement to any organisation which assists fine defaulters.

The website provides information about the SDRO, its enforcement procedures and the options available to fine defaulters. There are also downloadable forms for time to pay, annulment, etc. In general the site is quite helpful.

### 11.3 Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is happy to provide information to practitioners, and direct assistance to young people aged 25 and under, in relation to any aspect of the fine enforcement process.

Should you wish to contact me directly about anything arising from this paper, I am most easily reached by email at jane.sanders@freehills.com.

Otherwise, our contact details are as follows:

Address: 356 Victoria St, Darlinghurst NSW 2010
Phone: 9360 1847
Fax: 9331 3287
Website: www.theshopfront.org
Email: shopfront@freehills.com

_The Shopfront Youth Legal Centre is a service provided by Freehills, in association with the Sydney City Mission and the Salvation Army._

_This paper was prepared in March 2004 and, to the best of the author’s knowledge, is an accurate summary of the law in New South Wales at that time._

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