

'It's All About the Benjamins'¹: Infringement notices and young people in New South Wales

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Abstract

This article provides a brief analysis of the place, role and purpose of monetary penalties and of their theoretical underpinnings. Against this background critique of financial penalties, the article examines the six-fold growth in penalty infringement notices² issued to children and young people in NSW between 1998 and 2013. It outlines the disproportionate impact of monetary penalties on them and the increasing displacement of diversionary options, raising questions about the appropriateness of issuing infringement notices to children and young people. This article also addresses positive developments in relation to children and young people, including the introduction of Work and Development Orders (WDOs) in NSW.

Keywords

Infringement notices

Financial penalties

Children and young people

Juvenile justice

Diversionary options

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Compared to other criminal justice penalties, especially imprisonment, monetary penalties have attracted little attention and little criticism.³ However in recent years, articles in this journal have drawn attention to the way the expansion of infringement systems in Australia has led to a blurring of civil and criminal procedures, with adverse effects on 'already socially and economically marginalised' groups.⁴ The same authors have shown how infringement notices can feed into increasing imprisonment for fine default.⁵ The death of Ms Julieka Dhu, a 22-year-old Aboriginal woman, in police custody for unpaid fines in Hedland Health Campus in Western Australia in 2014 has drawn renewed attention to imprisonment for fine default, in particular for Indigenous women.⁶ In Victoria, community sector lawyers and others have campaigned for reforms to combat some of the damaging (and in some instances unintended) effects of infringement notices on particular marginalised groups such as people with mental illness or cognitive impairment.⁷ Other reports have highlighted adverse effects on Indigenous peoples,⁸ economically disadvantaged or unemployed people,⁹ homeless people,¹⁰ and children and young people.¹¹ There is a large body of evidence to show that the individuals who frequently come into contact with the criminal justice system often fit into one, if not many, of these groups.

At a theoretical level, Pat O'Malley has explored financial penalties as a form of 'monetized' or 'simulated' justice, a technology of freedom suited to a consumer society.¹² It is a form of governance aimed at groups (such as motorists, public transport users), or what O'Malley, following Deleuze, calls 'dividuals', rather than individuals; it is a form of 'simulated' governance that regulates 'flows and circulations' or 'traces'.¹³ Financial penalties have 'been designed ... to cause as little disturbance as possible to the circulation of valued bodies, utilities and things.'¹⁴ In O'Malley's account, it is a form of governance and 'justice' which for most people becomes just another cost, price or licence, 'empty of content' and largely 'stripped of moral meaning or any element of condemnation'.¹⁵ While O'Malley's work is extraordinarily rich and stimulating, it lacks an empirical interest in enforcement mechanisms and in their adverse consequences for the various marginalised groups mentioned above. It thus overlooks or obscures the damaging and punitive effects of

aspects of monetary penalties on specific groups who do not enjoy full access to, and the benefits of, the consumer society, their marginality and precariousness exacerbated at a time of increasing inequalities.¹⁶

A potted summary of financial penalties

The 'freedom' of the fine, at least in its automatic, penalty/infringement notice form, is a form of 'classical' freedom, deriving from classical utilitarian theory. In this model, free, equal and rational people ('men') entered into a social contract with the state to preserve the peace in order to avoid a war of 'all against all'. The classical conception of justice is described by Vold as

an exact scale of punishments for equal acts without reference to the nature of the individual involved and with no attention to the question of special circumstances under which the act came about.¹⁷

Penalties should be clearly laid down in advance and be strictly proportionate to the offence. In practice, it was difficult to ignore the differences between actors and their different backgrounds and focus only on equality of treatment for the same act. Consequently, a neo-classical revision took place, which still held that people were accountable for their actions, but recognised certain mitigating circumstances. Neo-classicism departed from the rigidity of a calculus of punishments in order to encompass not just the act, but also the means of an offender to pay a fine; in short, the inequality of circumstances of offenders. This tension between focusing only on the act – or including an examination of the offender's means to pay – persists, surfacing in operative European and UK schemes and periodic Australian proposals for 'day fines', whereby people are fined not a fixed amount but a proportion of their income or benefit (eg, x days), thus taking account of differing financial circumstances.¹⁸ Infringement notices, which by and large are fixed, inflexible and not pitched to the individual means or circumstances of an offender, tend to infringe the requirement of individualised justice and the principle of equal impact argued for by Andrew Ashworth¹⁹ At the enforcement stage, infringement notices also infringe the principle that sanctions should not be increased because of a person's inability to pay a fine.²⁰

Financial penalties, despite being by far the most utilised penalty, have generally attracted little attention, being seen largely as uncontroversial and non-punitive, an efficient and non-intrusive sanction. The fact that, unlike most other penalties, fines need not be paid by the offender, thus weakening arguments that they can serve as a deterrent, has gone largely unremarked. Where financial penalties have attracted attention is when their enforcement has resulted in imprisonment, and especially in deaths or serious injuries in custody.

