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Making fines fairer

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Introduction

Few would argue against the principle that the penalty for an offence should affect all offenders equally. No-one would argue that rich people should receive shorter jail sentences or have fewer demerit points deducted than poor people. Yet the system of flat rate fines for traffic and other offences in Australia is grossly unfair in just this way. A flat fine applied to all imposes much more pain on low-income people than it does on high income earners.

A speeding fine of \$125 represents one third of the weekly income of someone earning \$20,000 a year but only 6 per cent of the weekly income of someone with an income of \$100,000. Some rich Australians consciously break the law knowing that paying any fine will have a negligible effect on them. Some well-heeled Mosman drivers are reported to say “Oh, that’s only pocket money to us” when they get booked.² On the other hand, a \$68 parking ticket can cause serious distress to a student or pensioner. The weekly food bill for some is no more than the cost of a bottle of wine for others.

From time to time it has been suggested that traffic fines in Australia be based on the offender’s income. There are a number of rationales for this proposal. Most importantly an income-contingent fine would ensure that the fine has the intended deterrent effect. It would also be popular as justice would be seen to be meted out fairly.

Such schemes already operate in Germany, Sweden, Finland, Denmark, France, Portugal and Greece. In determining the penalty the police or the courts first establish the gravity of the offence and then assess the capacity of the offender to pay, generally based on their income. The police officer or the judge can then impose different monetary penalties for the same offence on the principle that the economic burden should be the same for each citizen.

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² Reported in John van Tiggelen, “Big Mothers”, *The Good Weekend Magazine*, Sydney Morning Herald, November 6, 2004, p. 20

The proposed scheme

It is proposed that traffic fines³ be imposed on a sliding scale according to the offender's income and thus capacity to pay. Each infringement notice would be issued showing a fine for each of five levels of taxable income. A scale of fines for a speeding offence that currently attracts a flat-rate of \$125 is shown in Table 1. The table also shows that proportion of taxable weekly income represented by the current level and the proposed levels. The impacts of the proposed scheme for a parking offence that currently attracts a fine of \$68 are shown in Table 2.

Presently a speeding fine is six times more onerous for a poor person (the lowest income category) than a rich person (the highest income category). In the new scheme, most of the disparity is eliminated. Under the proposed scheme, two thirds of the population would pay the same fine or less, as their incomes are less than \$50,000.

Table 1 Impact of a speeding fine on taxable incomes

Taxable income p.a.	Current fine	Proposed fine	Percentage of weekly income ^a	
			Current (%)	Proposed (%)
<\$30,000	\$125	\$75	31	16
\$30,000-\$50,000	\$125	\$125	16	16
\$50,000-\$75,000	\$125	\$190	10	16
\$75,000-\$100,000	\$125	\$270	7	16
\$100,000>	\$125	\$385	5	16

a. Calculated using mid-points of ranges; \$25,000 for lowest category; \$125,000 for highest category.

Table 2 Impact of a parking fine on taxable incomes

Taxable income p.a.	Current fine	Proposed fine	Percentage of weekly income ^a	
			Current (%)	Proposed (%)
<\$30,000	\$68	\$45	14	9
\$30,000-\$50,000	\$68	\$68	9	9
\$50,000-\$75,000	\$68	\$105	6	9
\$75,000-\$100,000	\$68	\$150	4	9
\$100,000>	\$68	\$220	3	9

³ The system could and should apply to all types of monetary penalty imposed by the courts. The courts do, however, often adjust fines according to the offender's capacity to pay.

a. Calculated using mid-points of ranges; \$25,000 for lowest category; \$125,000 for highest category.

In principle, it would be more equitable to impose a scale of fines representing equal proportions of after-tax income rather than taxable income. In practice, assessing after-tax income is more difficult. To reflect the fact that higher taxable incomes attract higher rates of tax, the fines proposed in Tables 1 and 2 could be adjusted so that those with higher taxable incomes pay fines that represent a lower share of their taxable incomes.

The principal difficulty with the proposed scheme is determining the taxable income of the offender. Australia's Federal system in which, for the most part,⁴ the states and their courts impose penalties and the Commonwealth collects income data (at the Australian Tax Office) makes it difficult for the courts to access the information needed to apply the principle of equal economic burden. In the past, this difficulty has led others to deem income-contingent fine systems impractical.⁵

In the proposed scheme the onus would be on the offender to demonstrate that he or she has an income less than the highest category by inclosing with the fine payment a notarised copy of his or her income tax assessment notice from the previous year. Concession card holders (or Centrelink beneficiaries) could present their cards and pay only the lowest level of the fine. If the offender fails to provide evidence of his or her taxable income they are obliged to pay the fine at the highest level.

Imposing the requirement on the offender to prove their income is not an unreasonable burden, and would require a minimal increase in administrative effort on the part of those who collect the fines (the Road Traffic Authority or Department of Justice).

An objection to the proposed scheme is that it may give an undue advantage to offenders who are asset-rich but income-poor. However, the impact of a fine on income flows (including any income generated by ownership of assets) may give a better measure of the economic burden than a measure that tried to combine income and assets. The latter would be infeasible. The proposed scheme is not perfectly fair but it is much fairer than the existing flat-rate system.

What are the revenue implications of the proposed scheme? In 2002 the average taxable income of individual taxpayers was a little over \$33,000⁶ so if there were no change in behaviour the new scheme would result in the collection of more revenue as richer people would pay substantially more. However, we would expect the substantially higher fines for high-income earners to have a significant deterrent effect, thereby reducing revenue collections, as well as saving costs from accidents and inconvenience arising from traffic offences.

⁴ Of course, Federal courts can impose financial penalties.

⁵ See the superficial commentary of the NSW Law Reform Commission in its 1996 report titled *Sentencing* (Discussion Paper 33, Sydney), pp. 376-77.

⁶ ATO, *Taxation Statistics 2001-02*, ATO, Canberra, 2004