



Young Peoples Legal Rights Centre
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Ms Anthea Derrington
Director
Policy and Strategic Services
Infringement Management & Enforcement Services
Department of Justice

By email: isou@justice.vic.gov.au

Dear Ms Derrington,

Re: Youthlaw's submission re: Infringements trial – shop theft and wilful damage

Youthlaw welcomes the opportunity to make this submission. We are particularly interested in the potential impact of this aspect of the trial on our client group, that is, young people up to the age of 25 years.

Most of our comments relate to the offence of shop theft. This is based on our casework experience of assisting young people with approximately thirty shop theft infringement matters in past year, but none with wilful damage infringement matters.

As a member of the Infringements Working Group, Youthlaw endorses the Federation of Community Legal Centre's submission. In general terms we stress that issuing infringement notices does not address the underlying causes of offending behaviour for most young people committing minor shop thefts, and are very unlikely to deter the recipient from similar behaviour in the future. Youthlaw supports resources being invested in programs aimed at modifying the behaviour of young offenders to most effectively reduce the amount of low level criminal behaviour.

**Question 1:
Operational feedback – Case studies**

Despite guidelines to the contrary, Youthlaw has seen clients who have received more than one infringement notice. One 19 year old male received infringement notices for shop theft 2 days in a row and another client has three shop thefts on record.

None of the young people Youthlaw has assisted who have received infringement notices for shop theft have been able to afford to pay the fine. In the majority of cases, the shop theft was of an item of 'necessity' and closely related to the client's financial or housing insecurity. A large proportion of the young people we have seen with shop theft fines are homeless or have complicated issues of mental illness or substance use. Often we take their infringements to the Specials Circumstance system.

Here are a few examples of our client's circumstances:

- *An 18 year old female stole food from supermarket after being told they would not accept her food vouchers,*
- *A 19 year old male has been homeless since 15 years of age was fined for shop theft of underwear from Big W, and*
- *A 20 year old male living in transitional housing was fined for shop theft of food from a supermarket when he instructed that he could not afford to eat.*

In all the above cases, matters were heard in the special circumstances list and the clients were sentenced to adjourned undertakings to be of good behaviour. Each client now has a court record for shop theft - a dishonesty offence - that may have enormous implications for future endeavours to find employment.

We also had a case of a 16 year old girl being issued with an infringement notice for a trial offence, despite the trial not applying to under 18 year olds . Ultimately the infringement went through the CAYPINS process in the Children's Court. If no payments are made, this would result in the Children's Court issuing a warrant to seize property of the child. While these are rarely enforced, they do remain on the client's record.

Question 2:

The impact of the use of infringements on disadvantaged members of the community

Infringements act to entrench disadvantage for already disadvantaged and vulnerable children and young people and increase their interactions with court system.

In particular shop theft infringements disproportionately impact on disadvantaged members of community. Shop thefts under \$600 are frequently opportunistic or connected to client's circumstances of disadvantage (see case studies above).

For many of our clients, the outcomes via the infringements process are actually worse than an outcome where the matter is heard in open court. Unlike a fine, a court-determined matter allows for diversion options to be explored. This may result in no criminal record being received and in many cases some sort of restorative justice process being accommodated. Bail support Programs, diversion or treatment-focussed orders that are available through regular court system are often best for disadvantaged clients.

Where they to go to court, clients would be likely to receive:

1. Diversion
Many shop theft cases would be eligible for diversion e.g. no priors, minor offence, young person, offence is related to disadvantage or difficult circumstances of accused. Where a person committed shop theft under peer pressure or for opportunistic reasons, diversion can include conditions that allow the accused to engage with victim, understand impact of offence, make donations to charity etc. For persons who commit shop theft due to underlying issues e.g. mental illness or substance use, diversion conditions may include rehabilitation or treatment. The young person gets to also avoid having any court record.
2. Adjourned undertakings to be of good behaviour
3. Treatment focussed orders
In cases where client's offending is clearly connected to a mental illness, substance addiction or homelessness/ financial insecurity, client may get a community based order (CBO) to enable them to receive government funded community support. Treatment-focussed orders such CBOs or probation can also include Youth Justice or Corrections programs for housing, rehabilitation etc. Or they may be eligible to access Bail Support Programs namely Court Integrated Services Program which links the person into court provided services e.g. housing, rehab or D&A counselling, Psychologists, neuropsychologist assessments etc.

In the infringements system, the vast majority of our clients cannot pay the infringement.

