



TOP END WOMEN'S LEGAL SERVICE INC.

FREE LEGAL ADVICE FOR WOMEN

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20 September 2019

The Hon Natasha Fyles MLA
Attorney-General and Minister for Justice
GPO Box 3146
Darwin NT 0801

By email to Minister.Fyles@nt.gov.au

Dear Minister Fyles,

Alleviating the hidden impacts of fines – consideration sought for amendments to the *Fines and Penalties (Recovery) Act 2001 (NT)*

The Top End Women's Legal Service Inc. (**TEWLS**) write to request that consideration be given to amending the *Fines and Penalties (Recovery) Act 2001 (NT)* (the **Fines Act**). The purpose of such amendments would be to promote therapeutic and counselling engagement, and to address otherwise unpayable debt via two primary means; first, via an expansion of the operation of Division 9 Community Work Orders of the Fines Act; and second, via the empowerment of the Fines Recovery Unit (**FRU**) with discretionary powers to reduce or revoke fines.

We note that the term "fine" is used in this letter to refer to infringement notices and fines issued by Northern Territory Police, as opposed to fines issued by Northern Territory Courts.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. TEWLS provides high quality, responsive, and culturally appropriate free legal advice, casework and representation services, community legal education and advocacy in civil and family law to women living in the Greater Darwin region.

TEWLS' service area includes Darwin, Palmerston, the Royal Darwin Hospital, Dawn House Women's Shelter, six Indigenous communities in the Greater Darwin region, at Adult Migrant English Programs, and women incarcerated at the Darwin Correctional Centre (**DCC**).

Advice and representation services are provided for civil and family law matters, and the most frequently requested areas of assistance are family law, domestic and family violence, housing and tenancy, consumer law, credit and debt, fines, sexual assault, discrimination, employment law, compensation for victims of crime, and complaints.

The context – women incarcerated at the DCC

Since 2007, TEWLS has operated a civil and family law clinic for women incarcerated in Darwin correctional facilities. TEWLS is the only clinic-based civil and family law service within Sector 4 of the DCC, the women's sector, where we currently attend every third week in line with available resources.

In 2019, TEWLS commenced a Legal Health Check Project (**the Project**) with women incarcerated at the DCC. The legal health check itself is a legal screening tool that TEWLS adapted to “diagnose” the precursors to incarceration and to identify the multiple legal needs of women incarcerated in the DCC. It employs structured interview questions, in a conversational context, building rapport with the interviewee in an aim to identify previously unknown and unmet legal need.

Of the 50 participants in the Project, 69% had unpaid fines with the FRU, many of which are unpayable and consequently serving to compound the respective participants’ financial disadvantage, which is itself a precursor to incarceration. Of note, this financial disadvantage is interconnected with a matrix of vulnerability, where:

- 86% of Project participants were in receipt of Centrelink immediately prior to incarceration;
- 68% of Project participants had a prior incarceration;
- 51% of Project participants had unpaid loans; and
- 40% of Project participants were homeless immediately prior to incarceration.

Outside of the DCC, almost all Project participants reported having had experienced multiple vulnerability indicia, including:

- 83% of Project participants had experienced domestic family violence (with a corresponding 85% of Project participants wanting trauma counselling to be made available within the DCC);
- 83% of Project participants having or having had drug or alcohol misuse issues;
- 83% of Project participants are Mothers;
- 77% of Project participants had, on at least one occasion, been the victim of a violent act;
- 70% of Project participants had experienced homelessness; and
- 53% of Project participants had a pre-existing mental health issue.

The data collected during the scope of the Project demonstrate circumstances including the above that not only make it difficult for these women to pay their debts, but also to navigate and negotiate the fines enforcement system itself.

Amendments sought to the Fines Act

In a representative capacity, TEWLS seeks legislative and/or regulatory amendments to the Fines Act to enable and encourage the operation of Community Work Orders as a first instance penalty option and as an alternative to fines. TEWLS also seeks that consideration be given to empowering the FRU with discretionary powers governed by written guidelines to reduce or revoke fines issued to persons with no prospect of repayment and who will likely suffer the unintended punitive impacts of fines.

To give context to the amendments sought, TEWLS provides the following deidentified case study – an example that is unfortunately, not uncommon for our clients, particularly those incarcerated at the DCC.

TEWLS deidentified Case Study – “Barbara”

Barbara is an Aboriginal woman with complex psychological trauma. She has never been employed, she cycles in and out of incarceration at the DCC, with extensive periods of homelessness.

Barbara owes FRU over \$30,000.00, an amount comprising of 65 unpaid fines. Of the 65 fines, 33 fines are “public space offences”, being fines for using indecent language in a public area, stacking/storing goods in a public area, and consuming alcohol in restricted/ public areas.

