

LAW REFORM COMMITTEE

Inquiry into warrant powers and procedures

Melbourne — 20 October 2004

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Mr G. Moase, Western Suburbs Legal Service.

The CHAIR — Welcome to the inquiry, Godfrey Moase from the Western Suburbs Legal Service. Our inquiry is subject to the Parliamentary Committees Act which means that the evidence you give today is subject to parliamentary privilege. In the ordinary course of events the evidence you give is made public after you have had an opportunity to correct it, but if there is anything you would like to say in camera then you are welcome to do so. You will get an opportunity to correct the transcript. We then put it on our web site and it is available for anyone to read. Of course we like to draw on any of the material you have given us for our conclusions and recommendations.

Mr MOASE — The Western Suburbs Legal Service is a community legal centre based in the inner west of Melbourne. We provide advice and casework to anyone who lives, works or studies in our region. Our work involves a substantial number of persons who find themselves with infringement notices which are generally dealt with under the PERIN system, principally as a result of public transport offences, traffic offences, or local council infringements. Very often people seek advice because of their desire to know what their options are when they receive a fine. Sometimes they may have many fines and are overwhelmed by the number and increasing debt generated by those fines as they pass through the many enforcement steps.

We support the written submission made by PILCH Homeless Persons' Legal Clinic. However, our work is of a slightly different nature and thus raises additional matters or another perspective that we think ought to be considered. Those concerns we raise principally relate to how the system works or does not work for people with mental illnesses, intellectual or other disabilities, or with language difficulties. These people make up a good proportion of our client base and clients who have real difficulties within the PERIN system will, without exception, have one or more of these factors operating in their case, and usually a low income to boot.

First and foremost, we submit that the PERIN system does not meet its own reason for being. It is not a simple process for managing offences in a fair and economic manner. The various steps and parties involved in an infringement notice which proceeds through to the warrant stage are complex, discriminatory in nature, and unnecessarily costly — and not just to the client. A quick glance at the PERIN information booklet created by Victoria Legal Aid will leave you with a view of how inscrutable the system is.

Nowhere is it made clear exactly what range of options are available to people at each stage of the enforcement system. For example, everyone knows that if they do not pay within the first 28 days they will get a courtesy letter with extra costs attached, but where can you find out what those costs will be? When deciding whether to risk challenging an infringement notice it is only fair that you know what will happen to you, but is there a consistent view amongst agencies about placing a hold on a payment until an objection is considered? Is there a consistent view about what grounds or explanations for challenging the notice are likely to be acceptable? That these things are not clear to every person who holds an infringement notice in their hands is unacceptable.

We also submit that in many cases some of the fines themselves are disproportionate to the seriousness of the offence. For example, for not paying a \$2.60 concession, zone 1, 2-hour fare on public transport a person can expect a fine of \$150, or even more if it a second or subsequent offence. Whilst it is true that often during blitzes on fare evasion many commuters are checked, we submit that this is not a true representation of who pays the majority of public transport fines.

The people who repeatedly come to the attention of inspectors or police officers on public transport are those people who are most likely to be checked out. These are basically people with a mental health issue, an intellectual disability, or perhaps a social disorder — the visible people. These types of persons are generally on social security benefits and without the disposable income of many other commuters, which means the fine is likely to have a profound impact on their day-to-day livelihood. Factor in a situation where a person is not acting wilfully but is under the influence of an illness or disability and what you have is a tax levied almost without exception on the poorest and most disabled members of our community.

Basically, a fine is a fine is a fine, unless it is a PERIN fine where it can start out as a fine and grow to be a civil debt of overwhelming proportions. Ironically, a system designed to keep costs low does the opposite. For example, if you are fined by the Magistrates' Court you get told how much the fine is and usually given a few months to pay it off.

If you cannot pay, you can talk about exceptions or trading it in to do community work. Most of us understand this. However, if you get a PERIN fine no-one asks you about your ability to pay or talks about paying the fine off until eventually the amount you owe has almost doubled and it is registered with the PERIN Court. Even then the PERIN registers might demand that you pay more than your income will allow, due to the desire to inflict a reasonable payoff period on you.