4. Where the client has 'special circumstances' and accesses legal support, the best outcome would be to get an adjourned undertaking to be of good behaviour. The client still gets a court record for a dishonesty offence (as in open court) and there is no court-provided supports to assist the person to address the causes of offending.

5. Where the client does not have 'special circumstances' or does have 'special circumstances' but does not access legal support, the fine will ultimately become a warrant and the person will either have property taken away, or more likely, be placed on a community work order or be ordered to spend up to 1 day in prison per penalty unit.

6. Community work is inappropriate for most people who have special circumstances and sets them up to fail.

A 21year old female client with major mental health issues (paranoid delusions, borderline personality disorder), substance addiction and with long term history of homelessness who, without legal assistance or advice, was brought to court on infringement warrants (including shop-theft fine) and placed on a community work order with corrections. Client soon breached the community work order then faced court on criminal charge of breach of order.

7. Imprisonment for an unpaid fine

We endorse the serious concerns expressed by the Federation of Community Legal about the operation of s 160 of the *Infringements Act*, namely that if the court makes an order for imprisonment in lieu of payment, and the person defaults on the payment, a warrant will automatically be issued and can be executed without any requirement or right to come back before the court.

So effectively if people 'leave it too late', they have no right to appeal an order to imprison and so have no option but to spend a day in custody for each penalty unit. This equates to up to 5 days imprisonment for one shop theft fine, including enforcement costs. Clearly this is a far more severe outcome than would ever occur in the open court on a single charge of shop theft.

Question 4:

The appropriateness of enabling shop theft and wilful damage offences to be expiated by payment of the infringement fine

Youthlaw submits that in the first instance an informal warning or caution should always be the first option for young people caught for minor shop theft, rather than issuing an infringement notice.

Seeking to allow for expiation of these offences through payment of a fine is generally meaningless as the young clients we assist never have the financial means to pay the fines in the first place.

Youthlaw supports Federation's comments that the amount of someone's fine should be proportionate to their income. Young people pay the same amount for on-the-spot fines that adults do despite the fact they often do not have an income or earn much less than an adult. Young people with no or low income and limited or absent parental financial support are particularly disadvantaged.

Question 5:

The impact of the issue of infringements for these offences on young people

If infringement notices for these two offences were extended to under 18 year olds we suspect the majority would not be able to afford to pay the fine. Most would just go through CAYPINS which is highly ineffective and end up with a warrant being issued to seize the child's property. Even though these warrants are not enforced in practice they remain on child's police record.

Another reason Youthlaw does not support infringements for these offences being issued to young people under 18 years is that it may deprive them of the opportunity to address the issues underlying their offending behaviour. As mentioned earlier, the majority of clients committing the offence of shop-theft stole either because of necessity or due to peer pressure or opportunistic crimes. In either case a preferable outcome for that young person would be to have the benefit of court-based services that avail them to diversion (see above) or therapeutic orders to deal with underlying issues. For under 18 year olds, these types of matter would typically end up with ROPES diversion.

Question 6:

Other general comments

Criminal records

One of the main arguments in favour of infringement notices as opposed to court decisions is that people do not receive a criminal record. However clients that have their matters resolved via the special circumstances list end up with a court record for their infringement. This is particularly concerning in the case of a dishonesty offence such as shop theft.

When a young person's infringement matter is heard in open court, even in the special circumstances court, a finding of guilt is recorded. This will result in the young person having a court record for the infringement offence. Even where the Court does not record a conviction in respect of the offence, a finding of guilt will appear in any subsequent police or court searches.

Therefore the system creates worse outcomes – ie. a court record – for those young people who are given infringements but who have special circumstances (mental illness, intellectual disability, serious substance addiction and/or homelessness), as compared with young people who are financially supported by their parents and who have the capacity to pay their fines and have their matters expiated.

Inability to advise client's on their shop theft fines

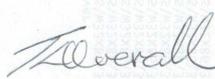
Upon receipt of an infringement, there is no automatic right to obtain a brief of evidence from police regarding the offence. Therefore it is impossible to advise a client who has received a shop theft infringement on the strength of the police case or on the merits of electing to have matter heard before Court.

A brief of evidence only becomes available *after* one elects to have matter heard in court and once charges are actually listed.

The importance of providing informed advice to clients who are considering electing to have shop theft matters heard in court is amplified compared to other types of infringements due to the dishonesty element of the shop theft offence and the detriment to the client in having that charge appear on their court record.

I am happy to discuss this submission further. Please see my contact details below.

Yours Sincerely



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