Public space offences are often considered to be directly related to homelessness.¹ For Barbara, \$30,000.00 is an unfathomable – and most importantly, unpayable – amount of debt.

Barbara’s fines vary in cost; however, the most common fine is \$277.00, including enforcement charges. The average weekly income of a person on Centrelink’s Newstart Allowance is \$248.50.² This means that the average fine costs approximately 112% of Barbara’s weekly income.

Barbara instructs she would like to access alcohol and trauma counselling to address the issues underlying her incarceration and recidivism. Access to such services, with attendance reducing unpayable debt, could assist with well-being, reduce recidivism, increase productivity and save on incarceration costs.

Fines compounding vulnerability

Fines target the disadvantaged groups within our community, including Aboriginal Australians, the homeless, the mentally ill, the welfare dependent and prisoners.³ Although imprisonment is no longer directly used as an enforcement measure for unpaid fines, unless a community service order is breached,⁴ fines still present significant hidden penal affects. TEWLS particularly note the comments of researchers Julia Quilter and Russell Hogg, who have stated that:

*Abolishing imprisonment for default has removed the most visible marker of unfairness and inequity, but perhaps only to displace the problems into the more hidden, arcane domains of administrative practice under novel enforcement systems that produce their own punitive effects.*⁵

A fine debt often exacerbates the acute hardships of those most likely to be fined, making those vulnerable feel even more helpless, anxious and overwhelmed. These negative psychological effects can contribute to substance abuse and mental illness, which are known precursors for offending conduct.

¹ Chris Povey, Lucy Adams & Chris Hold of the PILCH Homeless Persons’ Legal Clinic, “Fines, Infringements and Homelessness”, Submission to the Sentencing Advisory Council, *Court Fines and Infringement Fines Project*, October 2013, 3.

² Ibid.

³ Julia Quilter and Russell Hogg, “The Hidden Punitiveness of Fines” (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 9-40, 15.

⁴ *Fines and Penalties (Recovery) Act 2001* (NT) s 86.

⁵ Julia Quilter and Russell Hogg, above n 3, 17.

In the Australian Law Reform Commission's (**ALRC**) 2018 Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Pathways to Justice) (the **ALRC Report**), the ALRC reported that,

*Fine enforcement regimes can aggravate criminogenic factors and operate to further entrench disadvantage, especially when the penalty for default or secondary offending includes further fines, driver licence suspension or disqualification, and imprisonment.*⁶

It is TEWLS' submission that the Northern Territory fines enforcement system, based on an escalating penalty model that includes all the penalties listed by the ALRC, unfortunately entrenches disadvantage. By way of example, suspension of a driver's licence (section 60 of the Fines Act) causes a loss of mobility. For an Aboriginal person living in a remote NT community, where no public transport is available, the fine defaulter is now limited in being able to access health services, shops and extended family.⁷ If there is no alternative transport, then the fine defaulter may drive unlicensed, thereby breaking the law and committing more serious offences which may result in incarceration.⁸

The NSW model

In that same ALRC report, the ALRC recommended the, "nationwide adoption of Work and Development Orders based on the New South Wales (**NSW**) model"⁹ as one method "...to reduce the harm caused to Aboriginal and Torres Strait Islander People."¹⁰ It is TEWLS' view that the adoption of this model within the Northern Territory legislative and regulatory fines scheme would see benefits extend throughout the community in our jurisdiction.

Under the NSW model, individuals with unpaid fines are able to apply for a Work and Development Order (**WDO**) if they:

- Have a mental illness;
- Have an intellectual disability or cognitive impairment;
- Are homeless;
- Are experiencing acute economic hardship; or
- Have a serious addiction to drugs, alcohol or volatile substances.¹¹

If an individual is successful in their application for a WDO – notably via an application to the corresponding NSW department to the FRU, Revenue NSW – their WDO may require them to undertake in one or more of the following:

- Unpaid work for, or on behalf of, an approved organisation;
- Medical or mental health treatment in accordance with a health practitioner's treatment plan;

⁶ Aboriginal Law Reform Commission (ALRC), "Pathways to Justice - An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples", Summary Report No. 133 (2017) 18.

⁷ Mary Spiers Williams and Robyn Gilbert, "Reducing the unintended impacts of fines", *Indigenous Justice Clearinghouse*, Current Initiatives Paper 2 (2011) 4.

⁸ *Ibid.*

⁹ ALRC, above n 6, 18.

¹⁰ *Ibid.*

¹¹ *Work and Development Order Guidelines 2017 (NSW)*, cl 4.