The recent history of financial penalties has been one of massive expansion over the last 20 years, a multiplication brought about by: their application to a wider range of offences, including public order offences; their utilisation by a proliferation of agencies outside traditional criminal justice agencies;²¹ more sophisticated and in some cases automated systems of offence detection (eg, speed cameras); the downward classification of formerly indictable offences to be dealt with summarily; and increasing reliance by governments on their revenue-raising capacities. Their attractiveness to governments is that they 'permit mass violations to be processed at low economic and political cost.'²² Or, as then Victorian Attorney-General Robert Clark put it in 2011, infringements notices being extended to a wider range of offences had 'reduced the volume of cases in relation to ... offences going to hearing and ... has freed up resources and ... police time for other law enforcement activities...'.²³

In terms of process, financial penalties in their penalty notice/on-the-spot fine form largely bypass the scrutiny of the courts;²⁴ usually are set at higher (fixed) levels than would be awarded by a court, which can take means into account; involve a severely diminished form of due process, including an effective reversal of the onus of proof and lowered evidentiary and definitional thresholds; entail a significant enlargement of police powers and police power; and represent a form of 'technocratic'²⁵ or 'monetized'²⁶ justice.

In terms of enforcement, this has largely been handed over to non-criminal-justice agencies, thus introducing an emphasis on 'risk-based recovery' involving escalating administrative sanctions, such as driving licence disqualification, which turn the fines into debts; debts which in turn tend to generate forms of secondary punishment and the hidden punishment of vulnerable groups; and a markedly discriminatory effect on

the poor, unemployed, mentally ill or developmentally disabled, the homeless, Indigenous peoples and young people.²⁷

Rather than mount a general critique of monetary penalties, this more modest paper seeks to highlight the problems associated with the growth of penalty infringement notices in relation to one specific group, children and young people.²⁸ It examines data sourced from the NSW Bureau of Crime Statistics and Research (BOCSAR) for the UNSW Comparative Youth Penalty Project (CYPP) for the period 1998 to 2013.²⁹ These data raise serious questions about the capacity of children and young people to pay fines, their limited deterrent value, the disproportionate impact of monetary penalties on children and young people, and the way that infringement notices are increasingly used in lieu of alternative diversionary options available under youth justice legislation. While the data are from NSW, the issues and questions they raise are relevant to states and territories across Australia.

The increase in infringement notices

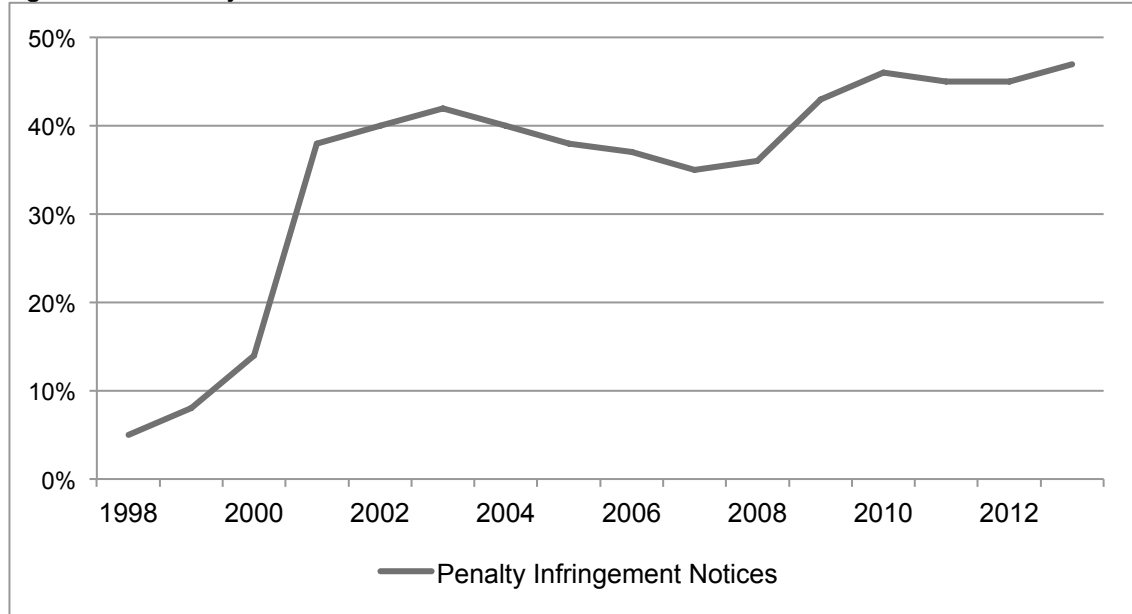
Penalty infringement notices – or ‘on-the-spot’ fines – have become the most frequent and direct point of contact with the criminal justice system for both children and adults. In NSW, there are over 7000 penalty notice offences covered in 110 different statutes, covering minor and low-level crimes.³⁰ Quilter and Hogg note that there are 23 penalty notices issued for every penalty imposed by a court in NSW; in Victoria, the ratio is even higher, at around 50:1.³¹ The types of minor offences covered by infringement notices vary across states and territories, but can include: offensive language and behaviour; failing to move on as directed by police; some alcohol-related offences; and various public transit offences.³² The minimum age at which a young person can be issued with an infringement notice varies across jurisdictions, for example, from 10 year-olds in NSW and Victoria, 14 year-olds in the Northern Territory, to 16 year-olds in South Australia.³³

