
A Joint Project of the National Environmental Law Association (Australia) and the Resource Management Law Association (New Zealand)

A multidisciplinary approach to improve environmental laws and policies across Australia and New Zealand

The Penalty Infringement Notice (PIN) Research Project: Discussion Paper Stage

The first Forum on the PIN Research Project was held in the boardroom of Clayton Utz, Lawyers, Sydney, on 21 November 2005 thanks to the generosity of Clayton Utz.

Matthew Baird presented an introduction to the PIN Research Project followed by the Forum (a dialogue facilitated by John Haydon). We now have some very interesting feedback for incorporation into the PIN Discussion Paper.

Once released and uploaded on the NELA web site the opportunity for NELA members to comment will be available up to the end of March 2006. The proposal then is to produce a PIN Report with recommendations for harmonisation across Australia and New Zealand.

The harmonisation position paper (NELA 2004) says:

The concept for the progressive development of environmental law is to promote inter-governmental harmonisation of environmental law. NELA is committed to a strategy to promote harmonisation across the nine jurisdictions that make Australian environmental law. Such national harmonisation is desirable, not simply to level the environmental playing field, but to lift the level of play by highlighting State best practice. This approach has supported dramatic advances in environmental law in the European Union, for example.

It has been attempted in Australia in areas other than environment, for example, through the national Criminal Code. Closer to environmental issues, the Australian Building Codes Board is a joint venture of all levels of government in Australia. The Board's mission is to provide for efficiency and cost effectiveness in meeting community expectations for health, safety and amenity in the design, construction and use of buildings through the creation of nationally consistent building codes, standards, regulatory requirements and regulatory systems. Continual improvement to the Building Code of Australia has resulted.

The PIN Discussion Paper will draw upon and develop further consideration from:

- The Australian Law Reform Commission in 2002 produced report no 95 entitled *Principled Regulation: Civil and Administrative Penalties in Australian Federal Regulation*.¹
- The New Zealand Law Commission released on 30 August 2005 a Study Paper on the infringement system. The study paper contains the Commission's recommendations regarding the breath and scope of infringement offences and their penalty structures. The New Zealand Ministry of Justice has also released, as part of a joint review with the Law Commission, a discussion paper entitled "Review of the infringement system: Options for reform".²

The New South Wales Law Reform Commission identified the advantages of infringement notice schemes this way:

*Infringement notices can prevent minor cases reaching court and save time and money both for the offender and the criminal justice system. The avoidance of a conviction results in reduced stigma. The system can be automated, is highly efficient and raises significant revenue. The penalty payable is considerably less than the maximum available were the matter to be dealt with in court.*³

1 <http://www.austlii.edu.au/au/other/alrc/publications/reports/95/>

2 http://www.lawcom.govt.nz/UploadFiles/Publications/Publication_117_319_SP16.pdf

3 New South Wales Law Reform Commission, *Sentencing*, Discussion Paper 33 (1996), New South Wales Law Reform Commission, Sydney, para 10 20

The New South Wales Law Reform Commission identified the same disadvantages of their infringement notice scheme as the ALRC and highlighted some additional disadvantages,⁴ including the failure to consider the circumstances of individual cases; dispensing with the traditional criminal law requirement of *mens rea*; reversing the onus of proof; and diminishing the moral content of particular offences. In its report on the *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, the Senate Standing Committee for the Scrutiny of Bills noted that:

*strict liability offences should be designed to avoid the likelihood that those affected, particularly by the issue of an infringement notice, will pay the lower penalty simply because it is easy and convenient to do so, rather than spend the money and time to pursue what might be a legitimate defence; any agency which encouraged this tendency would be acting improperly.*⁵

The Environment and Planning Law Association of NSW (EPLA) website provides access to additional information on the topic of PINs in a recent paper written by John Ritchie.⁶ For further information on the topic of environmental prosecutions generally, we recommend a paper written by Ertrunc Ozen for the 2005 EPLA Twilight Seminar Series.⁷

It is intended that the question of the use of infringement notices will be followed by a consideration of environmental offences and penalties across Australia and New Zealand in a separate Discussion Paper. PINs will then be seen in the context of the wider environmental enforcement requirements.

There are two ways of being kept informed about ELRANZ activities. You can join the Working Group or become an Associate of ELRANZ. There is no joining fee for NELA members.

If you are a member of the Roundtable Working Group or an Associate of the Roundtable you will receive information about ELRANZ projects and events.

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4 New South Wales Law Reform Commission, *Sentencing*, Discussion Paper 33 (1996), New South Wales Law Reform Commission, Sydney, para 10 21

5 Senate Standing Committee for the Scrutiny of Bills, *Application of Absolute and Strict Liability Offences in Commonwealth Legislation* (2002), AGPS, 286

6 Ritchie, J (2005) 'Damned if you do' – 'Damned if you don't' <http://www.epla.org.au/documents/damnedifyoudo.pdf>

7 Ozen, E (2005) 'The Investigation, Charging and Prosecution of Persons for Offences in The Local Court', Twilight Seminar Series, Environmental and Planning Law Association (NSW) Inc <http://www.epla.org.au/pubseminars.html>