



**Redfern
Legal
Centre**

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 260

Sent via email: seniorclerk.committees.sen@aph.gov.au

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Dear Committee Secretary

COVID-19 Royal Commission

Thank you for the opportunity to make a submission to this important Royal Commission. Our submission will focus on:

- rapidly changing public health orders
- issuing of fines
- children and the pandemic
- policing and the pandemic

Enclosed is a submission prepared by Redfern Legal Centre. We would be happy to provide any further information or comment that might be useful to your Inquiry.

Yours faithfully,

Camilla Pandolfini
Chief Executive Officer
Redfern Legal Centre

1. Introduction

Redfern Legal Centre (**RLC**) is a non-profit community legal centre that provides access to justice. Established in 1977, RLC was the first community legal centre in NSW and the second in Australia. We provide free legal advice, legal services and education to people experiencing disadvantage in our local area and statewide. We work to create positive change through policy and law reform work to address inequalities that cause disadvantages.

We provide effective and integrated free legal services that are client-focused, collaborative, non-discriminatory and responsive to changing community needs – to our local community as well as state-wide. Our specialist legal services focus on tenancy, credit, debt and consumer law, financial abuse, employment law, international students, First Nations justice, and police accountability, and we provide outreach services including through our health justice partnership.

During the COVID-19 lockdown, RLC was inundated with people contacting our service seeking legal advice about COVID fines and the public health orders. The demand for legal advice on our small legal centre was overwhelming and we struggled to provide timely information, advice and assistance to people seeking to understand the new and changing laws.

Over the lockdown period, RLC assisted hundreds of clients submit fine reviews, seek fine write-offs and Work and Development Orders, and challenge fines in court. Our submission to the COVID-19 Response Inquiry has been informed by the significant volume of legal assistance RLC provided during the COVID-19 lockdown.

1. Key areas of concern

Rapidly changing orders

In New South Wales between 15 March 2020 and 31 January 2022, 266 principal and amending public health orders were issued, equating to a change in the law every 2.5 days on average over that period.¹ Each public health order contained numerous directions which affected people in NSW in a vast number of ways.

Through our casework, we found the rapid changes to the public health orders made it next to impossible for the public and police to maintain an understanding of the public health laws, resulting in many people being fined incorrectly, along with penalty notices issued that failed to meet the requirements under s.20 of the *Fines Act 1996*.²

Of significant note, for a considerable period of the lockdown, public health orders were only published in English, which left many in the community vulnerable both in terms of their health and their ability to comply with the law.

Issuing of crippling fines

The creation and implementation of on-the-stop fines for non-compliance with the rapidly changing public health directions was largely chaotic, unfair, and discriminatory.

Historically, on-the-spot fines are for strict liability offences, where the elements of the offence are simple and unchanging, and the penalty amount is low. Yet when it came to COVID fines the reverse was true. The

¹ NSW Ombudsman, *The COVID Pandemic*, Second Report, 2 September 2022.

² *Beame; Els v Commissioner of Police & Ors* [2023] NSWSC 347.

elements of the offence were complex, what constituted “reasonable excuse” kept changing and was not exhaustive and the fine amounts were high (\$1,000, \$3,000, and \$5,000).

From March 2020 to September 2022, financial penalties of more than \$56 million were imposed on NSW residents by NSW Police. COVID fines were notably higher than fines for existing criminal offences and people were effectively criminalised for behaviours that would never previously have brought them into contact with the police.