In NSW, some penalty notice amounts differentiate between adults and children. For example, under the *Rail Safety (Offences) Regulation 2008* (NSW), a penalty of \$50 is imposed on children for fare evasion; for adults, the penalty is \$200. NSW State Debt Recovery enforcement costs also differ between adults and children. A \$65 enforcement cost is imposed for adults, but this is reduced to \$25 for children.

However, for the vast majority of penalty offences, there is no differentiation between children and adults. For example, the penalty notice amount for offensive language, offensive behaviour, or spitting on public transport or in a public area is \$400 and this is not reduced for those under the age of 18.³⁴ For penalty amounts that do differ for adults and children, fixed amounts for those under 18 do not take into consideration the child's employment status, ability to work or age.

The expansion and growth of the infringement notice system has been an issue of concern for a number of years, prompting numerous reports and inquiries.³⁵ Concern over the use of infringement notices as a sanction for children and young people is similarly not new.³⁶ However, there is little literature exploring the growth of infringement notices and their significant impact on this group. Analysis of the NSW data shows that over the 15-year period between 1998 and 2013, there was a six-fold increase in the rate of infringement notices issued to children by police, as shown in Figure 1. In 2013, almost half (47 per cent) of all young people who came into contact with police were dealt with by way of penalty infringement notice, compared with diversionary or court options. It is important to note that the data presented here only reflects police-issued infringement notices, and therefore does not capture the number of infringement notices issued by other public officials, such as council and transit officers.

Figure 1 Penalty infringement notice as percentage of total police proceedings against 10 to 17 year-olds, NSW, 1998 – 2013*



NSW BOCSAR Reference: Dg13/11525

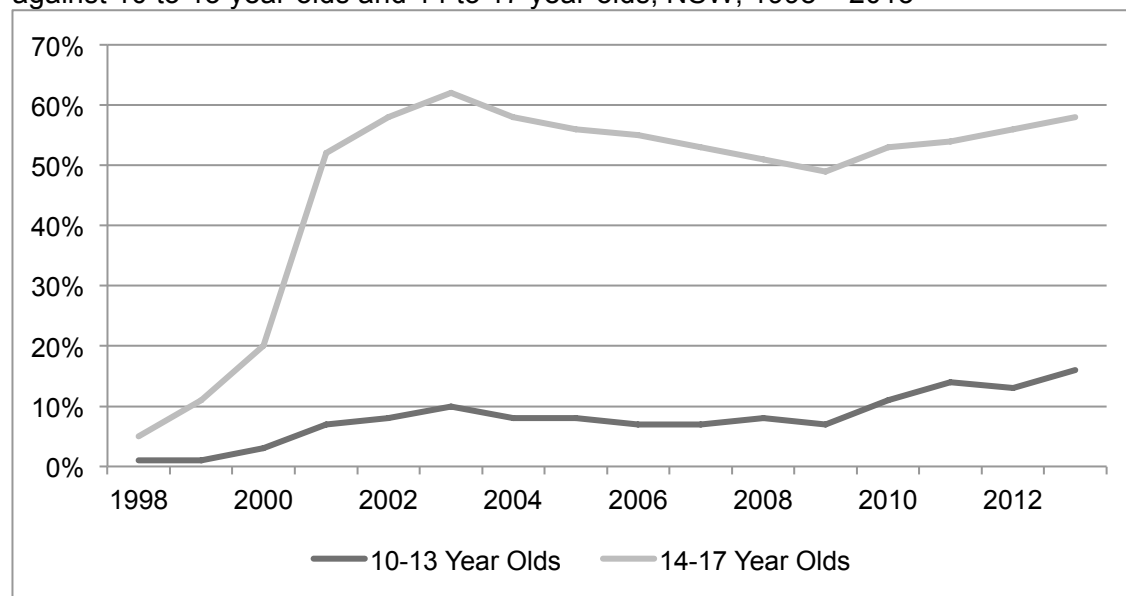
* 2013 is inclusive of 1 January – 30 June.

