



Supreme Court decision likely to invalidate all COVID fines

Today the NSW Supreme Court published its reasons in a test case about COVID-19 fines. The decision clarifies the requirements necessary for a fine to be valid, and calls into disrepute all the remaining 29,017 COVID-19 fines that have not been withdrawn.

The decision may also affect other fines where the penalty notice offence is not specified.

Redfern Legal Centre calls on the government to withdraw the remaining 29,017 fines and all COVID-19 related offences before the court originating from a penalty notice.

The judgment outlines the information that needs to be provided in order for a fine to be valid under s 20 of the *Fines Act 1996* (NSW).

Redfern Legal Centre filed the test case in July 2022, representing two people who argued that their COVID-19 fines are invalid because the penalty notices they received lacked sufficient detail about the offence.

On 29 November 2022, the government conceded and the Supreme Court found that two COVID-19 fines were invalid. Revenue NSW then withdrew a total of 33,121 COVID-19 fines.

The Court found that:

- It is imperative under the scheme provided for in the Fines Act that the penalty notice offence is set out clearly in the notice itself.
- The offence creating provision was a bare minimum requirement that would have enabled the plaintiffs to look up the section and find out what offence they had allegedly committed and provided the unambiguous clarity required by the Fines Act.
- The penalty notice offence must be *clearly and unambiguously* specified in the notice itself. Providing information that gives the recipient a clue or an indication from which they might be able to deduce or infer (using material outside the notice) the penalty notice offence is not sufficient.

In her judgment, Her Honour Justice Yehia states, “How then were the plaintiffs to know what offence they had committed or to make an informed decision as to whether to pay the fine or elect to have the matter determined by a court?”

Samantha Lee, Redfern Legal Centre Police Accountability Solicitor:

This judgment calls into disrepute all remaining COVID-19 fines because the fines do not meet the legal requirements of a valid penalty notice.

The government must now do the right thing and withdraw all Covid-19 fines that were issued – including those offences which individuals elected to take to court and any work and development orders – and reimburse fines already paid. This case is not about COVID-19 or about public health orders. It is about ensuring the rule of law is adhered to even in a time of crisis.

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