Small towns with high First Nations populations and western Sydney suburbs that are home to the most socioeconomically disadvantaged residents in the city bore the brunt of COVID fines. Statistics obtained by RLC under freedom of information laws from NSW police show that Walgett, Brewarrina and Wilcannia had the most fines issued per capita during the pandemic.³

The Guardian newspaper conducted an analysis of the statistics obtained by RLC and found:

- Areas with greater socioeconomic disadvantage had higher rates of fines per 1,000 people on average.
- Most advantaged suburbs had a rate three times less than the most disadvantaged suburbs.
- Only two suburbs in the state were hit with more than \$1m in fines between July and October last year: Liverpool and Mount Druitt in Sydney’s west. Residents in Blacktown were hit with almost \$730,000 in fines.
- The figures are much larger compared with many wealthier eastern and inner west suburbs, such as Bondi, which was hit with \$83,900 in fines in the same period, or Rozelle, which was hit with just \$43,200.
- The suburbs are also home to a high percentage of people from low socioeconomic backgrounds, with the median weekly income in Blacktown \$633 according to the last census⁴.

The NSW Bureau of Crime Statistics and Research (**BOCSAR**) published statistics showing that each of the locations outside of Sydney that experienced high rates of COVID-19 enforcement action were places with a significant proportion of Aboriginal and Torres Strait Islander residents.⁵

Similar statistics were also found regarding the issuing of fines in Victoria. In Victoria, a parliamentary inquiry found people in lower socioeconomic areas were twice as likely to be as those in higher socioeconomic areas.⁶

Children and the pandemic

Data obtained by RLC via access to information laws show that between 1 July 2021 and 4 June 2022, nearly 4,000 COVID-19 fines totalling just over \$2.1 million dollars were issued to children aged 13-17 years, the majority of which ranged from \$1,000 up to \$5,000 each.⁷

³ The Guardian, 10 Feb 2022, Mostafa Rachwani and Nick Evershed, ‘Incredible imbalance’: NSW Covid fines during Delta higher in disadvantaged suburbs’: <https://www.theguardian.com/australia-news/datablog/2022/feb/10/incredible-imbalance-nsw-covid-fines-during-delta-higher-in-disadvantaged-suburbs>

⁴ Ibid.

⁵ NSW Bureau of Crime Statistics and Research (BOCSAR), ‘NSW Recorded Crime Statistics 17 Mar 2020 to 31 Dec 2021: Number of persons of interest (POIs) proceeded against by the NSW Police for a COVID-19 related breach of the Public Health Act 2010’ (2022) https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/COVID.aspx

⁶ Sentas, Vicki, Webber, Leanne, Boon-Kuo, Louise, 30 July 2021, ‘Opinion: COVID has changed policing-but now policing needs to change to respond better to COVID’, UNSW Newsroom: <https://newsroom.unsw.edu.au/news/social-affairs/covid-has-changed-policing-%E2%80%94-now-policing-needs-change-respond-better-covid>.

⁷ Redfern Legal Centre, GIPA, NSW police, COVID fines by age and law code.

RLC is particularly concerned with the way the current fine system in New South Wales treats children and adults the same, an issue which the COVID fines regime brought into sharp focus. Generally speaking, children do not have the capacity to pay fines issued to them. Many children study full-time and if they are employed, their employment is usually casual, for a low number of hours and on a low wage. Children are unlikely to be aware of the fine review system or how to obtain advice about their fine.

We believe the NSW fines system should be tailored to the financial and social standing of children and young people in our society. We consider it is in the public interest to reduce the number of children having contact with the fines system.

Dr Noam Peleg, senior lecturer at the University of New South Wales's Faculty of Law & Justice, considers that the NSW government may be in breach of Australia's obligations under international law as a signatory to the United Nations Convention on the Rights of a Child by requiring children as young as 10 to work off COVID fines. Dr Peleg refers to Article 32 of the UN Convention on the Rights of a Child, which states: "governments should protect children from work that is dangerous or that might harm their health or education." Dr Peleg is also of the view that the issuing of COVID fines to children is "a violation of the Convention on the Rights of a Child" and "working orders directed at children are a second, consequential, violation."⁸

The disproportionate distribution of fines to First Nations communities, and communities with high proportions of ethnic minorities, could be a "clear violation of the core guiding principles of the duty to take a child's best interests into account, and not to discriminate between children."⁹

Policing and the pandemic

RLC is concerned about the heavy reliance on policing during the pandemic and the impact this particularly had on First Nations people, people with a mental illness and/or intellectual condition and those living in the lower-socio economic suburbs of Sydney.

