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Public Transport – It's not fine

A report into systemic issues identified
by South Australian children and young
people in relation to their experience of
public transport services

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Introduction

In 2017, I was appointed South Australia's inaugural Commissioner for Children and Young People. Over the last couple of years I have spoken to thousands of South Australian children and young people about their hopes and dreams and what they see in their future.

Most children and young people I've met are positive about the future and their capacity to achieve their goals. It has been heartening for me to hear how many children and young people want to help kids who are doing it tough. Because of this I've made vulnerable kids a particular focus of my work. I have also heard from children and young people who are not hopeful about their future and who face many challenges to achieve the goals they have set for themselves – short and long term.

Earlier this year I was made aware of a situation relating to our public transport system. It involved two 15 year old girls who are living independently in supported accommodation who had each been fined for not having their student card on them while travelling on SA public transport. Despite both these children having a strong advocate to argue for leniency, both fines of \$220 each remained. This represented almost 100% of their weekly income on Centrelink; an entitlement of \$455.20 per fortnight. It would be like the average Australian salary earner on \$62,000 per year incurring a fine over \$900.

As someone who is committed to seeing change made at the systemic level these examples prompted me to explore delivery of public transport services to our young people from their point of view. I wanted to see if this was an isolated incident, or if there were other similar incidents that may be negatively impacting on South Australian children and young people that with some adjustments could be eradicated or significantly reduced if a different, less punitive approach was introduced.

I decided to ask children and young people for more detail about their own personal experiences with public transport and what issues they were facing and would like me to advocate for on their behalf. Their responses are summarised in this report along with examples of how the system is currently operating from their perspective.

My report includes six recommendations on how particular problems identified can best be ameliorated to improve the experience of our public transport services for South Australia's children and young people.

Thank you for taking the time to read and consider its contents.

Yours sincerely



Helen Connolly
Commissioner for Children and Young People





Why is public transport important to South Australian children and young people?

Public transport is actually a subject that unites children and young people across both metropolitan Adelaide and regional South Australia. This is because the availability and affordability of public transport underpins children and young peoples' capacity and ability to engage with school, employment, sport, hobbies, interests and recreation activities. When transport is lacking, unreliable, unsafe or unaffordable, it has a disproportionate impact on their lives.

As part of the process of preparing this report a number of children and young people shared their direct experiences of our public transport services the Commissioner, and their feedback was not always positive. Children and young people told the Commissioner that they sometimes feel unsafe and unwelcome on public transport and that at times, when they have forgotten their student identity cards, or don't have enough money for their fare (but really need to get home), the transport system is "cruel" and "unkind" to them.

Some South Australian young people live independently, or in supported accommodation. Others are in situations which require them to 'couch surf'. Some are in households where a shortage of money is faced every day. Accessing public transport is critical to these children and young people who are often required to arrange access to important activities such as school, sport and social engagements on their own.

Some young people put in huge effort to keep connected to school, sport and social activities in the face of significant adversity. The challenge of day-to-day survival is so significant for these young people, that it can seem grossly unfair when the 'system' issues a fine for what to them, by comparison, is a trifling matter. For example, being issued a fine for not having their student identification card on them while travelling home on the bus from school, despite wearing a school uniform that indicates clearly where they've come from.

Having now researched the issue of public transport fines more closely, it is clear that some groups of children have had literally thousands of dollars in transport fines issued to them under the current approach. The administration costs to recover overdue fines is therefore significant. At other times, chasing overdue fines issued to young people often results in a recognition that the fine cannot be paid anyway. In these cases the majority of fines are eventually waived and the child is generally required to undertake an alternative penalty such as community service.

The establishment of the South Australian Public Transport Association (SAPTA) presents an opportune time to review the practice of fines issued to children and young people travelling on South Australian public transport services. It is also an opportune time for all public transport service providers to re-evaluate how they can best meet their obligations in relation to operating a child safe organisation.

This requires the best interests of children and young people to be placed first. Doing this will create the conditions that will help reduce the likelihood of any harm coming to them while remaining connected to school, sport and extra-curricular activities that bring them into contact with the broader community.

In preparing this report, discussions with children and young people indicate they fundamentally understand how paying a fare supports the sustainability of our public transport system. The majority also believe that most children and young people who do not pay fares don't deliberately evade them, and that there needs to be a balanced application of the consequences applied to children and young people for non-payment, including a simple payment of the fare where possible, and without ever incurring an on the spot fine.

The views of children and young people are backed by research that has found that the majority of public transport offences are committed by a small minority¹. Children and young people believe there needs to be some level of discretion that public transport officers can implement at the time of a breach. They also believe that each case should be considered on an individual basis to ensure children and young people are kept safe, and importantly are able to get where they need to go when they need to go there and with particular discretion able to be applied to those who cannot afford to pay for a ticket.

“The government needs to pay wages for bus drivers, etc. somehow and why use taxes that can be used for other things. But [there are] some people that cannot afford a ticket and in special circumstances should not be fined.” 16 year old female, Adelaide Hills

“More leniency needs to be given to young people. Wouldn't the government rather potentially vulnerable youth safely on a bus to travel home rather than be stranded in the city with no way home otherwise? It seems counterintuitive.” 18 year old female, Adelaide Eastern Suburbs

¹ Professor Graham Currie and Research Fellow Alexa Delbosc, Understanding the Psychology of Fare Evasion – Final Report, April 2013 and Professor Graham Currie and Research Fellow Alexa Delbosc, 'New Methods Exploring'

Key Recommendations

Recommendation One

That the public transport system comply with the National Principles for Child Safe Organisations starting with embedding child safety and wellbeing into organisational leadership, governance, culture and training with an emphasis on child safe environments and best practice (ie National Principle 1).

Recommendation Two

That students who are seventeen (17) be able to use any proof of age card (eg. Drivers Licence, Proof of Age Card, or Student ID card, while students over 18 years only be required to present the Student Identification Card issued by their educational institution (ie not a separate DPTI issued Student ID Card).

Recommendation Three

That Passenger Service Assistants (PSAs) and State Transport Police do not ask for student cards or check tickets of children who are dressed in their school uniform.

Recommendation Four

That young people in low income families travel FREE, enabling them to get to and from school and community activities in which they are involved, as well as reach home again safely without experiencing any public transport access issues likely to humiliate or shame them.

Recommendation Five

That the fines issued to children are not at the same rate as an adult fine. Neither is the Victims of Crime Levy imposed on fines issued to children and young people, thereby fully adopting the recommendations made by Commissioner Nyland in this regard.

Recommendation Six

That the new South Australian Public Transport Authority (SAPTA) work with the Commissioner for Children and Young People to identify ways to engage young people in the development of public transport policies and strategies that take into account the views and experiences of children and young people utilising public transport services across our community.