Jane Sanders, Principal Solicitor of the Shopfront Youth Legal Centre in NSW, has suggested that young people often receive multiple fines issued in relation to the one incident, for example, a young person may receive an infringement notice for fare evasion or travelling without a concession card and, in response to receiving the first fine, may be issued another for 'offensive language' for using the word 'fuck'.³⁷ Often the escalation of minor offences can lead to young people being issued with the 'trifecta' of offensive language, resist arrest, and assault police, with (court-imposed) fines reaching hundreds of dollars.³⁸ Infringements based on 'offensiveness' are often contested for their ill-defined elements, inconsistency in penalty amounts, and ability to disproportionately target young people.³⁹ Sanders has argued that fines are often issued for offensive behaviour in situations which would fail to meet legal definitions of 'offensiveness' in court.⁴⁰ Others have argued that 'offensiveness' should not be used as a basis for criminal liability at all.⁴¹

Specific concerns exist around penalty infringement notices issued to young children. The data collected by the CYPP shows that, over the 15-year period, there has been a significant increase in the use of infringement notices for children under the age of 14. From January 1998 to June 2013, almost 5000 penalty infringement notices were issued to children between the ages of 10 and 14 years. While this represents only a

small proportion of all infringement notices issued to children and young people, in each of these cases, an enforcement officer is required to judge whether the child is criminally responsible beyond reasonable doubt, in line with the presumption of *doli incapax*.⁴² There have been suggestions that enforcement officers are unlikely to be in a position to determine whether a child should be held criminally responsible.⁴³

Figure 2 Penalty infringement notice as percentage of total police proceedings against 10 to 13 year-olds and 14 to 17 year-olds, NSW, 1998 – 2013*



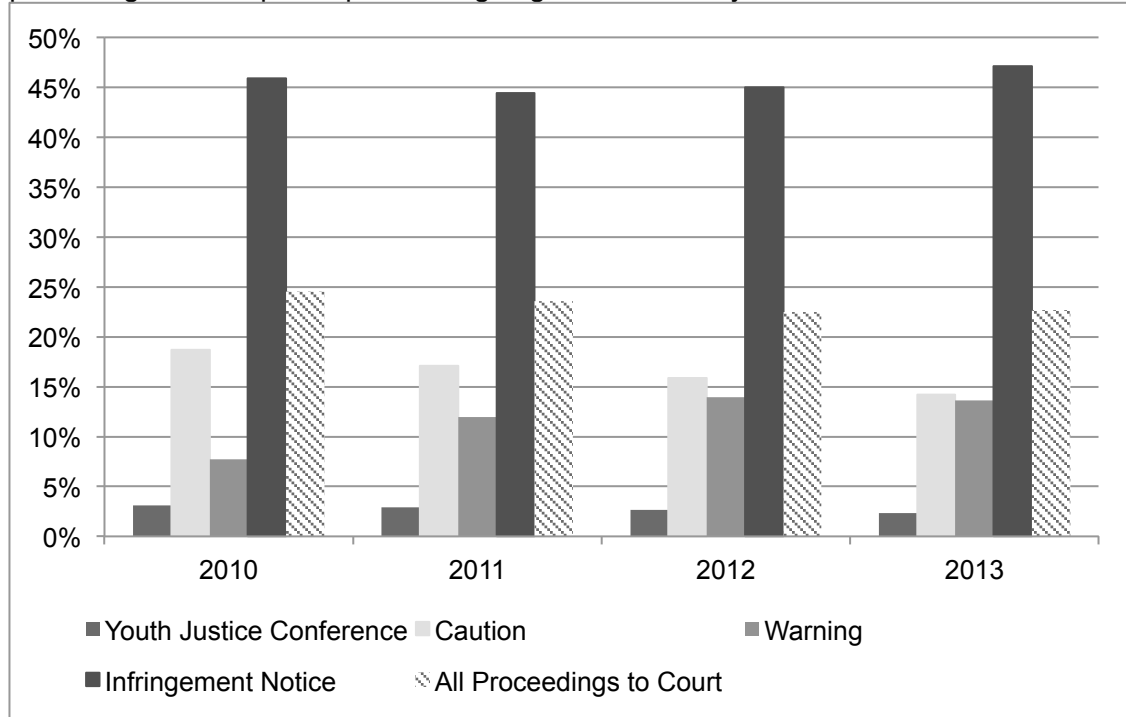
NSW BOCSAR Reference: Dg13/11525

* 2013 is inclusive of 1 January – 30 June.