Through our COVID fines legal advice casework we became aware that many of our clients were having regular contact with police because they were living in vulnerable circumstances and/or in an area with a high police presence. For example, we had a client who was 16 years old and had a diagnosed intellectual disability, whose disability was known by police. On three separate occasions, NSW police issued this young man with COVID fines of \$1,000 each. Police issued our client with the fines when he was only a few metres from his home and by himself.

In July 2021, the then Premier of New South Wales, Gladys Berejiklian, announced with the NSW Commissioner of Police, Mike Fuller, that there would be a police "crackdown" on areas in Sydney's south-west and 100 extra officers were to be deployed to these areas. ¹⁰

The three Local Government Areas where police were deployed consisted of some of the most diverse regions in Sydney, with the 2016 census suggesting 65.9% of residents in Canterbury-Bankstown and over 75% of people in Fairfield spoke a language other than English at home. Just over 78% of Fairfield residents and 65.7% of people from Canterbury-Bankstown had both parents born overseas.¹¹

⁸ Zwartz, Henry, 04 August 2022, 'NSW COVID fines on kids could breach international law', University of New South Wales.

⁹ Ibid at 7.

¹⁰ Rachwani, Mostafa, 9 July 2021, 'NSW police crackdown in south-west Sydney results in eight fines for Covid rule breaches', The Guardian.

¹¹ Rachwani, Mostafa and Zhour Naaman, 8 July 2021, 'Western Sydney residents feel they are being 'scapegoated' as police pledge Covid crackdown', The Guardian.

In addition to the police presence, The Guardian newspaper analysed the average number of COVID-19 fines per 1,000 people for postcodes grouped by index of relative socio-economic advantage and disadvantage (IRSAD) quintiles. It found that areas with greater socioeconomic disadvantage had higher rates of fines per 1,000 people on average. It also found that the most advantaged suburbs had a rate of COVID-19 fines three times less than the most disadvantaged suburbs.

The impact of COVID-19 fines on these communities, and on children, was disproportionate, unreasonable, unjust and oppressive. Most concerning, the figures set out above demonstrate that the approach was discriminatory in effect, in that certain areas with higher numbers of First Nations people and more severe socio-economic disadvantage had a higher rate of fines issued. This meant that the NSW Police Force approach to COVID-19 enforcement entrenched the already considerable socioeconomic disadvantage experienced by vulnerable members of the community. We would welcome the Law Enforcement Conduct Commission investigating and examining the NSW Police Force explanation for why these areas had the highest rates of penalty notices being issued.

The federal government could and should have held and facilitated high-level discussions about state and territory policing during the pandemic via the Australasian Police Ministers' Council (APMC). The APMC could have been a forum to discuss how police could support a public health and community informed pandemic strategy, instead of implementing a policing approach that was opaque and discriminatory.

2. Addressing issues of concern

Deliberating the above key concerns, when considering the mechanisms to better target future responses to the needs of populations such as children, First Nations, and those from lower socio-economic backgrounds, RLC recommends that in the event of another pandemic or similar crisis:

1. Fines should not be used as the primary tool of enforcement as they tend to be applied discriminatorily against First Nations and socioeconomically disadvantaged people. If fine offences are created, the amounts of the fines should be limited to a reasonable amount, police should issue cautions for less serious breaches and children should not be fined.
2. Relevant laws should balance the need to respond to changing health or other requirements with the need for simplicity and consistency over time, so that people have a reasonable opportunity to understand them.
1. Governments should provide clear and accessible information about any new laws, including in a range of community languages, and invest in community engagement with diverse groups to promote compliance.
2. The Federal Government should review and evaluate the impact and role policing had on children, First Nations people, people with a mental illness and/or intellectual disability and those from lower socio-economic backgrounds. The review should learn from the past and develop best practice principles for policing during a public health crisis, including mechanisms to avoid discrimination and approaches to people experiencing vulnerability.