What are children's rights and who is responsible for protecting them?

Under the Children and Young People (Oversight and Advocacy Bodies) Act 2016, each State authority “must, in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out from time to time in the *United Nations Convention on the Rights of the Child*”². Particular rights that are relevant in relation to public transport include agencies always doing what is in the best interests of the child (Article 3), including keeping children safe.

Similarly, under the Children and Young People (Safety) Act 2017 and the Children's Protection Act 1993, statutory bodies (including those bodies who administer passenger transport services on which children are carried for a fare³) must also comply with provision of child safe environments.

To support child safe environments South Australia has established a Child Safe Environments, Principles of Good Practice Guide, which has been in place since 2012. This guide contains six overarching principles that organisations must follow to ensure creation of a child safe environment.

However this guide is soon to be superseded by the National Principles for Child Safe Organisations. These national principles were endorsed by the Prime Minister and all state and territory First Ministers in February 2019 and were developed in response to the recommendations made in the Royal Commission into Institutional Responses to Sexual Abuse.

The development and implementation of these principles will be led by the National Office for Child Safety. When fully implemented in South Australia, public transport providers will be required to comply with these principles, and to have specific policies and procedures in relation to passengers who are children.

The principles will be used as a baseline for how children and young people are treated on public transport, and will form the basis of the minimum standards set for organisations, including the Department of Public Transport and Infrastructure (DPTI), Adelaide Metro, Fines Enforcement and Recovery Unit (FERU), South Australian Police (SAPOL) and South Australian privately owned and run transport services.

2 Section 5 of the Children and Young People (Oversight and Advocacy Bodies) Act 2016

3 Children's Protection Regulations 2010 sections 3 and 8

The ten new National Principles for Child Safe Organisations are:

1. Child safety and wellbeing is embedded in organisational leadership, governance and culture.
2. Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved in promoting child safety and wellbeing.
4. Equity is upheld and diverse needs respected in policy and practice.
5. People working with children and young people are suitable, and supported to reflect child safety and wellbeing values and practice.
6. Processes to respond complaints and concerns are child focussed.
7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.
8. Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.
9. Implementation of the national child safe principles is regularly reviewed and improved.
10. Policies and procedures document on how the organisation is safe for children and young people are established and regularly reviewed.

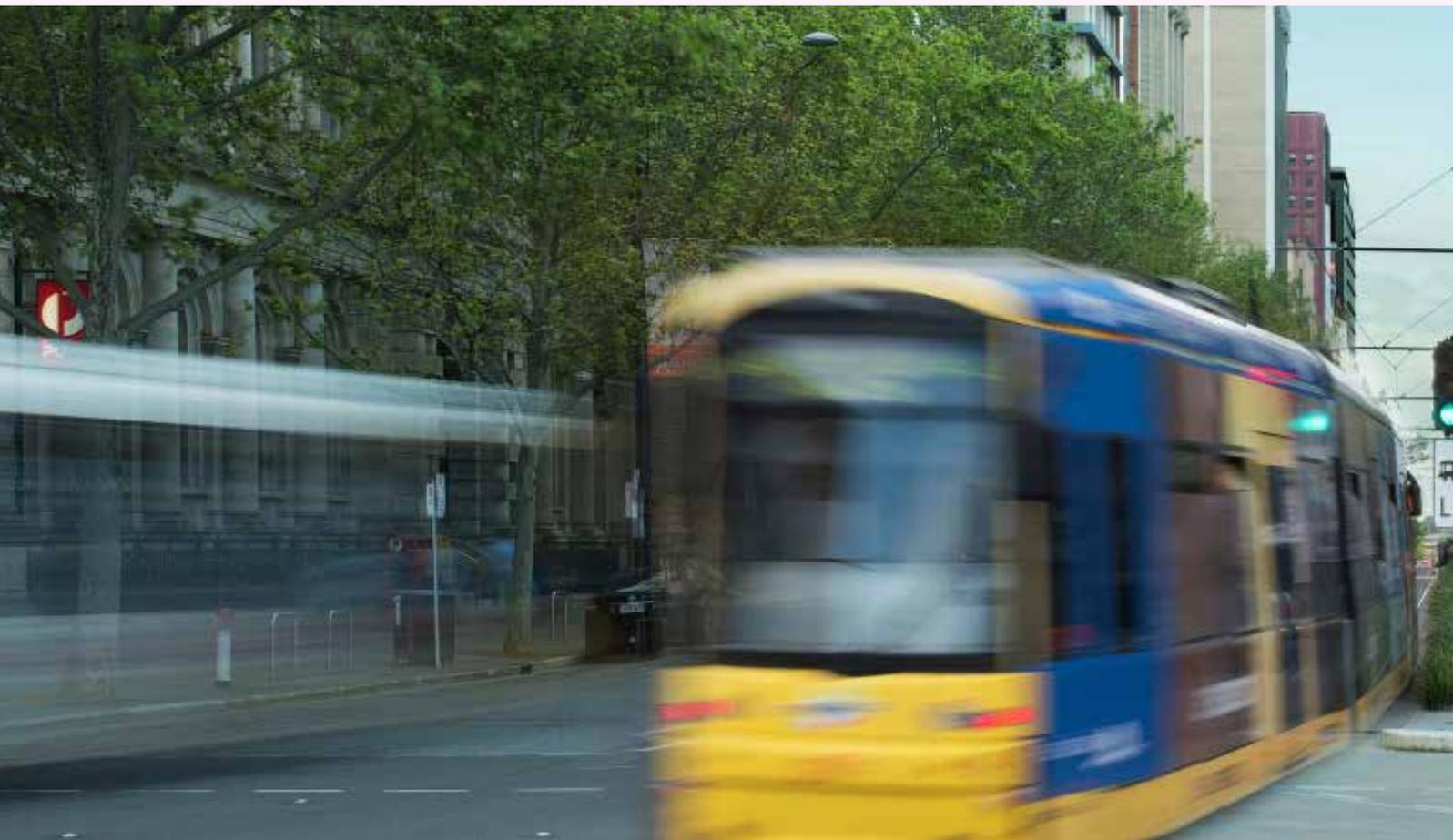
Scope of this report

For this report the Commissioner for Children and Young People talked to South Australian children and young people about their experiences on public transport. This included sending out a time limited survey via Survey Monkey which asked children and young people about their experiences on public transport and their views on fines.

The survey was live for a two week period during May 2019 with a total of 58 responses received. These came mainly from children and young people between the ages of 15 and 24.

In preparing this report, information on fine policies and practices was sought from DPTI, FERU, SAPOL and the Courts Administration Authority (CAA). Reports were received from each authority, and further communication was undertaken with DPTI and FERU.

State government policies and procedures around the issuing of fines on trains and trams were also reviewed. It was not necessary to review the operational policies and procedures of privately owned and operated bus services given these are required to comply with state legislation and therefore could be expected to be similar.



