

Tasmanian Social Policy Council (TSPC)

Discussion paper towards the development of formal TasCOSS policy **In relation to Income based monetary penalties**

July 2006.

In early 2006, TasCOSS engaged in media comment over a proposal from the Tasmanian Greens to introduce income-based monetary penalties, particularly for traffic and vehicle infringements.

TasCOSS said the concept of replacing flat-rate infringement penalties based on the severity of the offence committed, with a system that also considered the relative capacity of an individual to pay a penalty, warranted due consideration.

The impact of monetary penalties on low-income Tasmanians.

TasCOSS considers that the current monetary penalty system in Tasmania has an inequitable impact on low-income and disadvantaged Tasmanians, compared to the broader community.

The way infringement notices are currently issued, where they consider only the severity of the offence committed and not an individual's capacity to make payment, fails to address the inequitable impact of a monetary penalty on an individual, depending on the financial resources at their disposal.

It can not be denied that a fixed-rate \$90 traffic infringement for example, has far more severe consequences on low-income earners than medium and high income earners.

For high-income earners, a \$90 fine represents only a minimal percentage of an individual's discretionary income, while for low-income earners, a \$90 fine can account for a significant proportion of their discretionary income.

A \$90 infringement would account for just 12.5% of the average Tasmanian take-home weekly-wage of around \$700, while for a low-income earner receiving Newstart, the \$90 penalty can account for as much as 35% of their weekly income.

The impact of monetary penalties on low-income earners can be severe. Individuals and families on low-incomes tend to prioritise essential needs such as housing, food and health costs over less intermediate priorities such as fines. This means they carry a debt burden, while also risking more severe consequences for not having paid the fine such as a court-warrant or even arrest.

Low-income earners who prioritise payment of infringement penalties can be doing so at the expense of other needs, while dependents and children can be unfairly impacted through a re-direction of a low-income household's limited financial resources to the payment of an infringement.

Administration of Infringement Notices:

90% of monetary penalties issued in Tasmania are in relation to traffic infringements. Traffic infringement notices in Tasmania are administered through the Department of Justice on behalf of three issuing agencies, Tasmania Police, the Department of

Infrastructure, Energy and Resources (DIER) and the Department of Justice and Industrial Relations (DOJIR). Infringement notices for non-traffic infringements are also administered by the justice department on behalf of the issuing government agency or authority.

The amount of monetary penalty attached to a particular infringement is dependent upon the severity of the offence that has been committed. These levels are predetermined by the particular legislation or regulation relating to the offence. They also detail any additional financial penalties that can be incurred for late-payment.

Individuals have the opportunity to dispute an infringement notice by requesting to have the matter heard before the Magistrates Court. Any court-costs incurred by an offender as a result of an unpaid fine being progressed through the court system are set by the magistrate.

Under the Monetary Enforcement Penalties Act, individuals do have the opportunity to seek alternative payment options to pay their fine, such as through instalments and in some circumstances can request to meet their penalty through a community service order rather than monetary payment.

It can be assumed that low-income earners would be the most likely people to nominate to pay their fine through a community services order, if this is a more achievable outcome than full-payment.

Origin of Traffic Infringements:

The concept of universal monetary fines was originally introduced into Australian jurisdictions in the 1960s as a way of processing only minor parking offences. Since then the process has been adopted in relation to a range of other common traffic offences, including speeding and failing to comply with road rules.

However, while the use of the universal fines system has been significantly extended beyond its original purpose, the basic principles and processes of the system have essentially remained unchanged since it was first introduced in the 60s. That is, a system where citizens traded in “their day in court” in return for swifter disposal, a discounted flat monetary penalty and promise of a clean record for minor offences.

In Tasmania, penalties for traffic infringements have been the subject of a number of significant departmental reviews by different State Governments, most recently in 1999. However these inquiries have always been focused on reviewing the level of penalties in relation to different offences, rather than the more fundamental questions that need to be asked about the universal fines system.

