

# Court Fines and Infringement Penalties: Data Methodology

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## Data sources

Several data sources were used in this report to describe the imposition and enforcement of court fines and infringement penalties in Victoria, and to inform the Council's recommendations.

Some of the key data sources used in this report are:

- the Magistrates' Court Courtlink system and associated Cognos data extracts (court fine imposition, infringement penalty enforcement data, case initiation data, court fine payment data, warrant enforcement, community work for fine default, and imprisonment-in-lieu data);
- the Department of Justice's Higher Courts Conviction Returns Database (court fine imposition in the County and Supreme Courts)
- the Children's Court Courtlink system and associated Cognos data extracts (court fine imposition, CAYPINS infringement imposition, case initiation data, court fine payment data, warrant enforcement, and enforcement hearing sanctions data);
- IMES (infringement penalty enforcement data and internal review data);
- Corrections Victoria (community work order data, community work permit data and receptions into prison data);
- the Australian Bureau of Statistics (CPI data and population data);
- the Commonwealth Department of Social Services (concession cards data); and
- the Council's own reoffending database.

## Data

Some of the key data presented in this report includes:

### ***Court fines***

- contested hearings in the Magistrates' Court for the 2004–05 to 2012–13 period;
- payment data for Magistrates' Court matters for the 2004-05 to 2012-13 period;
- fine default enforcement sanctions in the Magistrates' Court for the 2004–05 to 2012–13 period (community work and imprisonment-in-lieu orders);
- warrants for unpaid fines issued in the Magistrates' Court, and the results of those warrants;
- contested hearings in the Children's Court for the 2004–05 to 2012–13 period;
- payment data for Children's Court matters for the 2004-05 to 2012-13 period;
- fine default enforcement sanctions in the Children's Court for the 2004–05 to 2012–13 period (probation, youth supervision and property seizure orders);
- warrants for unpaid fines issued in the Children's Court, and the results of those warrants; and
- contested hearings in the County and Supreme Courts for the 2009–10 to 2012–13 period.

### ***Infringement penalties***

- infringement warrant (section 160) enforcement hearings in the Magistrates' Court for the 2009–10 to 2012–13 period;
- Children and Young Persons Infringement Notice System ('CAYPINS') hearings within the Children's Court jurisdiction for the 2007–08 to 2012–13 period;
- payment data for CAYPINS matters for the 2007-08 to 2012-13 period;
- default enforcement sanctions for unpaid CAYPINS matters (probation, youth supervision and property seizure orders);
- warrants for unpaid CAYPINS matters issued in the Children's Court jurisdiction and the result of those warrants;
- internal review outcomes for 2009-10 to 2012-13 (from Infringement Management and Enforcement Services ('IMES')); and
- health care cards in Victoria from the Commonwealth Department of Social Services.

### ***Additional material***

- the Consumer Price Index (CPI) and population statistics from the Australian Bureau of Statistics.

## **Court fines data**

### **Counting units for court data**

Three approaches will be used to analyse the court data presented in this report: the number of distinct persons, the number of cases, or the number of charges:

- the "persons" counting unit, which is used for the re-offending analysis, consists only of counting distinct individuals. One person may be involved in multiple cases during their lifetime;
- a case describes a group of charges attributed to a single defendant or accused, and dealt with by the court as a single unit of work. In rare instances, a case may only have one charge, but most of the time, a case will have multiple charges. For example, a single case may have five charges, consisting of two charges of theft and three charges of burglary. Because of this, the total number of cases dealt with by a court in a given time period will usually be lower than the total number of charges dealt with by a court for that same time period; and
- a charge describes a single offence being dealt with by the court; for example, one charge of theft (as described by section 74 of the Crimes Act 1958 (Vic)). A charge can have various types of outcomes including being found "proven" and receiving a sentence, receiving a diversion program, or found "not proven".

# Contested matters

## Magistrates' Court data

Data for contested matters in the Magistrates' Court were extracted from the Courtlink system using Cognos software.

Courtlink is the administrative record-keeping system used by the Magistrates' Court and the Children's Court which traces key events occurring in each case.

Given that Courtlink is designed for administrative purposes, it is not immediately accessible for use in data analysis, meaning that other programs are required to extract and clean the data.

In this project, the Magistrates' Court extracted key pieces of data for our use using the Cognos software package.

Data for contested matters in the Magistrates' Court were provided for the 2004–05 to 2012–13 time period.

From the Magistrates' Court data provided, the following key variables were identified:

- case ID;
- matter ID/charge number;
- statutory reference and offence description for each charge;
- type of sentence or disposition given to each charge;
- whether the sentence type is an aggregate or non-aggregate version of that sentence (for example, an aggregate fine compared to a non-aggregate fine);
- whether a sentence had a conviction recorded against it or not;
- sentence length or dollar value of fine given to each charge;
- hearing date in which each charge was given a sentence or disposition;
- natural person/corporation status of the offender/accused;
- whether the case originated from the infringements system;
- whether an infringement charge was heard before the Special Circumstances List or the general list;
- whether the case was an ex-parte hearing or not; and
- the prosecuting agency of each charge.