While all children in NSW over the age of 10 years can be issued with infringement notices, the NSW Police Force Handbook provides some guidance to officers, stating: ‘Juveniles 10 to 18 normally receive a caution for the first offence’.⁴⁴

The NSW Law Reform Commission’s 2012 inquiry into penalty notices concluded that warnings and cautions should be the default response to minor offending by under-18s and that infringement notices should only be used for more serious offences.⁴⁵ Figure 3 shows penalty infringement notices are a common police response for children aged 10 to 17 years, and are used at a significantly higher rate than the diversionary options established under the *Young Offenders Act 1997* (NSW). This frequent use of infringement notices as punishment for young people undermines the diversionary philosophy of the *Young Offenders Act* and the intended rehabilitative and therapeutic emphasis of the youth justice system.⁴⁶

Figure 3 Infringement notices, diversionary options and court proceedings as percentage of total police proceedings against 10 to 17 year-olds, 2010 – 2013*.



NSW BOCSAR Reference: Dg13/11525

* Prior to 2010, warnings were not recorded consistently and are therefore not comparable.

A number of inquiries have referred to the potential for net-widening as a result of the proliferation of penalty infringement notices.⁴⁷ The ease with which they can be issued and their revenue-raising capacity makes them an attractive response for law enforcement to minor offences in situations where diversionary options may be more appropriate. The ability of infringement notices to produce revenue, even allowing for issuing and enforcement costs, makes them, as O'Malley comments, 'infinitely expandable'.⁴⁸ Fox's statement about the Victorian infringement notice system remains relevant and applicable to the NSW context today: 'not only is the net itself being widened, but its mesh is becoming finer',⁴⁹ as public policing intensifies and infringement notices become the default response to offences which previously may have been dealt with by warnings or cautions.

The disproportionate impact on young people and other vulnerable groups

As we noted in the Introduction, monetary penalties have a disproportionate impact on disadvantaged and vulnerable groups, including children, as well as people who

have mental or cognitive disabilities or are homeless, unemployed or on low incomes. The infringement notice system entrenches cycles of poverty and disadvantage for these groups, who are fined more often and also face significant challenges repaying fines, due to their life circumstances.⁵⁰ For example, in NSW, children are required to attend school full-time until they reach Year 10 or turn 17 years of age, whichever occurs first. As a result, young people have limited opportunities to engage in employment and, for those that are employed, the majority work casually and are on very low incomes. In many cases, young people may commit transport-related offences due to an inability to cover basic living expenses as well as the cost of public transport.

There are other reasons why young people are particularly vulnerable to receiving infringement notices. Limited alternatives for socialisation mean they frequently spend more time in public places and are easily identifiable by police. The nature of their offending is generally opportunistic and impulsive, and their susceptibility to peer pressure makes them more likely to commit minor offences or display behaviour viewed as 'antisocial'.⁵¹

Limited deterrent value

Infringement notices and fines are a unique criminal justice response in that they are the only sanction that can be borne by someone other than the person responsible for committing the offence.⁵² Infringement notices issued to children are often paid by parents or carers, which effectively limits their deterrent, educative or rehabilitative value, while also potentially placing an additional strain on families who are economically disadvantaged.⁵³ Research from the United Kingdom on the impact of infringement notices for children aged 10 to 15 years found that, in most cases, parents paid the fines for their children. The study found that this could have a negative impact on family life and could contribute to deterioration of the relationship between the young person and their parents, particularly if the family was economically disadvantaged.⁵⁴ A study by the New Zealand Ministry of Justice found that infringement notices failed to have a significant deterrent effect for young people, due to the opportunistic nature of their offending.⁵⁵ The same study found that

deterrence is limited for young people who have multiple unpaid notices, as the amounts are often seen as insurmountable.

Some have argued that children and young people should not be dealt with by monetary penalties at all. The Youth Justice Coalition and the Law Society of NSW have argued that, in recognition of their inherent vulnerability and limited earning capacity, penalty infringement notices should never be issued to children.⁵⁶ The NSW Law Reform Commission has recommended that children aged under 14 years be exempt from receiving penalty infringement notices.⁵⁷ This is in recognition of the fact that infringement notices are unlikely to have a deterrent or educative effect when the parents of the child will often pay for these fines.

Recent developments

While the rate at which young people are issued infringement notices continues to grow, there have been some positive developments to the infringement notice system. Prior to 2005, NSW State Debt Recovery was able to impose sanctions on a young person's driver's license for unpaid fines in relation to non-traffic offences.⁵⁸ Now, under s 65(3) of the *Fines Act 1996* (NSW), license sanctions can only be imposed for unpaid fines in relation to traffic offences by under 18s. Other developments allow the possibility of having license sanctions lifted after making six regular payments to State Debt Recovery on a time-to-pay arrangement. In addition, according to Sanders,⁵⁹ magistrates are more sympathetic when it comes to young people who are charged with driving whilst suspended if it is a fine-default suspension.