The inequities of the current system:

Infringement notices are now so commonly used as a law enforcement mechanism in our society that it is perhaps easy to forget the legal principles they represent.

Traditionally, the principle of prosecution of an offence provides for the accused to mount a defence and for a sanction to be tailored to fit both the seriousness of the offence and any mitigating circumstances relating to that offence.

The overarching determinant of infringement notices is the seriousness of the offence – the severity of the monetary penalty basically increases in accordance with the gravity of an offence. However, infringement notices completely disregard the second key

principle – that the sanction for an offence should be tailored around the specific circumstances behind an individual committing an offence.

The outcome of this is that monetary based infringements fail to consider the mitigating circumstances of an offender being issued the fine, including their capacity to pay the fine, or the impact paying that fine might have on their own wellbeing and on their dependents.

When an individual appears before a court, the court has a responsibility to consider that individual's circumstances when issuing a penalty, as well as what impact that penalty may have on others. With infringement notices, no consideration is given to the capacity of an individual to pay the fine when the penalty is issued.

Alternative monetary-infringement models:

The 'day fines' penalty system used in Scandinavia and some American jurisdictions is often identified as an example of a more equitable monetary penalties system.

This system essentially works on the principle that an offender should be fined a multiple of a single day of their discretionary income. Day fines work through the seriousness of an offence being represented by a number of 'units', which are then multiplied by a person's discretionary daily income to reach a figure which is the fine they pay.

Day fines are a direct attempt at addressing the inequity of universal fines by seeking to ensure the rate of penalty for the same offence is a similar financial burden to all citizens, regardless of their disposable income. The system also provides for the level of penalty to be increased with the severity of the offence. The implementation of the Day fines system overseas has resulted in higher payment rates, increase revenue and decreased enforcement costs.

Some of the obstacles with introducing the Day fines system in Tasmania include the practicality of people with complex, multiple or fluctuating incomes to determine their total or average income, to then nominate a rate of Day fine. The introduction of such a system would require substantial amendment to various legislations and government-regulations.

However, adopting a progressive monetary penalty system in Tasmania based around the principles of Day-fines is perhaps possible. An individual in receipt of an infringement notice could be able to nominate their income on a progressive scale where the monetary penalty increases in accordance with the nominated income.

A standard 100% monetary penalty could be set at average annual earnings, with the rate of penalty progressing at incremental levels in accordance with income.

In general terms, individuals with an annual income 50% of the Tasmanians average would pay 50% of the standard penalty; individuals with an income 150% of the Tasmanian average would pay 150% of the standard penalty.

Significant additional penalties would have to be factored into such a system to discourage false-declarations and there would need to be provision for spot-checks, similar to the process for checking income-tax returns. Any additional administration costs incurred by introducing such a monetary-penalties system are likely to be offset by reduced levels of defaults.

Such a proposal would not only mean that the penalty of monetary penalties would be far more equitable across all Tasmanians, but could lead to lower rates of unpaid infringement notices that are clogging up our court system.

Recommendation:

That the Tasmanian Social Policy Council endorses the following principles to be included into a draft TasCOSS policy position on income-based monetary penalties:

TasCOSS believes:

- The current monetary penalty system in Tasmania has an inequitable impact on low-income and disadvantaged Tasmanians, compared to the broader community.
- Monetary penalties can have a significant impact on the wellbeing of low-income earners and their dependents, which can lead to further hardship.
- It is unacceptable for any Tasmanian on a low-income to be imprisoned for outstanding infringement notices, when evidence exists to show that an individual does not have the resources to pay the penalty or if payment of the penalty.
- A progressive monetary penalty system based on an individual's income would be a far more equitable outcome for all Tasmanians.

TasCOSS will:

- Advocate to the Tasmanian Government further investigation into the viability as well as practicality of replacing the current flat-rate system for monetary penalties with a system that takes into account the inequitable impact monetary penalties can have on low-income earners.
- Continue to work with the Tasmanian Government on minimising the hardship experienced by low-income earners who are unable to pay monetary penalties.