



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBGMM1295616

Direct Line: 9926 0216

21 August 2009

The Hon. John Hatzistergos, MLC
Attorney General for NSW
Level 33, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney General,

Re: The presentation of CIN histories to courts

I am writing to you on behalf of the Law Society's Criminal Law Committee (Committee).

The Committee is concerned about the use of Criminal Infringement Notice (CIN) histories in the form of antecedents presented to the Local Court in criminal proceedings.

The Committee submits that an individual's CIN history should not be included as part of an offender's antecedents. Payment of the fine does not constitute an admission of guilt or liability: s 338 *Criminal Procedure Act 1986*.

When the legislation was introduced it was a stated intention that payment of a CIN would not result in a conviction or criminal record. In the Second Reading Speech to the *Crimes Legislation Amendment (Penalty Notice Offences) Bill 2002* the (then) Minister of Police, the Hon. Michael Costa MLC, stated that:

"... payment of the fixed penalty results in the offender acquiring neither a conviction nor a record. The offender can avoid the social stigma and legal disabilities that attach to prosecution and conviction in a criminal court."

The current police practice of providing CIN histories to the court is contrary to the legislative intent. Permitting CIN histories to be presented to court defeats the intention of the scheme which was to avoid "...[t]he social stigma and legal disabilities that attach to prosecution and conviction in a criminal court."

The NSW Ombudsman's '*Review of the Crimes Legislation Amendment (Penalty Notice Offences) Act 2002*', April 2005, recommended that safeguards be put in place to prevent CIN matters from being presented as part of a person's criminal history.

Recommendation 19 provides:

That Parliament establish safeguards, by means of legislation, against the presentation to the courts of Criminal Infringement Notice histories where those matters have been satisfied by the payment of the prescribed penalty.

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The Committee strongly supports this recommendation. The Committee asks that you give further consideration to implementing this recommendation through legislative amendment.

I would welcome the opportunity to discuss this matter with you further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joseph Catanzariti', written over a horizontal line.

Joseph Catanzariti
President