Who uses public transport?

Adelaide's public transport system consists of buses, trams and trains, mostly available in the Adelaide metropolitan area. The patronage of people on public transport, has remained steady for a number of years, despite the government's goal to increase overall usage. This suggests there are some systemic issues at play

In the 2017-2018 financial year, there were 75,029,174 passenger trips on public transport. Bus services were used by 68% of patrons, followed by trains at 19% and trams at 13%. Public transport users are mostly concession holders or children and young people. Only 29% of patrons are classified as 'regular' full fare paying customers. Other patrons could be described as those who are on lower incomes, 31% on concessions (this includes tertiary students), 16% classified as students (primary and secondary students), 10% who are Seniors, 13% who take free travel to special events including New Year's Eve, the footy express and tram travel within town) and 1% who are on a special pass (for example, those who have impaired vision).



Who administers public transport fines?

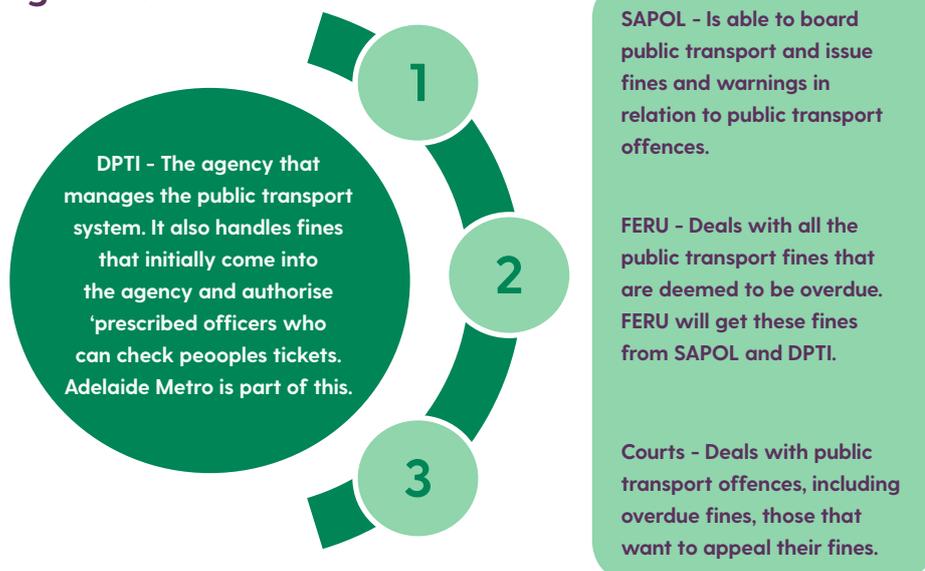
As South Australia's key agency in relation to public transport, DPTI is responsible for the public transport system, as well as for issuing fines. Adelaide Metro, which forms part of the Public Transport Services Division of DPTI, is the agency that centralises all ticketing complaints as well as providing other customer facing services.

According to DPTI's website it 'works as part of a community to deliver effective planning policy, efficient transport, and valuable social and economic infrastructure.' However, as part of the Liberal Government's election promise, DPTI will no longer be responsible for public transport operations; just infrastructure delivery and planning.

A new agency, the South Australian Public Transport Authority (SAPTA) has recently been established to deliver a public transport service which is based on customer needs using best practice evidence. This creates an opportunity for public transport services to be remodelled to create a more responsive, customer focussed, child friendly South Australian public transport system. It is understood that many of the staff from DPTI will move across to the new SAPTA authority.

The other major government agency currently required to handle processing of public transport fines is the Fines Enforcement and Recovery Unit (FERU). FERU receives overdue fines issued by all other agencies. This includes any transport fines issued by SAPOL, whose officers have the authority to impose on the spot fines. (See Diagram 1 below)

Diagram 1.



Who issues fines on public transport?

On South Australia's public trams, trains and buses, prescribed officers called Passenger Service Assistants (PSAs) are authorised by the Minister to exercise powers in respect to 'offences' under the Passenger Transport Act 1994. According to the Adelaide Metro website there are 100 Transit Police and 80 PSAs. The Transit Police and PSAs are engaged for the "safety and well-being of passengers" and to monitor "proper conduct of all passengers"⁴.

On public transport, PSAs are authorised to view a passenger's ticket and ask for proof of concession entitlement. Where a PSA suspects an offence has been committed they are permitted to require the individual to produce identification or state their full name and address. PSAs **must** submit a Transit Incident Report (TIR) to the Prosecutions Unit of DPTI when they detect an offence. PSAs are not able to issue a caution or an expiation notice with respect to the alleged offence. Their role is to observe, interact, detect and report alleged offences to the Prosecutions Unit. The Prosecutions Unit will adjudicate the TIR according to the legislation and departmental policy.

A work instruction detailing what should happen on trains and trams is made available to PSA officers. However it was apparent in our research that such work instructions were not provided in relation to bus services. Under the work instruction there is a procedure that must be followed when an offence is committed by a passenger. The instruction states that "all report offences **must** be entered into within the regulatory time frame". After taking details from the customer they must advise the customer that the information they have collected will be forwarded to DPTI through the compliance enforcement system and that it is up to DPTI to determine whether the matter will be pursued.

Buses have prescribed officers who travel the network to conduct ticket checks and to monitor the behaviour of passengers. These officers report any alleged offences to the Prosecutions Unit and their reports are adjudicated accordingly. The officers on the bus network randomly select what routes to travel on or can be required to attend upon a particular service.

Under the work instruction there are a number of exceptions that PSA's can be apply to customers to determine if they are undertaking valid travel, including the following:

- » metroCARD equipment is out of order
- » Visitors from overseas, interstate or country areas

⁴ Transit Police and Prescribed Officers, <https://www.adelaidemetro.com.au/Fare-Evasion/Transit-Police-and-Prescribed-Officers>, Adelaide Metro

- » Individuals who have difficulty understanding the conditions of travel or are unable to communicate
- » Special events where large numbers are travelling

There does not appear to be much opportunity for PSAs to choose to apply their discretion and not complete a TIR. It is interesting to note too, that while CCYP was told by DPTI, that PSA officers on trains are instructed not to check tickets of children or view student identity cards when in school uniform, this is not one of the 'official exemptions' listed formally under its Work Instruction. However, as stated on the Adelaide Metro website, it is a condition of travel that students over the age of 15 must carry a prescribed student card identification if they are travelling on a student fare.

Once PSA's have sent their completed Incident Reports to the Prosecutions Unit in DPTI, the DPTI Prosecutions Unit officers review each Incident Report adhering to three principle policy and procedure documents that determine whether a written warning, fine or prosecution will be issued. The Prosecutions Unit is guided by the Director of Public Prosecutions (DPP) *Statement of Prosecution Policy and Guidelines*⁵.

