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Ombudsman reviews impact of on-the-spot fines for minor offences

A review by the NSW Ombudsman, Mr Bruce Barbour, has supported a scheme that gives police the option to issue on-the-spot fines to adults suspected of minor criminal offences, but urges closer monitoring to reduce the scheme's adverse effects.

The Ombudsman's report, *Review of the impact of Criminal Infringement Notices on Aboriginal communities*, was tabled in Parliament yesterday by the Attorney General with the NSW Government's support in principle for 22 of the 25 recommendations made. The report examines the police use of Criminal Infringement Notices or 'CINs' to fine adults suspected of offensive conduct, offensive language, shoplifting and a limited range of other minor offences.

'CINs give police an additional, intermediate option between cautioning offenders on the one hand, and arresting and charging on the other,' Mr Barbour said. **'The scheme can provide a second chance to minor offenders in appropriate cases.'**

The Ombudsman's report identified some risks associated with using on-the-spot fines to divert minor offenders from the courts. Mr Barbour said: **'These include risks that at least some offenders are being fined in circumstances where previously they would have been warned or cautioned, and risks that homeless people, people with mental illnesses and other vulnerable groups can get caught up in fines enforcement processes.'**

Following a trial in 12 locations, the CINs scheme was extended state-wide on 1 November 2007. Parliament required the Ombudsman to review the expanded scheme, including how the provisions impact on Aboriginal and Torres Strait Islander communities.

The Ombudsman found that the number of CINs issued to Aboriginal people increased sharply after the scheme was extended state-wide, and that 45% of CINs issued to Aboriginal people were for offensive language. The review also found that Aboriginal CIN recipients were much more likely to experience difficulties in paying the fine within the time allowed and be referred for enforcement action by the State Debt Recovery Office.

The recommendations in the report include procedural measures aimed at improving the NSW Police Force's and SDRO's administration of the scheme. The Government will be setting up a working party made up of representatives of the Department of Justice and Attorney General, the NSW Police Force, the Office of State Revenue and Aboriginal Affairs NSW to further consider seven of the recommendations and the implementation of the others.

'CINs appear to be a good option for dealing with many one-off misdemeanours, but there is a need for stronger systems to ensure that the use of CINs is targeted and effective, and that any problems are quickly identified and addressed,' Mr Barbour said.

The report notes a number of important reforms to the fines enforcement system that are currently being implemented. The Government gave in principle support to a key recommendation by the Ombudsman that consideration be given to establishing a body with ongoing responsibility for monitoring the fair and effective use of fines and penalty notices in NSW and providing advice on opportunities for further improvement.

Copies of the Ombudsman's report are available at: www.ombo.nsw.gov.au.

Snapshot of findings and recommendations

The Ombudsman's review of the Criminal Infringement Notices (CINs) scheme focused on the impact of CINs issued in the 12 trial areas during the extended trial period (2002-2007), and CINs issued across NSW in the first year of the current scheme (1 November 2007 to 31 October 2008).

Issues and findings relating to police issuing of CINs

Police issued 8,681 CINs in the first year of the state-wide scheme, including 645 CINs (7.4% of all CINs) to Aboriginal suspects. In reviewing the data we found that:

- 70% of all CINs (and 83% of CINs issued to Aboriginal people) were for offensive conduct or offensive language. For Aboriginal suspects, offensive language was by far the most common offence, making up 45% of CINs issued to Aboriginal people.
- CINs are now the most common way for police to deal with offensive conduct and offensive language incidents. In the last three months of 2008, 57% of all offensive conduct or offensive language incidents resulted in a CIN; the remaining 43% led to a charge.
- Recent changes to police procedures for recording warnings or cautions issued to adults make it difficult to determine whether, and how often, adults are cautioned instead of being charged or issued a CIN. Until 2008, between 16% and 20% of all offensive conduct and offensive language incidents involving adults resulted in a recorded warning. Changes to the police COPS system in August 2008 effectively removed this option. Police advise that adults are still 'informally' cautioned where appropriate, but it is not clear how often this occurs.
- The data suggests there has been a significant net increase in minor matters resulting in some form of sanction. That is, although fewer offensive conduct and offensive language suspects were brought before the courts in 2008, the steep rise in additional CINs issued greatly outnumbered any decreases in charges.
- Although police policy requires CINs to be served in person at the time of, or soon after, the alleged offence, almost half (46%) of CINs were served by post, raising questions about how many suspects received the notice and what information police provided regarding options for dealing with the penalty notice and the consequences of failing to challenge or pay.

Issues and findings relating to the enforcement of CINs

The State Debt Recovery Office is responsible for collecting CIN payments and taking enforcement action against those who do not pay.

Our review of enforcement measures found that:

- 48% of all CIN recipients (and 89% of Aboriginal recipients) failed to pay their fine in the time allowed and were referred for enforcement.
- Even after enforcement action, almost a third of all CINs (and more than two-thirds of CINs issued to Aboriginal recipients) remained unpaid for some months, or in many cases years, after the offence.
- It is evident that the CINs scheme is increasing the number of Aboriginal people being caught up in the fines system, many of whom have accumulated significant fine debts. However, in many cases the CIN penalty and enforcement costs were the only debts owed.
- The imposition of RTA sanctions in response to unpaid CIN penalties appears to have increased the risk of secondary offending by Aboriginal people, particularly young recipients who make up the majority of CIN recipients.