



## YOUNG PEOPLE AND INFRINGEMENTS

### YOUTHLAW - KEY ISSUES & RECOMMENDATIONS

#### Introductory comments

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

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.

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.

#### Youthlaw supports

- The introduction of reduced fines for all infringements (not just public transport fines) for children under 18 years **OR**
- The inclusion of hardship provisions for on the spot infringements to enable young people up to 18 years experiencing financial stress to apply for fines to be reduced to a sum proportionate to their income

## 1. THE CHILDREN AND YOUNG PERSONS INFRINGEMENT NOTICE SYSTEM (CAYPINS) SYSTEM

### 1.1 Inability to determine infringements that are outstanding

- It is extremely difficult for a young person or even a lawyer to find a complete list of a client's outstanding infringement matters - this is especially the case where the young person is homeless or is transient.
- The only way to find outstanding infringements is to contact the Children's Court and request a complete court search. This is time consuming for the Court and the information provided often lacks sufficient details.
- In contrast, the adult system has the Infringements Court, a central body that manages unpaid infringements. The Infringements Court has a record of all outstanding infringements and can be contacted to obtain a list of infringements.

#### **Recommendation 1:**

Establish a centralised database be established in order to provide comprehensive information about a young person's outstanding infringements (combined with Recommendation 2 set out below –stopping fines moving on in the system).

## **1.2 Where there are multiple infringements the system becomes highly complex and inefficient to deal with.**

- Fines can be listed in different courts and at different points of the process (eg some before an infringements registrar, others in open court). This often results in most fines having to be dealt with individually and in various locations and stages – numerous consolidations of matters may also be required (where possible) to have outstanding matters heard on the one Court date in the one location. This is extremely time-consuming for all involved (agency staff, the young person, lawyers, prosecutors and court staff).
- In contrast the adult system is much more centralised and a person's fines can be found at one central point, and generally do not proceed beyond this point until they can be dealt with together.

## **1.3 It is inefficient, time consuming and beyond the capacity of many young people to attend a number of different courts (eg CBD, regional, outer suburban).**

- Where a young person has fines from multiple occasions they are required to attend court separately for each. Fines are referred to either a court near where the young person lives or near where the fine was incurred.
- Court may not be close to where a young person is living, working or studying.
- Disadvantaged and at risk young people are highly likely to be moving around. They are particularly impacted by this aspect of the system.

## **1.4 It is almost impossible to consolidate matters**

- A young person often has fines in both the CAYPINS system and Open Court. The Open Court fines cannot be referred to the CAYPINS hearing list preventing consolidation. Fines can be listed at different courts and be at different stages of the infringement system making it difficult and time-consuming to locate them to consolidate.

## **1.5 Service by post results in high non-attendance.**

- In a system where fines keep progressing through the system unbeknown to the young person, the service of notice of the Court or CAYPINS hearing by post has particularly serious implications for homeless and/or transient young people. A high number of infringement matters are heard ex parte without the young person being aware that the matter has been heard. Non-attendance results in higher penalty. The Court or CAYPINS Registrar will generally impose the full fine.

Registrars (CAYPINS and Infringement) dealing with applications to review infringements be supported and encouraged to waive fines on grounds of the special circumstances of the young person before them

## **1.6 Re-hearing is an onerous process**

- At this stage, the only way for the young person to rehear the case is to lodge an application for rehearing for each unpaid infringement. Where the matter has been referred direct to open Court, this must be done in person at the Court where the matter was initially heard. This can be incredibly difficult and costly for

a young person who is homeless and facing other serious problems. It is time-consuming and inefficient for lawyers and court staff involved.

- This is in contrast in the Adult system where generally the adult takes steps to refer a matter to Court **not the enforcement agency**. While the Infringements Court may issue a warrant in respect of the unpaid infringements, in most cases the matter will not be referred to open Court until the adult makes an application or until the fines have progressed to a point where enforcement action is taken by the Sheriff. This means that it is possible to deal with all outstanding matters together, as a single application, and it is generally reasonably straightforward to consolidate a large number of infringements.

**Recommendation 2:**

**That matters only be referred to CAYPINS or open Court on application of the young person. Prior to a matter being referred to CAYPINS or to Court, the fine should be managed by a central body such as the Infringements Court.**

### **1.7 Inequitable outcome – Getting a record**

If an infringement matter is heard in open court a finding of guilt is recorded. This will result in the young person having a criminal record. Even where the Court does not record a conviction in respect of the offence a finding of guilt will be recorded and will appear in any subsequent police or court searches.

In contrast if an infringement matter is heard at CAYPINS or if it is paid prior to going to court there is no record incurred and it must not be referred to in any subsequent report provided to a Court in the future.