When an incident report is sent to the Prosecutions Unit they will either:

- » Take no further action
- » Issue a formal caution
- » Issue an expiation notice
- » Prosecute the matter

Under the DPP Statement of Prosecution Policy and Guidelines there are some important considerations that should be taken into account when assessing whether an offence should be pursued. They include the following:

- » the seriousness or, conversely, the triviality of the alleged offence or that it is of a "technical" nature only
- » any mitigating or aggravating circumstances
- » the youth, age, intelligence, physical health, mental health, or special infirmity of the accused, a witness or victim
- » the accused's antecedents and background
- » whether the consequences of any resulting prosecution or conviction would be unduly harsh and oppressive
- » the likely length and expense of a trial

⁵ Director of Public Prosecutions South Australia, Statement of Prosecution Policy and Guidelines, <http://www.dpp.sa.gov.au/wp-content/uploads/2015/03/DPP-Prosecution-and-Policy-Guidelines.pdf>



Photo: James ADL

How many fines are issued?

Of particular interest in the information gathered from the government agencies required to record details of fines issued, the exponential increase in the number of fines issued over the past eight years. This could be linked to efforts to minimise fare-evasion, which may be having an unintentional side effect of impacting negatively on those least likely to be able to afford payment of fares or fines; usually the most vulnerable in our society.

It is unlikely, too, that as a result of this exponential increase either PSA officers or staff from DPTI's Prosecution Unit have the time or capacity to consider exceptional circumstances, or to apply any discretionary authority they may have. This in turn creates a domino effect where an unpaid fine accrues non-payment fees until the accumulated fee becomes very large indeed, causing the person (who may be a child or student) extra stress as this process continues.

How many fines issued are to children and young people?

DPTI was only able to provide CCYP with numbers for public transport related offences from children under 18, with their database unable to search by age range. This meant the total numbers provided by DPTI could not be compared to figures received from FERU, SAPOL or the Courts Administration Authority whose programs were able to define figures according to more detailed age ranges.

What is known of the DPTI figures, however, is that in the 2017-18 financial year there was a total of 11,848 formal cautions made and 19,780 expiation notices issued, with only 534 expiations later withdrawn.

The majority of these fines appear to be for minor matters, including ticketing or concession related issues. Students who were not in possession of a valid student ID card ranked as the fourth highest reason for expiations issued. This figure equates to a total of nearly 10% of all fines issued being to students not in possession of their student identification card (see Table 2 in Appendix).



What do children and young people say about public transport?

The Commissioner has heard a number of concerns in relation to public transport. Particularly in relation to the behaviour of officers working on the public transport system, and their lack of compliance with South Australia's Child Safe Environments, Principles of Good Practice, and National Principles for Child Safe Organisations.

Overwhelmingly children and young people who have contacted the Commissioner say they do not feel welcome or safe on public transport. The majority of these young people can recall at least one negative experience that includes either their own personal experience, or one where they were a witness to an upsetting scene. None of the children and young people who had been fined who contacted the Commissioner said they were issued fines for violent offences impacting on others' safety, or for being a nuisance to others.

Most children and young people talk about their awareness and commitment to doing the right thing and complying with the law. SAPOL records reveal that the majority of fines issued on public transport are due to minor public transport matters, including not having a student identification card (see table 1 in Appendix). Of the 468 'offences' recorded, only 14 related to 'disorderly conduct on the public transport system'.

Young people have told the Commissioner that they 'are not deliberately walking out of their homes in the morning to evade fares on public transport'. Children and young people have told her that sometimes they simply forget to take their student card with them, or are waiting for a new student card to be issued, or some other equally minor reasons. When they try to explain this to the officer who questions them, they are usually not believed, and are made to feel like a criminal, as they endure being publically shamed in front of other passengers.

"I was travelling alone and accidentally swiped my ticket on the wrong gate, meaning it came up with an error message. When I tried again, I tried to ask for help and explained what had happened. However, the employee helping me, instead began to assume my ticket didn't work because I was breaking the law. He told me that since I didn't have my student ID on my person he could easily fine me (I am clearly very young-looking). He was intimidating to me, purposefully because I was a teenage girl travelling alone. I missed my train home that day because of the incident." 16 year old female, outer northern suburbs

In other common instances, even if the young person has done the right thing and recharged their metroCARD prior to boarding, the current system is not fast enough to record this change and respond in real-time, leading to them not being believed when questioned and ultimately resulting in them not being able to get where they need to go, such as to school, to their part-time job or home.

"My sister was refused [and told to get] off the bus for her card not being recharged as it sometimes takes 24hrs to come through." 17 year old female, southern suburbs.

The Commissioner heard that even when a bus driver is kind enough to let a young person on the bus to get home when they don't have the money, this can be overruled by a PSA or SAPOL officer who boards the bus later.

"I hadn't any money for the bus so I asked the driver if I could go on anyways and he said that was fine. Then a ticket inspector came along and was checking everybody's tickets and when he got to me I told him what happened and he didn't believe me, and so he made me get off at the next bus stop and then once we were off he handed me a fine of \$300." 16 year old female, eastern suburbs

"I think it is unreasonable to fine someone that is using a school metroCARD but doesn't have their ID on them, especially if it is a first offence. No one is perfect and small slip up [can] happen and I don't think the fine really reflects the wrong doing. I also think that the fine for non-validation on the train is excessive. Sometimes metroCARDS don't scan properly. If you go directly after someone and I think if it is a first offence thing, you have money on your metroCARD, and it was an honest accident, then the fine is highly uncalled for." 17 year old female, inner north western suburbs

Feeling unsafe and threatened when using public transport

Children and young people say that at times the actions from PSAs or Transport Police have resulted in them feeling unsafe and abandoned. If children and young people are removed from public transport for a minor matter, they may have no other way to get home, especially if they do not have anyone that can pick them up.

"It's very scary and threatening as a young person to be threatened with a fine when it's obvious you're a student. Even as a uni student, I've seen people logging into the uni website to prove they're a student when they don't have their card with them and [they're] very upset. Obviously [they] can't afford the fines and it's just bad luck when you forget your card for a day." 24 year old female, eastern suburbs

"I was on the train with one of my friends. I just got on the train to get home from school. I always have my metroCARD on me but today I didn't. I don't know how or why but it wasn't in my bag. A 'ticky' walked up to me and started asking for ID. I told him I didn't have any and what it was for. He wouldn't tell [me] why. After my friend became very heated he said he saw I hadn't bought a ticket. I looked for my card but I couldn't find it. I tried to explain I would have to walk home in the rain if I didn't catch this train. It was over an hour walk. The 'ticky' was very aggressive after hearing this. My friend bought a ticket without my knowledge and gave it to the man. But he refused it and wanted to fine me." 18 year old male, north western suburbs.