Surely this is ironic: we will not let you pay it off early and then we will charge you more so you need more time to pay it off; then we will say you have to pay more than you can afford because it takes too long to pay it off. And that is just the costs to the person charged with the offence. A system which fails to provide people with an early method of paying off fines inflicts on itself every cent of costs incurred beyond that point. Certainly, only a proportion of those costs can ever be recouped from the offender, and we would argue equitably that they should not be.

I will move on to some of our general recommendations: firstly, reform the system; implement a compulsory system for every complying agency to inform offenders of their options and the costs incurred by each option; secondly, agencies should be required to develop a consistent criterion for considering special circumstances, and publicise that criterion to give offenders an opportunity to decide whether to make a submission addressing those factors; thirdly, agencies should be required to develop an early-intervention strategy, or ensure that persons with an obvious financial, mental health, or other disability are given options to pay off fines which are not waived by instalments or community work-hours; fourthly, the management of PERIN fines should be consistent across every agency; fifthly, agencies should be required to make a case before increasing fines; this case should be considered, reviewed, approved, or refused by a supervising authority.

I will move onto specific case studies. Case study no. 1 concerns John. The major factor I want to point out with respect to John is the amount of time it took to work through the issue. In John's case his disabilities were obvious and it was more of a clear-cut case. The main point with John was how long it took to sort out such a clear-cut case. Case study no. 2, Angela, is more of a borderline case, but the main point I want to make relates to the amount of enforcement costs that add up to the total fine. They were more than 50 per cent of the original fines incurred. She had a debt of \$7500 or thereabouts from the original fines. Add to that another \$9000 for enforcement costs and that is a pretty heavy burden.

There is one last concern we have, and it relates to the McQuillen Report. I am sure you are familiar with the *Review of Arrangements for Authorised Officers Employed by Public Transport Operators* which came out of the last committee inquiry into the powers of entry, search and seizure, and the questioning by authorised persons. The Western Suburbs Legal Service has concerns with the McQuillen report insofar as its recommendations concerning public transport fine increases. To this end the McQuillen report itself is a good case study of a pressing problem in the infringement notices system; namely, the ad hoc nature of fine increases without reference to the overall infringement system. We have two major concerns. The first is the recommendations concerning the public transport fine increases, which appear to be outside the terms of reference of the report. According to its terms of reference the report was supposed to provide advice and recommendations in a number of areas in relation to the conduct of authorised officers. Despite this, the Department of Infrastructure has been relying on the report to justify an increase in public transport fines.

However, probably our most pressing concern with the report is it does not have sufficient analysis of the issue of increasing fines, and the issue itself is raised abruptly by the report. To quote an example, out of nowhere it states:

The issue of penalties and fines for offences also needs to be addressed in this context.

The context being the over-reliance on authorised officers for revenue protection. Only two arguments are given for an increase in fines in this report and none of the arguments against are considered. The first argument is confined to one sentence; I think I am being charitable in classifying that as an argument. It states:

Maximum penalties and fines have not increased since 1994, when most transport infringement notices were increased from \$50 to \$100.

The missing premise in this argument is that if a particular fine is not increased in 10 years, then it is time for that fine to go up again. This particular assumption is not examined at all, and no reference is made to any possible impact the increase in fines may have.

The second argument relies on a generalised statement as to the character of fare evaders. It states:

Given the relative cost of a ticket, the chances of being caught without one and the level of penalty if an offence is detected, fare evaders are financially in front by deciding not to purchase or validate a ticket.

Firstly, no numerical backing is provided for this rough calculation. Secondly, fare evaders are characterised as cynical operators who make a reasoned financial decision in order to save a few dollars. Thirdly, the argument could also be used to justify a decrease in the overall cost of public transport tickets, but this is not considered. On the basis of those two arguments the McQuillen report concluded that in order to disincentivise fare evaders, consideration should be given to increasing public transport infringement notices.