Currently many agencies refuse to waive fines at the agency level and this triggers the fines going directly to open court and not CAYPINS (This is required by the Infringements Act). The unintended impact of this is that a young person will incur a record whereas if they had simply ignored the infringement while it was with the Enforcement Agency, the fine would progress to CAYPINS and the young person would not incur a record.

A young person who does not have the financial means to pay an infringement (eg. because they are homeless or have no parental support) is more likely to incur a record whereas a young person who is financially supported by their parents will not receive a record.

**Recommendation 3:**

**That the Children’s Court be given discretion to order the complete expiation of an infringement offence from a young person’s record.**

## **1.8 There is inconsistency between CAYPINS Registrar and Magistrate sentencing**

Where an infringement matter is referred to CAYPINS, the registrar has power to make an order confirming the penalty, make an order reducing the penalty, or to order that payment of the amount that remains unpaid not be enforced.

The registrar must have regard to the child's employment or school attendance and **the child's personal and financial circumstances**.

The current practice of Registrars is to almost always impose a financial penalty unless exceptional circumstances can be demonstrated.

In our experience Registrars are extremely reluctant to exercise their discretion to order that the penalty not be enforced even where documentary evidence has been provided outlining that the young person is homeless, was homeless when the fine was incurred or has a very limited income (eg Youth Allowance). This is also the case where the Registrar's are presented with evidence of mental illness or drug/alcohol dependence. This is despite the fact that they are required to take into account the child's personal and financial circumstances.

In our experience Magistrates, at Enforcement hearings (requiring further attendance) rarely enforce these fines imposed by registrars.

In contrast to the CAYPINS Registrar a Magistrate in the Children's Court is much less likely to order a fine. They can only impose a fine once it has been decided that the following sentences are inappropriate and are required to impose the minimum sentence that is appropriate:

- without conviction, dismiss the charge;
- without conviction, dismiss the charge and order the giving of an unaccountable undertaking;
- without conviction, dismiss the charge and order the giving of an accountable undertaking;
- Without conviction, place the child on a good behaviour bond.

It is our view that there is a significant inconsistency between the sentencing outcomes of CAYPINS Registrars and Magistrates for similar matters and that this is not acceptable.

<p><b>Recommendation 4:</b> <b>That a review of CAYPINS sentencing, guidelines and training be undertaken.</b></p>
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## **1.9 Lack of parity between Children and Adult systems**

In the adult infringement system the Special Circumstances of a person incurring fines is considered. Special Circumstances apply where a person is homeless, has a mental or intellectual disability, or a serious addiction to drugs, alcohol or a volatile substance,

where that condition results in the person being unable to control the conduct, or understand that their conduct constitutes an offence

Where Special Circumstances are established it is the practice of the Magistrates' Court to either dismiss an infringement or to order an adjourned undertaking.

This is compared to the practice of the CAYPINS Registrar, where a child, who would fall within the adult definition of Special Circumstances is generally fined.

This means that children are being punished more severely than adults, for the same offence, and that there is a lack of parity between the children's and adult's systems.

**Recommendation 5:**

**That a practice direction be issued to enable a CAYPINS registrar to take into account whether a child falls within the *Infringements Act 2006* definition of Special Circumstances and the treatment of children with Special Circumstances should correspond to the treatment of adults who have comparable circumstances.**

## **2. THE ADULT INFRINGEMENT SYSTEM**

Youthlaw assists many young people under 25 with fines. The majority of these fine cases are dealt with in the adult infringement system

We have highlighted the positive aspects of the adult system in contrast to the system for young people under 18 (see above) however there are still some major re-occurring systemic issues in the adult system

These include the following:

### **2.1 Enforcement Agency policy to not withdraw infringements**

Agencies including Victoria Police and many Local Councils have a general practice of refusing to withdraw infringements on the basis of special circumstances at the internal agency review stage. It is our view that this is contrary to the Attorney- General's guidelines on Infringements and the intention of the Government that fines are dealt with at the earliest possible stage.

Case example:

*Youthlaw spoke to a City of Whitehorse Council officer about a young person's fine requesting an internal review. The officer informed our lawyer that 'Our policy is to never withdraw because people have to learn to take responsibility'.*

*We note that there are examples of good practice in regard to internal review such as the Department of Transport (DOT).*

## **2.2 Requirement to refer internal review applications on Special Circumstances to open court**

Where there is a refusal to withdraw infringements on the basis of special circumstances at the agency stage they must be referred to open court rather than the Infringements Court and the person cannot have access to the more appropriate Special Circumstances list in the Magistrates Court (this is only available via the Infringements Court).

## **2.3 Difficulty consolidating open court and Special Circumstances listings**

Once a matter has been referred to in open court it becomes very difficult to then consolidate the matter with other infringements that are proceeding through the infringements system. They can only be consolidated if referred to Open Court and not the more appropriate venue of the Infringements Court.