"I left my wallet at home by accident and was almost fined but they wrote me in the book. I felt very threatened and scared just the way they spoke to me". 23 year old male, western suburbs.

Being fined or warned for very minor issues

Many children or young people state that they are fined or warned, even when wearing a school uniform. This is despite DPTI stating that PSAs on trains are instructed not to ask children in uniform for their student cards or tickets.

“Was wearing school uniform and was yelled at by a ticket person because I didn’t have my school ID card and was using a student metro card.” 17 year old female, outer southern suburbs when on the train

“I was wearing school uniform, it was after school. I did not have my student ID on me and used a student metro card. I was fined, even though it was clearly obvious I had just walked to the train station from school. I even had a back pack.” 15 year old female, inner western suburbs.

Further, we have heard that sometimes the issuing of new student cards from schools and universities takes longer than expected, resulting in children and young people being warned or fined for something that is out of their control. It is also important to note that DPTI itself is responsible for administration of secondary and tertiary identification cards.

Many university-students spoke about student identification cards that had expired by a couple of weeks and that they hadn’t had it renewed and yet, despite travelling with textbooks, readers and other student paraphernalia that indicated they were clearly a school student, they were fined.

“Police officer asked for my metro card and I happily gave it to him, asked to see id and I showed him the one I had and he said it’s not good enough because it isn’t valid but it was 3 days out and I hadn’t gotten another one from school. I explained that to him and he still tried to make me buy a full ticket I refused.” 17 year old female, eastern suburbs

“Got fined due to not having current student ID even though the school hadn’t given us the new one yet. I still had previous years of ID just not the current one”, like she said: “It’s not the students fault if they don’t have current ID”. 17 year old female, outer southern suburbs.

Although students report that they understand they ‘broke’ the rules they believe that their purchase of a student fare is legitimate. They believe the impact of the fines issued to those who are on a low income can create a financial crisis for many students, particularly those who are living on government Youth Allowance and working part-time jobs.

Feeling disrespected when spoken to by public transport staff

We received many examples of staff in the public transport system who children and young people described as being rude and at times intimidating toward them. Young people spoke about the transport staff not understanding the different types of study options young people have available to them, or the personal circumstances young people are in. Many spoke about the poor communication skills and lack of flexibility in their approach. Many were accused of escalating tensions rather than respectfully communicating with young people in a calm and mature way

“Wasn’t carrying student I.d, which was my own fault, however, I provided proof of my age but obviously wasn’t enough. Issued a warning but the inspector was extremely rude about it.” 17 year old female, southern suburbs

“They are asked for my metro card and I paid and scanned it and he told me that I need to show id so I got my student id card and he started abusing me saying TAFE students shouldn’t be using student ID from high school and that my school ID was fake.” Young female, north western suburbs

“Was wearing school uniform and was yelled at by a ticket person because I didn’t have my school ID - seemed angry.” 17 year old female, northern suburbs

One 15 year old transgender person articulated her negative experience on public transport where the officer did not want to hear their position:

“Until February I did not carry my student ID card because it used an old photo with my birth name (I am transgender MtF). Carrying and viewing the ID triggered severe dysphoria, which meant that the risk of being fined/warned was better than the dysphoria for me. On the train an authorized officer requested my fare/pass. I presented the student metroCARD, and explained that I did not have my student ID on me, having been fully aware of the legislation. I was not in a position to feel safe revealing more details than “privacy”, mainly because of the area the train was in. I also note that I was not wearing school uniform nor clothing that was feminine at the time. The officer asked me to say (out loud) my full name, address, etc. as required under the Act. This was quite a horrible experience, as my legal name causes severe distress.” 15 year old transgender person, southern suburbs

Feeling targeted when it comes to being fined

“It’s crazy the amount of kids I know getting either warnings or fines on the Belair train line.” 16 year old female, southern suburbs.

Many young people as well as adult stakeholders have stated that they think PSAs and police target the buses and trains that take children to and from school. Adult stakeholders have told the Commissioner that they have witnessed children coming home from school getting on a train and at the next stop, multiple PSAs or transport police board the train to check their tickets. This does not appear to be fostering creation of a child safe and community focussed transport system.

“I think that in my case the bloke must have needed to meet a quota or something but it was pretty stupid he was on the school line. He was definitely looking for trouble in my opinion. A lot of the time they are, but they also have a job to do because not everyone can use public transportation for free, it wouldn’t be able to run otherwise.” 16 year old male, north western suburbs.

Feeling discriminated against

There are also certain groups that feel even more unsafe because of race or ethnicity.

“Although I wasn’t fined, it felt like it was heading that way due to the interrogation style questioning. Was one of the only people who was asked about their ticket, and had it checked, was asked for ID even though I was in clear school uniform as well as using a bag embellished with a high school logo. Provided my student Identification card. Questioned about intentions seemed as though they didn’t believe where I was going / my ID card. Felt as though they were either going to pull me off the bus or fine me”. Probably racial profiling due to Hispanic heritage but that’s racism at its finest.” 17 year old female, western suburbs.

Another young person said:

“It is blatantly obvious to me that those who appear to be poor and/or aboriginal are quite literally swooped on by ticket checkers. I get this treatment when I look a bit more ‘daggy’ - the ticket checkers seem to try to find the poorest looking people on the train to check their tickets first. Disgraceful and discriminatory.” 21 year old non-binary young person, southern suburbs.

Experiencing difficulty accessing services and information

In addition to not being made to feel welcome, children and young people report that access to services and information provided by Adelaide Metro is not easily accessible or friendly. Particular difficulties include:

- » The online card recharging option taking more than 24 hours to actually add the money onto the card.
 - » The delayed response of schools and other educational institutions when issuing new student cards at the beginning of the year, resulting in young people receiving fines through no fault of their own.
 - » The confusing requirement for students leaving high school and going on to tertiary studies not realising they need a different student concession card than the one they used for high school.
 - » The Terrific Transport Travellers campaign is viewed as being ineffective and patronising to children and young people. It assumes all the bad behaviour comes from children and young people and disregards the rudeness and offensive behaviour of adults.
 - » The lack of ticket vendor machines that allow for payment by card, phone, or cash, especially close to bus stops, is frustrating.
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Examining systemic issues

The issues that children and young people face appear to be more than the result of poor individual practice. Rather they appear to be the result of systemic issues, either regulatory, policy driven or cultural. More importantly they put children and young people at risk and place a disproportionate financial and emotional burden on children and young people.