Our main concern is that no consideration is given to the identity of fare evaders, why they are evading fares and other modes of enforcement which could be used — for instance, a fine for fare evasion on a first offence now represents 72 per cent of the income of an over-18 living away from home on youth allowance and getting the maximum rent assistance and the maximum youth allowance rates. On the basis of a short comment buried in the middle of a report — that particular paragraph comes from page 23 of 44 — and outside its terms of reference, public transport fines have been increased across the board in the order of 50 per cent.

Just tying back to that overall system, I think this represents basically the ad hoc nature of fine increases in general without overall reference to the system of enforcement.

The CHAIR — Thank you very much for that. Perhaps we could start with the PERIN system. I take it from your comments that you do not think the enforcement review program, which is part of the PERIN system and is meant to deal with people with a mental illness, works particularly well. Would that be a fair comment?

Mr MOASE — I would say that would be a fair comment. Also, there is the special circumstances list in the Magistrates Court. It takes a lot of time to get up to that point. I do not think it is working at this point in time.

The CHAIR — We had put to us yesterday by the Victorian Mental Illness Awareness Council and the Mental Illness Fellowship Victoria that there should also be processes for dealing with people who may have an undiagnosed mental illness. In your case study headed ‘Angela’ you are referring to someone who obviously at various times is well but also has episodes of being ill and therefore not able to make the appropriate judgments about what she is doing and is incurring fines as a consequence. Do you have any suggestions for the committee as to how we might deal with people who have episodic mental illness, in the way in which it is described here, within the system? It is very difficult for law enforcement agencies at one point to say this person is well and can make those judgments and then all of a sudden they are unable to. How do we deal with that?

Mr MOASE — That is a tough issue. I think what we need is a more flexible program. One of the reasons Angela has not been able to get her fines waived at this point in time is she is

not seeking treatment for her conditions, and you have to have that. If we can open up the scope to a question of facts for the magistrate to consider, based on, say, an expert report whether that person in that time frame was acting under the influence of their disability. If we go to a better system where these people are channelled out earlier — then again I think it is dependent upon an expert assessment of whether that person was acting under the influence at that point in time. It is a tough issue, and there would be many lineball cases one way or the other. Allowing scope for that to be examined is the most important thing to be dealt with.

Mr DALLA-RIVA — I am slightly confused. I understand the issues and what you are saying — what is your solution? We know the system is a big web of organisations and everything else, are you advocating a central point for all the PERIN — I do not understand how you are trying to solve it. You spoke about the broader issue in transport, and there is that argument there. We are trying to work out recommendations. What are you proposing?

Mr MOASE — Our proposal would be for one particular body to have oversight of all the fines, whether they go up or down, and that we have a system where each particular offence is tied to a unit and that unit is consistent across the board. That unit is not a fixed dollar amount — the lowest base unit could be one working day for one particular person. That way you would have an offence that was tied to the seriousness for that person. If you are on benefits and you receive a public transport fine, that fine would be tied to one day of benefits.

Mr DALLA-RIVA — Western Australia has that. They initially started at \$50 as an equivalent to one working day, and then they realised they had better up it, so they could clear more people. I think the average working day dollar cost was around \$120.

The CHAIR — I think you are suggesting based on your income?

Mr MOASE — Yes.

The CHAIR — You are saying that if you are on a pension or benefit, your working day dollar is worth less than someone who is on \$50 000 a year?

Mr MOASE — As I pointed out, if you get a public transport fine and you are on a benefit, that is so much of your weekly income that generally you will not be able to pay it off straightaway, but there is no system for instalment orders, which means what happens is your fine will go up and all the enforcement costs will be added.

The CHAIR — One potential problem there is that the state does not have a comprehensive system for making income assessments in that way. It does insofar as people are issued with a commonwealth health care card of some description through Centrelink, but for all others we do not have the capacity to make that assessment. Maybe you have a system for people on benefits and for others, the difficulty is always those people who are at the margin of health care cards — who are nevertheless on a low income but do not qualify for one of the cards. That is one of the logistical problems I can see.

Thank you for your time and your submission. It is a most interesting submission, and it gives us another insight into some of the problems faced by people caught up in the web of the PERIN and public transport systems. Thank you.

Witness withdrew.