## **2.4 Infringements Court policy on providers of supporting documentation**

The Infringements Court is inflexible as to who may provide documentation to establish special circumstances. In contrast the Magistrates Court is far more flexible accepting letters from a range of professionals and workers (eg youth workers) and a range of relevant services.

The Infringements Court requires a letter from a GP or psychiatrist to confirm mental illness or substance abuse. A letter from a psychologist, counselor, drug and alcohol worker or mental health nurse is not sufficient. Obtaining a letter from a GP or psychiatrist is very difficult and from the latter usually impossible without payment. GPs are generally reluctant to provide letters for a range of reasons. The content of their letters is generally very limited and do not necessarily meet the very stringent criteria of the Infringements Court.

It is also our experience the Infringements Court may still reject a Special Circumstances application even where Special Circumstances are established through documentation from a GP including a diagnosis of a recognised mental illness which is characterised in the DSM-IV diagnostic manual as impacting on a person's ability to control or understand their behaviour. This is particularly the case where the illnesses diagnosed are in the category anxiety disorders, depression, Attention Deficit and Hyperactivity Disorder and Obsessive Compulsive Disorder. We consider it concerning that the Infringements Court may be imposing their own "diagnosis" of certain categories of mental illness in determining whether applicants satisfy the Special Circumstances criteria.

The Infringements Court requires letters from SAAP funded agencies to confirm homelessness. Other services that young people turn to for help when homeless or seeking accommodation are not accepted.

This inflexible approach does not reflect the range of services and people young people seek support from and their varied responses to homelessness, mental illness and substance abuse. For example young people often prefer generalist youth services support rather than specialist professional support.

## **2.5 Infringement's Court policy on content of supporting documentation**

When considering special circumstances the Infringements Court is inflexible and has unrealistic expectations as to the content and quality of letters that are provided. In our experience the quality and content of letters is viewed as indicative of the merit of the young persons case rather than reflective of the limited capacity or services and professionals to provide these, the way young people access services and issues raised in 2.4 above.

Our view is that it should be possible to provide supplementary materials such as a statutory declaration from the young person or submissions to the court.

## **2.6 Shop theft fines**

- 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.
- 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. 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, with a large number being homeless or have complicated issues of mental illness or substance use.
- Generally these clients infringements matters are taken to the Specials Circumstance system. Clients were generally sentenced to adjourned undertakings to be of good behaviour. Clients then have a court record for shop theft - a dishonesty offence - that may have enormous implications for future endeavours to find employment. (see 2.7)
- For many of our clients, the outcomes via the infringements process are 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.

## **2.7 Criminal records**

Clients who 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. (see 2.6)

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.

The current system creates a worse outcome – 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.

## **2.8 Imprisonment for an unpaid fine**

Youthlaw holds serious concerns 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.

### **Recommendations 6 and 7:**

**Where an application for internal review is refused, the matter should then be referred to either the Special Circumstances List of the Magistrates' Court, or to the Infringement Court.**

**The Infringements Court should be required to take a more flexible approach to assessing the documentation that may be provided to establish special circumstance.**



## PROCESS FOR THOSE INCURRING FINES WHILE UNDER 18

### Applying to Agency

The young person can apply to the agency to consider special circumstances  
If the fine is not withdrawn it is required to be sent by charge and summons to open Court (Children's Court).

### Young person CAN WAIT for further notice

If the young person does not pay, a penalty reminder notice is issued

If still not paid, the enforcement agency may either:

- Lodge it with the Infringements Registrar ( the CAYPINS system). The amount lodged by the agency can't exceed what a court would give as a penalty (Under 15 no more than 1 penalty unit – currently \$116 or over 15 no more than 5 penalty units). Each fine lodged through CAYPINS is dealt with individually. If multiple fines are referred to CAYPINS they are likely to be listed on different days at different courts **OR**
- The agency may decide to send it direct to open Court and not CAYPINS. This has the more serious consequence of generating a criminal record and a penalty of an undertaking or bond may be imposed.
- A young person may have fines going through CAYPINS and other fines referred direct to Open Court.

### CAYPINS

The young person will be sent notice that the fines have gone to CAYPINS and that a hearing has been scheduled. At this point, the young person has a number of options:

- Apply for an order that the fine not be enforced;
- Appear before the registrar on the date specified;
- Decline to be dealt with by the registrar and request that the matter be heard and determined by Court; or
- Do nothing and have the matter dealt with by the registrar in the young person's absence.

At the hearing, the registrar may:

- Make an order confirming the infringement penalty;
- Make an order reducing the penalty; or
- Order that the payment of the amount that remains unpaid not be enforced.

In exercising his or her discretion the registrar **must have regard to** the child's employment or school attendance and **the child's personal and financial circumstances**.