The range of systemic issues identified through this investigation into current operational processes include:

- » Use of cumbersome administrative procedures
- » Checking for tickets of children who are in school uniform
- » Fining children under 15 years
- » Issuing obscure fines
- » Placing a disproportionate financial burden on children and young people
- » Taking children under 15 years to court for trifling transport offences
- » Chasing fines when this cost far outweighs the cost of enforcement
- » Including the victims of crime levy on fines issued to children and young people
- » Minimising impact on children and young people

Use of cumbersome administrative procedures

It is the Commissioner's strong belief that the requirement for children and young people to obtain a South Australian approved student identification card after they turn 15 years is administratively cumbersome. Particularly given that young people are required to be in an approved education, employment or training organisation until they turn 17 years.

To require young people to have a student identification card for just two more years of high school is a huge administrative burden on both students, their schools and ultimately staff within DPTI who have overall responsibility for the administration of this requirement.⁶

⁶ <https://adelaidemetro.com.au/Tickets-fares/Concession-Cards>

Checking for tickets of children in school uniform

Although CCYP has been informed that the Rail Operations section of DPTI has directed their PSAs **not** to check the tickets of children when they are in school uniform, or to request to view their student ID cards when they are in school uniform⁷, information we've gathered direct from children, young people and parents, indicates that this practice is still occurring and on a considerable scale.

Further, this 'guidance' is not written into policy, processes or procedures, nor is it included in the relevant DPTI Rail Commissioner Work Instruction: Revenue Protection and Customer Service on Trams (Work Instruction).

Neither do the procedures allow the PSA officer to use their discretion if the young person has forgotten their metroCARD or Student ID Card but clearly needs to get to school or home via public transport.

An adult passenger on the Outer Harbor line who responded to the CCYP Fines Survey, reported witnessing two female high school students being strongly berated by an Adelaide Metro staff member for not having their School Student ID Card on them. According to this passenger they were in school uniforms, clearly around 15 years of age.

This regular commuter stated that:

"The police and Adelaide Metro staff are constantly at the Adelaide train station stopping people. They clearly "profile" people on appearance. Anyone who presents as coming from a low socioeconomic background is stopped, interrogated, searched. They clearly focus on low hanging fruit. Appalling. Public transport is a service for the public."

South Australia's practices are out-of-line with practices occurring in other states throughout Australia, where student cards can be issued by schools, or where school uniforms are accepted as proof that the person travelling on public transport is accepted without question to be a student.

In Queensland, Northern Territory⁸ and the ACT, school-issued identification is acceptable. In Victoria, all children 18 years and under travel on a concession fare. Those who are 16 years and under do not require proof of age. Those who are 17 years and over do require some form of proof of age such as a passport, learner's permit, drivers licence or proof of age card.

⁷ Contained in letter to the Commissioner dated 29 August 2018.

⁸ <https://nt.gov.au/driving/public-transport-cycling/public-buses/fares-concessions> and <https://www.transport.act.gov.au/tickets-and-myway/fares/concessions>

Issuing obscure fines

There are a number of other 'offences' children may breach whilst travelling on public transport and often they do not know what these are or therefore that they are 'offending'. This creates a sense of trepidation in young people who are not given an opportunity to learn about their offence before being issued with a fine.

Less obvious fines would benefit from application of discretionary leniency which could include a warning process that does not involve issuing of the fine if it is possible to establish that the child or young person was not aware they had committed an 'offence'.

There would be also be value in examining the language used to prevent a perception by the child or young person that they have committed an offence that may incur a record which is kept against them – particularly as there has been no 'crime' committed an given the understanding of the word 'offence' is often interchanged with 'crime'. There may be other words that could distinguish traffic fines from offences instead. For example 'misdemeanour' or 'notice' may soften the impact and provide proportionate response to the scale of the mistake that the child or young person has unknowingly made.

As one young person commented:

“There are weird fines – example: didn't know you needed a ticket to take your bike on the train, after a certain time.

“A month ago, got a \$200 fine for not having a \$3 ticket.”

Fining children under 15 years

Despite laws and policies that state children under 15 years should not be fined, information from FERU reveals children under 15 years are being fined.

As can be seen in Table 1 below, in the 2017/18 financial year there were six children under 15 years who were referred to FERU due to the non-payment of a fine they were issued. As DPTI and SAPOL were not able to break down their numbers into age, the total number of children under 15 years who were actually issued public transport related fines is likely to be higher.

Table 1 *Number of people on public transport expiations or infringements per agency per age at the date of penalty (2017-2018).*

Age At Date Of Penalty Enforcement	Number Of Expiation Issued Overall	Number Of Expiations Relating To Public Transport Infringements Issued By DPTI	Number Of Expiations Relating To Public Transport Infringements Issued By SAPOL
13	0	0	0
14	6	4	2
15	140	96	44
16	247	196	51
17	324	241	83
Total	717	537	180



Placing a disproportionate financial burden on children and young people

Children and young people are required to pay the same fine as adults, despite the fact they often do not have an independent source of income, and therefore lack any actual capacity to pay. This has been recognised in Victoria where fines issued to children are less than half the value of those issued to adults.⁹ Where young people do have paid employment they traditionally earn much less than an adult. This is exacerbated if they are doing it tough, and are children or young people who are living in a low income household, are homeless, live independently or under guardianship.

Many children and young people in South Australia are living in families which cannot afford to pay for transport fares. These children know only too well that asking for financial support from their families will be stressful, yet naturally they also want to do what their peers are able to do. It is not surprising then that sometimes these children cannot pay their transport fares and risk being 'caught' instead. This is akin to punishing a child just because they find themselves part of a low income family.

A fine can also place an unfair financial burden on the parents/carers of low-income families, or could mean children end up with a large debt by the time they turn 18 years. Worse still, in the current process there is even a risk they may end up with a criminal record simply for a minor issue such as forgetting to carry their student ID card or for forgetting to top up their metroCARD; an outcome clearly disproportionate to the offence.

Chasing fines when this far outweighs the cost of enforcing them

The cost of chasing a fine issued to a child or young person often far outweighs the cost of enforcing it, especially given the time a fine takes to reach FERU and the Youth Justice Court. If fines are not paid by the due date they are referred to FERU. This includes 'overdue' expiations from DPTI, SAPOL and other agencies, and any pecuniary fines issued by the courts.

⁹ Common fines on the Victorian public transport network effective as at 1 July 2019: <https://www.ptv.vic.gov.au/tickets/myki/travel-with-myki/transport-fines/>

Review of current practices

In examining FERU's policy and procedures, clear acknowledgement has been made of the inherent vulnerability of children and young people allowing staff to treat their offences differently to comply with child safe practices. There would be inherent value in FERU's child safe environment practices and policies (that comply with legislation) being adopted by DPTI resulting in fines from vulnerable children being reviewed, revoked or waived wherever possible earlier in the process.