Other changes were introduced by the *Fines Further Amendment Act 2008* (NSW). The amendments included the option for police officers to officially caution instead of issuing an infringement notice for certain offences; more flexible payment options; the introduction of Work and Development Orders (WDOs); and the option for fines to be partially written off.⁶⁰ WDOs were originally introduced in NSW in 2009 for a two-year trial period and now operate permanently. They allow adults and children who fit certain criteria to reduce their outstanding debt with State Debt Recovery by working with an approved organisation or completing certain education courses or treatment. To be eligible for the program, the person must have a mental or cognitive

disability; be homeless; have a serious drug or alcohol addiction; or experience financial hardship. A child may be required to work up to 100 hours on a WDO, while an adult may work for up to 300 hours.⁶¹ During 2014-2015, NSW Juvenile Justice facilitated 485 WDOs, clearing a total debt of over \$302,961 owed by young people.⁶² In NSW, WDOs provide an alternative response to a system which otherwise entrenches disadvantage for some of the most vulnerable members of the community and provide 'a systemic response that engages people in activities that can assist them in acquiring new skills, work opportunities or medical treatment'.⁶³ WDO schemes have also been introduced in other jurisdictions, including Western Australia and, more recently, Queensland.⁶⁴ We note however the problems in the Western Australian WDO scheme, where WDOs are not served concurrently, whereas imprisonment for fine default is, making it more attractive for some. In Western Australia, Aboriginal women with childcare responsibilities in particular are 'cutting out' fines in prison, with a more than six fold increase in the number of women imprisoned for this reason between 2008 and 2013 from 33 to 223.⁶⁵

Conclusions

Penalty infringement notices have emerged as a favoured criminal justice response by police for dealing with young people. Yet, there is growing evidence in NSW that young people who receive infringement notices may be more appropriately dealt with by diversionary options available under the *Young Offenders Act*, such as cautions, warnings and youth justice conferences. These options actually divert the young person away from the criminal justice system, unlike infringement notices, which entrench cycles of debt and disadvantage and appear to have little rehabilitative or deterrent value.

While changes to the NSW infringement notice system and the introduction of WDOs are a step in the right direction towards a more equitable system, fundamental questions remain around the use of monetary fines against children: Should monetary penalties be used as a sanction for children at all? What are the rehabilitative and therapeutic purposes of such a system? Is the infringement notice scheme at odds with the diversionary and rehabilitative ethos of the juvenile justice system?

The number of infringement notices issued to children is alarming. Almost half of *all* proceedings against children by NSW police officers in 2013 were penalty infringement notices. Our data also show that infringement notices are increasingly issued to very young children who have no capacity to pay. If penalty infringement notices are to be given to children at all, there is a need to increase the age limit at which they can be issued. Raising the age at which a child is liable for a penalty infringement notice to, at least 16 years would create a more equitable system. This would mean children and young people subject to monetary penalties are at least of working age and allows for the inclusion of driving offences committed by young people. Recognising the vulnerability of children by setting the penalty amount for children at 25 per cent of the adult penalty rate, as recommended by the NSW Law Reform Commission, would additionally lead to a more equitable system.⁶⁶

While there are a range of issues arising from the recent rapid expansion in the use of penalty infringement notices, as we have touched on above, our concern here has been to highlight specific problems in their application to children and young people. There are both serious questions as to their appropriateness as a penalty for children at all and practical measures, such as those we have suggested, that can be taken by governments to ameliorate some of the adverse effects.

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¹ 'It's All About the Benjamins', Puff Daddy and The Family (1997). 'Benjamins' is slang for American \$100 notes, which feature the image of Benjamin Franklin, one of the Founding Fathers of the United States.

² An infringement notice or fine is a monetary penalty which is issued 'on the spot' by the police, local government authority or other prosecuting agency, for minor offences such as speeding, illegal parking, littering, fare evasion, offensive language, public intoxication and so on.

³ Anthony Bottoms, 'Some Neglected Features of Contemporary Penal Systems' in David Garland and Peter Young (eds), *The Power to Punish – Contemporary Penalty and Social Analysis* (Heinemann, 1983) 166; Julia Quilter and Russell Hogg, 'The Hidden Punitiveness of Fines' (Paper presented to the 4th Annual Criminal Law Workshop, Faculty of Law, UNSW, 15 February 2017).

⁴ Gaye Lansdell et al, 'Infringement Systems in Australia: A Precarious Blurring of Civil and Criminal Sanctions?' (2012) 37(1) *Alternative Law Journal* 41.

