



11 October 2011

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Fines Collection and Enforcement Consultation  
c/- Legislation and Legal Policy Section  
Attorney-General's Department  
DX 336  
ADELAIDE SA

and via email: [LLPSubmissions@adg.sa.gov.au](mailto:LLPSubmissions@adg.sa.gov.au)

Dear Sir/Madam

### **Discussion Paper – Improving Fines Collection and Enforcement**

I refer to your letter of 19 September 2011 from the Attorney-General in which he kindly invited the Society consider the above Discussion Paper. The matter has been considered by the Society's Criminal Law Committee and Civil Litigation Committee. Accordingly, we provide the following comments, which are aligned with the Key Findings and Questions put forward in the Discussion Paper.

The Society agrees that there is a need to improve the collection process of fines that have been validly and appropriate imposed.

The creation of the State Debt Recovery Agency is proposed to consolidate these activities in one body rather than the functions being performed by a number of bodies. There is no information in the Discussion Paper as to the proposed savings by creating another government body, however we acknowledge that a single body whose core business is the collection of such fines may assist in developing expertise and streamlining the recovery process.

We suggest that an amnesty campaign would assist those who may have genuine financial hardship.

We note a reference on page 4 of the Discussion Paper to an increase in the number and size of fines resulting from the increased use of cameras. This statement is of concern as it suggests that the use of cameras is a revenue raising exercise rather than a mechanism to improve road safety and regulating driver behaviour.

**Question 1: Do you support the general approach to improving the fines collection and enforcement system proposed by the Fines Enforcement Working Party?**

Yes.

**Question 2: Do you wish to comment on any of the specific proposals?**

We provide the following comments

- *Paragraph 3.2*  
The reference in paragraph 3.2 in the Key Findings to streamlining and relaxing the proof of hardship is supported if it is ensured that each individual's circumstances are given appropriate weight and consideration.
- *Paragraph 3.3*  
We support the initiative in relation to online payment options. However this is likely to be of most benefit to those who already have the means to pay, i.e. those who do not have the means to pay in any event will not gain much advantage from such technology.
- *Paragraph 3.5*  
We support the proposal that the imposition of additional charges be staggered. This measure is likely to provide some relief to those who may have difficulty meeting their liability.
- *Paragraph 3.9*  
There is reference in the Foreword and paragraph 3.9 of the Key Findings to the possibility of unpaid work to pay off such debts. Mention is made in the Foreword of those with mental illness, intellectual disability or cognitive impairment. The Society would be concerned that such debts had been imposed on those who may not have had legal capacity and have fully understood their rights in the first instance. We consider that there will need to be clear policy guidelines in relation to any such work programme, particularly given the real possibility of the vulnerability of some debtors.
- *Paragraph 3.11*  
We oppose this proposal. It would unjustly impose a burden on someone who may not have been responsible for the debt. Therefore the registered owner to retain the ability to defend the claim by proving they were not driving.
- *Paragraph 4.1*  
Whilst it is worthwhile to consider ways in which to minimise the opportunities of defaulters to avoid payment this should not be done at the expense of legal safeguards and due process.
- *Paragraph 4.2*  
In our view if this proposal is implemented it should come with safeguards to avoid people experiencing undue hardship.
- *Paragraph 4.4*  
We also question whether the proposal that large or repeat overdue debtors to provide a valid credit card or direct debit details at the time of registering their car or renewing their driver's licence is aimed at ensuring that people do not deliberately provide invalid card or payment details, or to provide the ability to deduct automatic payments.

We oppose any proposal for the State to deduct payments without the consent of the card / account holder. Quite apart from the privacy concerns, this would significantly interfere with the citizen's private matters. Significantly, it would improperly affect the relationship between the financial institution and the client and would expose the financial institution (an innocent party)

to greater risk. In both instances, the client should still be able to maintain control over his/her relationship with the financial institution and object to the transaction.

We question whether the proposal may have the unintended consequence of discouraging owners to register their vehicles at all and therefore not pay CTP premiums.

- *Paragraphs 4.5, 4.7, 4.8 and 5.2*  
We consider that the desire to efficiently collect fine revenue should not result in a material reduction in an individual's right to privacy.
- *Paragraph 4.10*  
We oppose this proposal. As with paragraph 3.11, we believe it would be plainly wrong and unjust for the State to shift the burden of its debt to such offenders. We are particularly concerned that it does so in respect of a strict liability offence which appears to be unfair in respect of a driver who has reason to believe the car is registered but is not able to independently check by viewing the now defunct registration label.
- *Paragraph 4.11*  
We oppose this proposal, for all the reasons why imprisonment for fine defaulters was not permitted.
- *Paragraph 7.2*  
This proposal would generally benefit those who already have the means to pay and is unlikely to assist in the recovery of fines from recalcitrant debtors.
- *Paragraph 7.4*  
We would not expect that a State imposed debt would be collected as part of the Commonwealth's tax system.
- *Paragraph 7.5*  
We express some concern that the implementation of Key Performance Indicators for debt recovery may drive unacceptable behaviour in the debt recovery process.

**Question 3: Do you consider these measures will improve fines collection in South Australia?**

In our view some of the proposals have merit whilst others are of concern (as set out above).

I trust these comments are of assistance. Please do not hesitate to contact me, should you wish to discuss any aspect of this response.

Yours sincerely



Ralph Bönig  
**PRESIDENT**