Considering the proportion of 'clients' under 18 referred to FERU, as at 20 December 2018 representing only 0.7% of all overdue fines, the cost of chasing this small proportion of overdue fines can often far outweigh the costs of enforcing them. Of note is that from 3 February 2014 to 31 May 2018, a total of 17% (equivalent to \$857,730 worth) of debt, technically owed by young people in South Australia was either waived or written off by the South Australia's Chief Recovery Officer (CRO) or in a few circumstances, changed to a period of community service.

Below is an overview of some of FERU's policies and practices which aim to minimise the impact of fines issued to children and young people:

- » A system rejection of any lodgement for children 10 years and under, with these returned to the issuing authority.
- » Young people 19 years and under are exempt from garnishing of funds to satisfy debts.
- » Quarantining of debts where vulnerability is identified to ensure no further enforcement action is taken.
- » Waiving or writing off debt where a person's vulnerability has been established.
- » Using community service to pay off the debt.
- » Working closely with DHS Youth Justice.
- » Developing a portal to share fines information across justice agencies.

¹⁰ Out of 125,000 'clients' who are currently in the FERU system, only 878 were below 18 years of age. This number represents less than 1% (0.7%) of all fines FERU.

In circumstances where the CRO thinks just, he has the authority to waive payment of the application fee for the review of a fine under Section 22(7) of the Fines Enforcement and Debt Recovery Act 2017.

Requests for reviews undertaken by FERU are more likely to result in the fine being revoked, unlike requests for reviews undertaken by DPTI. This implies that both departments consider similar vulnerabilities, however, each arrive at different interpretations and therefore outcomes.

In the 2017-18 financial year, 59 young people applied to FERU for the revocation of an enforcement from a total of 73 fines issued. Of these applications, 67 were approved, three were refused and three were withdrawn (ie the debt was waived negating the need for a 'review'). These outcomes were then sent back to DPTI to implement.

The success for revocation once it reaches FERU, if a young person, or their representative makes an application for review, is therefore high. If DPTI were to apply child safe practices in the same way that FERU does a fine may be revoked earlier, resulting in many of these matters not coming to FERU.

It is the Commissioner's view that FERU practices should be adopted by DPTI so that the matters are not left unresolved for months at a time or until the matter moves to FERU for resolution. This lag is costing valuable resources from both departments. DPTI could look more closely at the DPP guidelines and use its discretion to cancel or withdraw a fine once it has been established the fine has been issued to a child or young person. Particularly if the 'offence' committed is trifling offence (such as forgetting their student card), can neither afford to pay, or the pursuit of which would far outweigh the cost of enforcement. There appears to be some difference in the interpretation of 'trifling' with FERU believing for example that travelling without a student ID card is not a serious matter while DPTI appears to believe it is.

Adopting a sensible approach to children and young people identified as vulnerable

As part of the implementation of the Fines Enforcement and Debt Recovery Act 2017, FERU and DHS Youth Justice have the authority to determine if overdue fines issued to vulnerable children and young people can be resolved in another way. Particularly when the young person concerned is under the Guardianship of the Minister, or is a resident of a Youth Training Centre.

To do this efficiently, on a weekly basis since June 2018, FERU has introduced a review of all new expiation notices and pecuniary sums referred to it. By merging new fines issued with existing fines held in FERU's database children who are under protection or care of some kind can be identified and referred to DHS to be managed with greater consideration of the child's wellbeing, including their background and circumstances ie capacity to pay.

Further, when FERU identifies a vulnerable child it has the discretion to waive some or all of the fine. In deciding the amount to be waived consideration is given to a number of factors, including the individual circumstances of the child or young person. These circumstances may include any financial hardship or vulnerability the child or young person is experiencing, the type of offence, and/or the length of time between offending, etc. Of those young people who were identified in this cohort, approximately 80% of their fine debts (equating to \$125,993) were waived.

Of note from 3 February 2014 to 31 May 2018, a total of 17% (equivalent to \$857,730 worth) of debt, technically owed by young people in South Australia was either waived or written off by the CRO, or in a few circumstances, changed to a period of community service

In DPTI, current practices appear to increase the risk of vulnerable children remaining 'active' in the system, accumulating fees which over time can grow into a debt of considerable size. The child or young person may be held liable for this accumulated debt, particularly if administrative staff are not aware of the incident history, or the details of the child or young person's situation at the time the fine. This practice is not in-line with child safe practices and principles.

Any accumulated debt has long term potential to impact on a young person's capacity to borrow funds or maintain a good credit rating in their adult lives. Particularly if they seek to apply for a personal loan or mortgage, or become involved in a financial or business venture.

If DPTI were to take a similar approach to FERU and introduce this step before a fine has become overdue for payment, this could prevent an overdue notice or late payment fee from actually being issued to a child or young person already identified as being within this vulnerable cohort. If DPTI were to adopt this approach earlier in the process this may also lead to creation of significant efficiencies across the current system.

Ensuring children under 15 years who have not committed ‘violent’ public transport ‘offences’ are not taken to court

Although children under 15 years cannot be fined under the Passenger Transport Act, DPTI and SAPOL can still take them to court for passenger transport offences. Taking children or young people to court could result in a criminal record and/or a penalty of up to \$1,250.

By the time a matter is referred to the Youth Court it could have been around for a year or more. Often public transport matters result in no conviction being recorded and the matter being dismissed but the impact on children and young people can be great and the burden on those who are required to administer the act appears to be inefficient. As one young person said:

“Told nothing about appeals. Example: No metro ticket – a year later had to go to court. Waited in court 4 hours then dismissed.”

In the Youth Court in the 2017/18 year, 374 transport related offences were listed for 107 children and or young people. Most of these were for matters which did not endanger the child or young person or anyone else. In fact, the top 3 ‘offences’ were:

- » Travel on regular passenger service without paying fare (165)
- » Student travelling without identification card (51)
- » Boarding passenger service without purchasing a ticket (40) (see Table 2)

There were only 20 offences in total which appeared to be for actions that could be deemed dangerous to the child or young person, or others.

Of the 107 children and young people issued with fines. Only nine (8.5%) of these children and young people were “convicted”. Fifty four children ended up with no conviction recorded, five were discharged without penalty, two were fined, one had an obligation imposed, and another had no further breach penalty recorded.

In situations where offences are not related to behaviour and cause no harm to others, CCYP recommends that precious Youth Court resources be channelled to address more important matters relating to children and young people. Ending up in court for failing to have a student ID card is clearly a trifling matter, particularly when compared with some of the serious issues that need the urgent attention of the Youth Court.

Table 2 Breakdown of Youth Court transport related offences for the 2017/18 FY.