⁵ Gaye Lansdell, et al, 'Exposing the injustice of imprisonment for fine default': The Taha case and achieving social justice' (2013) 38(3) *Alternative Law Journal* 160; for an earlier campaign around imprisonment for fine default in NSW after the bashing of a young fine defaulter, Jamie Partlic, in Long Bay gaol, see David Brown, 'Imprisonment for Fine Default Revisited' (1987) 12 *Legal Service Bulletin* 8.

⁶ Amanda Porter, 'The price of law and order politics: Re-examining the *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012* (WA)' (2015) 8(16) *Indigenous Law Bulletin*, 28; Amanda Porter, 'Reflections on the coronial inquest of Ms Dhu' (2016) 25(3) *Human Rights Defender*, 8.

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¹¹ Jane Sanders, ‘Fines and Young People (or, all you need to know about the SDRO)’ (2004); Jane Sanders, *Fines and Young People – the Punishment/Poverty Cycle* (2005); Rob White, ‘Indigenous Young Australians, Criminal Justice and Offensive Language’ (2002) 5(1) *Journal of Youth Studies*, 21–34.

¹² Pat O’Malley, ‘Fines, Risks and Damages: Money Sanctions and Justice in Control Societies’ (2009) 21(3) *Current Issues in Criminal Justice*, 365–381; Pat O’Malley, *The Currency of Justice: Fines and Damages in Consumer Societies* (Oxford: Routledge-Cavendish, 2009); Pat O’Malley, ‘Theorizing Fines’ (2009) 11(1) *Punishment and Society*, 67–83; Pat O’Malley, ‘Simulated Justice: Risk, money and telemetric policing’ (2010) *British Journal of Criminology* 50, 795–807.

¹³ O’Malley, ‘Simulated Justice’, above n 12, 796.

¹⁴ *Ibid* 796.

¹⁵ Quilter and Hogg, above n 3, 7.

¹⁶ *Ibid* 8–9.

¹⁷ George Vold, *Theoretical Criminology*, (Oxford University Press, 1958) 23; cited in Ian Taylor, Paul Walton and Jock Young, *The New Criminology* (Routledge and Kegan Paul, 1973) 5.

¹⁸ See Jesper Lindqvist and Cameron Amos, ‘Finland’s fine example’ (2016) The Australia Institute. For a discussion of day fines see Australian Law Reform Commission, *Same Crime Same Time: Sentencing of Federal Offenders*, Report 103, (2006) 220.

¹⁹ Andrew Ashworth, *Sentencing and Criminal Justice*, (Cambridge University Press, 5th ed, 2010) 100.

²⁰ *Ibid*, 252; *Myers* [1980] Crim LR 191, *Ball* (1981) 3 Cr App R (S) 283.

²¹ 120 agencies in Victoria: see *Lansdell et al*, above n 5, 161.

²² *Quilter and Hogg*, above n 3, 5.

²³ Victoria, *Parliamentary Debates*, House of Assembly, 5 May 2011, 72 (Robert Clark, Attorney-General), cited in *Lansdell et al*, above n 4, 43.

²⁴ NSW Law Reform Commission, NSW Ombudsman, above n 8.

²⁵ David Brown et al, *Criminal Laws* (Federation Press, 6th ed, 2015) 352; Justin Pen, ‘The rise and rise of technocratic justice’ (2015) 40(2) *Alternative Law Journal* 132.

²⁶ O’Malley, *The Currency of Justice*, above n 12.

²⁷ *Clarke et al*, above n 8; NSW Ombudsman, NSW Sentencing Council, NSW Law Reform Commission, above n 9; Homeless Persons Legal Service, above n 10.

²⁸ We use both the terms ‘children’ and ‘young people’ interchangeably to refer to all persons under the age of 18 years.

²⁹ Data sourced from NSW Bureau of Crime Statistics and Research (reference Dg13/11525).

³⁰ NSW Law Reform Commission, above n 9.

³¹ *Quilter and Hogg*, above n 3, 3.

³² For example, the *Summary Offence Act 1988* (NSW) ss 4, 4A, 9 include provisions regarding offensive conduct, offensive language and move on directions; *Passenger Transport Regulation* (NSW), ss 50-51 include provisions for offensive behaviour and language and smoking in or on public transport.

³³ Chris Cunneen, ‘Youth Justice in Australia’ in Michael Tonry (ed), *Criminology and Criminal Justice: Oxford Handbooks Online* (Oxford University Press, 2014) 6. In all Australian jurisdictions, the age of criminal responsibility is 10 years, and therefore children under this age cannot be subject to an infringement notice.