- Educational, vocational or life skill courses;
- Financial or other counselling;
- Drug or alcohol treatment; or
- A mentoring program (if under the age of 25).¹²

Under the NSW model, fines are satisfied / repaid at a rate of \$30.00 per hour of the approved activity, and although a WDO is only available at the fine enforcement stage, an individual can apply for fine enforcement for the purposes of applying for a WDO.¹³

Since its inception in 2011, the WDO scheme has been recorded to successfully “ameliorate the systemic difficulties that fines present to very disadvantaged people in the community”.¹⁴ In 2014, INCA Consulting were commissioned by the the NSW Government to undertake an evaluation of the WDO scheme. After undertaking their evaluation, in 2015 INCA Consulting Evaluation reported that 96% of sponsors – being approved organisations or health practitioners that assist those unable to pay their fines – believed the WDO scheme, “had helped reduce the level of stress and anxiety their clients felt about their fines debt”,¹⁵ and 87% of sponsors, “...said the scheme had enabled clients to address the factors that made it hard for them to pay or manage their debts in the first place.”¹⁶

In a representative capacity, TEWLS submits that individuals who are unable to pay off their fines, if able to apply for a community work order similar to a WDO that included educational, vocational or life skill courses, would be assisted to improve their health and wellbeing whilst reducing recidivism. We commend legislative and/or regulatory amendments to the Fines Act and promote these options for your consideration.

Aside from alleviating the entrenched vulnerabilities borne by many fine defaulters and aside from contributing to a reduction in recidivism, TEWLS submit that an adoption of a model similar to the NSW WDO scheme in the Northern Territory would see additional benefits flow through our community. Tangible benefits of schemes like the WDO scheme include the community work that is completed, such as graffiti clean-up. There were also reports in the evaluation of the NSW scheme that some fine defaulters who undertook voluntary work as part of a WDO continued to volunteer after their WDO had been completed.¹⁷ Further intangible benefits of such a scheme include encouraging citizenship and community health.

Empowering the FRU with discretionary powers

In addition to advocating for the consideration and operation of a WDO scheme similar to the NSW model, it is TEWLS’ view that consideration of the individual circumstances of the fine defaulter is critical when issuing fines and essential when applying enforcement methods.

Provisions held within the *Sentencing Act 2001* (NT) (the **Sentencing Act**) suggests that the Northern Territory understands the importance of a discretionary approach that takes into

¹² Ibid cl 6.1.

¹³ Chris Povey, Lucy Adams & Chris Hold of the PILCH Homeless Persons’ Legal Clinic, above n 1, 26.

¹⁴ INCA Consulting, ‘Evaluation of the Work and Development Order Scheme: Qualitative Component: Final Report’, Prepared for NSW Department of Justice, May 2015, 8.

¹⁵ Ibid 3.

¹⁶ Ibid.

¹⁷ INCA, above n 14, 22.

account an individual's circumstances. Section 17 of the Sentencing Act provides that the Court is to consider the "financial circumstances of the offender"¹⁸ and "the nature of the burden that its payment will impose on the offender"¹⁹ when deciding the amount of the fine the Court is to issue. This discretionary approach is also supported by the decision of *Walker v Meredith [2008] NTSC 23*, where Justice Mildren held that an order allowing the fine defaulter to serve extra time in prison as an alternative to paying his fines (per section 26(2) of the Sentencing Act) was appropriate due to the individual circumstances of the fine defaulter, which included no prospects of payment and that he was already serving a long prison sentence.

While provisions of the Sentencing Act provide for the judiciary to take into account the above noted financial circumstances of an offender, the imposition and payment of infringement-based fines – being fines not imposed by a Court – do not. This means that some individuals, such as the deidentified case study noted above, will accrue and owe thousands of dollars in fines to the FRU, where there are often little to no prospects of repayment.

To account for this current gap, it is TEWLS' submission that the FRU be empowered with discretionary powers governed by written guidelines to reduce or revoke fines issued to persons with no prospect of repayment and who will likely suffer the unintended punitive impacts of fines. In our submission, this discretion, coupled with the adoption of a WDO scheme, would alleviate the pressures experienced by persons with unpayable debt, contributing to goals including reduced rates of recidivism and heralding a prioritisation of community well-being.

Conclusion

In light of the above, TEWLS advocate for the consideration and addition of the NSW model into the NT scheme, as well as the extension of discretionary powers open to the FRU.

We thank you for your consideration of the above and would be pleased to discuss the potential merit with delegated officers, at their convenience. Alternatively, we would welcome the opportunity to contribute to a broader consultation process.

In the interim, should you require anything further regarding this letter, please do not hesitate to contact Vanessa Lethlean, TEWLS Managing Solicitor by telephone to (08) 8982 3000 or by email to vlthlean@tewls.org.au.

Yours faithfully,

TOP END WOMEN'S LEGAL SERVICE INC.



Vanessa Lethlean
Managing Solicitor

¹⁸ *Sentencing Act 2005 (NT)* s 17(1)(a).

¹⁹ *Ibid* s 17(1)(b).