Court level	Last event outcome decision	Last outcome compensation decision	Defendants
Family Conference	Agreed	Formal caution	3
		Undertaking	3
Court	Without Conviction	Fine	22
		Dismissed without penalty	17
		Discharge without penalty	6
		No further penalty	4
		Community service order	2
		Obligation	2
		Dismissed, no penalty time spent	1
	Convicted	Discharge without penalty	5
		Fine	2
		No further breach penalty/order	1
		Obligation	1
	No Action Taken	No action taken	2
	Not Proceeded With	Not proceeded with	2
	Transferred	By consent	2
	Remanded	To seek legal advice	1
Total Outcomes			107

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Section 60(8) Passenger Transport Act 1994 – Notwithstanding the Expiration of Offences Act 1987, an expiration notice may be given to a child who has attained the age of 15 years. S 6 (1)(g) of the Expiration of Offences Act 1987 states that children under 16 cannot be given to a child.

Removing the Victims of Crime Levy on fines issued to children or young people

Currently, the Victims of Crime Levy is being applied to transport fines issued by DPTI and SAPOL. This levy increases the cost of the fine by \$60; a large amount of money for many children and young people, and their families. Applying the Victims of Crime Levy to all public transport fines, which are mostly non-violent in nature, appears discriminatory. It should certainly not be applied to transport fines issued to children and young people.

During the Child Protections Systems Royal Commission, Commissioner Nyland made an interim recommendation to abolish the Victims of Crime Levy with respect to children and young people. The reason she gave for this recommendation was that she saw “no benefit to the victims of crime, and the community more generally, in burdening children and young people with large debts they can never repay”. Further she heard “expert evidence that the past experiences of these children means their behaviour is not likely to respond to punitive approaches”.

Her recommendation was accepted in relation to fines imposed in the Youth Court, with the Victims of Crimes Act 2001 subsequently amended to give the courts discretion to exonerate the defendant from paying the levy at the time of sentencing the young person. The courts have adopted Commissioner Nyland’s recommendation and dropped the levy imposed with overall figures declining significantly from 97% in 2014 to 29% in 2017. From 1 January 2018 to 31 May 2018 the proportion declined even further to 13% showing strong positive reform results in this area. However, amendments to drop the levy were not carried over to The Expiation of Offences Act 1996 nor into the *Passenger Transport Act 1994*. These laws still need to be amended to reflect Commissioner Nyland’s recommendations.

Conclusion & Recommendations

There are six key recommendations that have been made on the basis of the information gathered directly from children and young people in the course of this investigation into public transport fines issued to children and young people. Please refer to page 9 at the front of this report to review these.

It is clear that presently the rights of South Australia's children and young people, especially in relation to their safety when on public transport, are not being met. These rights, although reflected in legislation, are also not present or well-articulated in current policy and procedures and it is reasonable to conclude that staff applying the processes and procedures are not provided with the discretion or training required to minimise their impact when applied. This is not the case in all areas, however, it is clear that there is an urgent need for relevant government entities to review their policy, practices and procedures relevant to children and young people, and is particularly timely given establishment of a new entity in SAPTA, which is tasked with delivery of a more customer focussed public transport experience.

The efficiencies to be gained in adopting recommendations cannot be underestimated, nor can the positive impact that will flow to the lives of children and young people who will ultimately benefit from their adoption, and whose interaction with public transport will demonstrate to them daily that they are valued customers who have rights and whose access to transport can be experienced without fear of intimidation or a fine. This is particularly so in circumstances where it is clear they have not committed a serious offence that has placed themselves or anyone else in danger.

Appendices

Table 3 *Legislation and regulations governing fare enforcement*

The Act	What it does	Powers
<p>Passenger Transport Act 1994</p>	<p>Creates a passenger transport network</p>	<ul style="list-style-type: none"> · Ministers powers and functions: · Oversee a creation of an integrated network of passenger transport services · Monitor and review passenger transport services and fares · Design a centralised feedback system · Undertake inquiries into the public transport system · The Regulations set the 'offences' as well as the cost · Cannot fine a person under 15 years of age · Many of the ticketing related offences start at \$160, including not having a concession card and not validating tickets
<p>Fines Enforcement and Debt Recovery Act 2017</p>	<p>An Act to provide for the recovery of expiation fees, fines and other pecuniary sums.</p> <p>To continue the Office of the Fines Enforcement and Recovery officer as the Chief Recovery Officer (CRO)</p>	<ul style="list-style-type: none"> · The CRO has wide powers under this Act to investigate and recover any monies due · Provides alternatives on how people can pay for their fines · The CRO can waive fines or an aggregation of fines · It applies to debtor who is a youth and provides an additional power for the youth or the Chief Recovery Officer to apply, at any time to the Youth Court for the making of a community service order
<p>Expiation of Offences Act 1996</p>	<p>An Act to provide for the expiation of minor offences</p>	<ul style="list-style-type: none"> · This Act allows for different ways to expiate an offence · Cannot be given to a "child" (under 16) except where another Act provides otherwise · Expiation notices can only be given by the police force or a person who is authorised in writing by either the Minister or the statutory authority of council, or another Act · Allows for an alleged offender to elect to be prosecuted · Allows for the review of expiations on the grounds that the offence is trifling · Allows for issuing authority to withdraw expiation notices

Table 4 *Fare evasion related offences (all ages) for the period 1 July 2017 – 30 June 2018 – Source DPTI*

Type of Offending	Formal cautions issued	Expiation notes issued
No valid ticket	3,122	6,626
Person not in possession of valid transport concession card	3,231	4,962
Fail to purchase ticket immediately upon boarding	1,275	2,305
Student not in possession of valid student ID Card	1,519	2,033
Wrong fare paid	1,306	1,870
Fail to validate ticket on boarding	1,071	1,404
Use ticket/pass, student ID, travel concession fare not entitled to be used or expired	88	119
Bring bicycle/surfboard on train without paying appropriate fare	54	109
Use expired ticket	58	108
Fail to validate ticket for bike	40	77
Enter/remain in declared area without a ticket or pass	27	69
Override on ticket	35	42
Fail to immediately purchase ticket in declared area	6	25
Attempt to use an interpeak ticket during peak time	8	17
Use invalid ticket	5	8
Refuse to show ticket/card on prescribed premises	1	1
Total	11,848	19,780

Table 5 Expiations issued by SAPOL for children under 18 (Source SAPOL)

Type of Offending	Formal cautions issued
Board without ticket or immediately purchasing a ticket	204
Use concessional ticket / not possessing valid student identification card (SIC)	113
Use concessional ticket / not possessing valid transport concession card (TCC)	58
Travel without paying appropriate fare	49
Fail to validate ticket in passenger vehicle	15
Foot on seat in passenger vehicle	12
Use SIC/TCC Pass invalid / not entitled	10
Use expired ticket	1
Consume food / drink in passenger vehicle after request to stop	1
Refuse request to move while in passenger vehicle	1
Wrong fare paid	1
Use ticket validated by another person or invalid	1
Attempt to travel without paying appropriate fare	1

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