³⁴ *Passenger Transport Regulation 2007* (NSW), s 50.

³⁵ NSW Ombudsman, NSW Sentencing Council, NSW Law Reform Commission, above n 9; Clarke et al, above n 8; Richard Fox, Australian Institute of Criminology, *Criminal Justice On-the-Spot: Infringement Penalties in Victoria* (1995); Richard Fox, Australian Institute of Criminology, *Infringement Notices: Time for Reform?* (1995); NSW Law Reform Commission, *Sentencing*, Report No 79 (1996).

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³⁷ Ibid; Jane Sanders, Shopfront Youth Legal Centre, Submission to National Youth Commission Inquiry into Youth Homelessness – June 2007, (2007).

³⁸ Jenny Bargaen, ‘Diverting ATSI Young Offenders from Court and Custody in New South Wales: Practices, Perspectives and Possibilities under the *Young Offenders Act 1997*’ (Paper presented at the Best Practice Interventions in Corrections for Indigenous People Conference convened by the Australian Institute of Criminology, Sydney, 8–9 October 2001); NSW Law Reform Commission, *Young Offenders* Report 104 (2005).

³⁹ White, above n 11. Luke McNamara and Julia Quilter, ‘Turning the Spotlight on “Offensiveness” as a Basis for Criminal Liability’ (2014) 39(1) *Alternative Law Journal*, 36; Elyse Methven, ‘A Very Expensive Lesson: Counting the costs of penalty notices for anti-social behaviour’ (2014) 26(2) *Current Issues in Criminal Justice*, 249.

⁴⁰ Sanders, ‘Fines and Young People (or, all you need to know about the SDRO)’, above n 11.

⁴¹ White, above n 11; McNamara and Quilter, above n 3, 8.

⁴² The principle of *doli incapax*, that a child under 14 years lacks the capacity to be criminally responsible for his or her acts, was established in English common law by the mid-17th century; see *C (A Minor) v DPP* [1996] AC 1. In 1998, the UK Parliament abolished the presumption of *doli incapax*. The principle has been adopted in Australia and is established in NSW common law; see *RP v The Queen* [2016] HCA 53.

⁴³ NSW Law Reform Commission, above n 9.

⁴⁴ NSW Police Force, *NSW Police Force Handbook* (5 January 2017) http://www.police.nsw.gov.au/__data/assets/pdf_file/0009/197469/NSW_Police_Handbook.pdf 499.

⁴⁵ NSW Law Reform Commission, above n 9.

⁴⁶ Sanders, ‘Fines and Young People (or, all you need to know about the SDRO)’, above n 11.

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⁴⁸ O’Malley, *The Currency of Justice*, above n 12.

⁴⁹ Fox, *Criminal Justice On-the-Spot*, above n 35, 289.

⁵⁰ Clarke et al, NSW Ombudsman, above n 8; NSW Ombudsman, above n 9.

⁵¹ Kelly Richards, ‘What makes juvenile offenders different from adult offenders?’ (2011) No 409, *Trends and Issues in Crime and Criminal Justice* 1.

⁵² For a full discussion see O’Malley, *The Currency of Justice*, above n 12.

⁵³ NSW Law Reform Commission, above n 9.

⁵⁴ Juliana Amadi, Ministry of Justice, *Piloting Penalty Notices for Disorder on 10- to 15-year-olds: Results from a one year pilot* (2008) 25.

⁵⁵ New Zealand Ministry of Justice, *Young People and Infringement Fines: A Qualitative Study* (2005).

⁵⁶ Law Society of NSW, Submission to NSW Law Reform Commission, *Penalty Notices* (2010); NSW Law Reform Commission, *Penalty Notices*, Consultation Paper 10, (2010).

⁵⁷ NSW Law Reform Commission, above n 9.

⁵⁸ These changes were introduced under the *Fines Amendment Act 2004* which came into effect on 1 January 2005.

⁵⁹ Sanders, ‘Fines and Young People (or, all you need to know about the SDRO)’, above n 11.

⁶⁰ Clarke et al, above n 8.

⁶¹ NSW Law Reform Commission, above n 9.

⁶² NSW Juvenile Justice, *Year in Review* (2015).

⁶³ Ed Santow, ‘The NSW Work and Development Scheme: A Therapeutic Response to an Infringement System that Oppresses People Experiencing Homelessness’ (2014) 27(9) *Parity* 51.

⁶⁴ Work and Development Orders were introduced in Queensland under the *State Penalties and Enforcement Bill 2017*. See Curtis Pitt, Queensland Government, *Law changes give greater flexibility to SPER to recoup debts* (2017).

⁶⁵ Quilter and Hogg, above n 3, 14.

⁶⁶ NSW Law Reform Commission, above n 9.