There were some limitations on the data received from the Magistrates' Court including:

- consultations with representatives from the Magistrates' Court revealed that the court does not have a firm idea of the number of charges that originated from the infringement system. It is suspected that not all charges which started as infringements are recorded as such in the Magistrates' Court data (see further discussion in the section below on, 'How many infringement charges are heard in open court?'). Thus, the charges identified as originating from the infringements system are likely to be an undercount.

- the data obtained dealt with sentences and results for each charge at first instance. If a charge subsequently went through an appeal, rehearing, or breach proceedings, then the new sentence/s that arose from such proceedings would not be included in the data.

## County and Supreme Courts data

Data for contested matters in the County and Supreme Courts were obtained from the 'Higher Courts: Conviction Returns Database' provided by the Business Intelligence area in the Courts and Tribunals unit within the Department of Justice.

Data for the County and Supreme Courts used in this report covered the period from 2009–10 to 2012–13.

For the County and Supreme Courts the following key variables were identified:

- case ID;
- matter ID/charge number;
- statutory reference and offence description for each charge;
- type of sentence or disposition given to each charge;
- whether the sentence type is an aggregate or non-aggregate version of that sentence (for example, an aggregate fine compared to a non-aggregate fine);
- sentence length or dollar value of fine given to each charge;
- hearing date in which each charge was given a sentence or disposition; and
- natural person/corporation status of the offender/accused.

Some of the key limitations with the County and Supreme Courts data included:

- cases that were being sentenced in the County Court or the Supreme Court for the first time could not be distinguished from cases that arrived from the Magistrates' Court as a *de novo* or appeal hearing;
- the absence of data on whether fines given in the County and Supreme Courts were successfully paid; and
- the absence of data on which enforcement sanctions (if any) were used in the County and Supreme Courts in the cases that were sentenced to a fine.

## Other court data

### Records of enforcement sanctions used for fine default in the Magistrates' Court

Data were obtained for the Magistrates' Court on cases that received:

- community work as a result of an enforcement hearing for fine default; or
- imprisonment-in-lieu orders as a result of an enforcement hearing for a fine default.

These datasets covered from 2004–05 to 2012–13, which paralleled the time period studied for contested matters in the Magistrates' Court.

For each of the datasets the following key variables were identified:

- case ID;
- enforcement sanction used (for example, community work or imprisonment-in-lieu order);
- date at which enforcement sanction was handed down; and
- proposed length for imprisonment-in-lieu orders (although not all imprisonment-in-lieu orders are actually carried out). Data were not available on whether the proposed length of the order was concurrent or cumulative with an existing custodial sentence. However, consultation with various stakeholders indicates that the majority of imprisonment-in-lieu orders are usually concurrent.

Data on the length of community work orders were not available.

Data-matching based on case ID's was used to link these enforcement orders back with the data on contested matters and infringement warrant enforcement hearings in the Magistrates' Court.

## **Payment records for cases in the Magistrates' Court**

Data on payment records were obtained for the Magistrates' Court for 2004–05 to 2012–13.

Payment records came in two separate files: the 'repayment record' data and the 'payment summary' data.

The 'repayment record' data contained the following key variables:

- case ID;
- the dollar amount which the relevant court received on a particular date;
- the date at which the payment was received; and
- the original court sentence or disposition which resulted in payment being required (mainly fines, although other payment types such as adjourned undertakings and compensation orders are also listed).

The 'repayment record' data listed individual payment instalments being made in the case but did not provide any data on the total amount paid in the case so far. Consequently, a new variable was created that calculated the total amount paid back in each case. This was done by summing all the individual payment instalments made against each case ID (for example, if a case ID had two entries of \$50 being paid back against it, then it would be deemed to have paid a total of \$100).

The 'payment summary' data contained the following key variables:

- case ID;
- the date and time at which a relevant payment event occurs in the case;
- the total amount still owed in the case due to court orders for payment (which included fines, but could also include any other orders involving monetary penalties). This amount should decrease over time as payments were received in the case, either through monetary or non-monetary methods;
- whether an instalment plan or time to pay order had been granted in the case;
- the payment rate for cases that were given an instalment plan;



- the total amount paid in the case so far, using monetary methods; and
- the total amount paid in the case so far, using non-monetary methods such as community work or imprisonment.

Monetary and non-monetary method payment data was summed to obtain the total amount paid in the case. A new variable was also calculated to indicate whether the case had used monetary methods only, non-monetary methods only, or a combination of both.

The 'payment summary' data for each case is continually updated whenever new payments are made by the offender. For each case, the record with the highest total amount paid was selected as the last known payment status.

It was not possible to reconcile the 'repayment record' and 'payment summary' data completely. In order to investigate the extent of the discrepancy between these two datasets, the amount which was recorded as being paid back was compared within each case.

The records indicate that 90.2% of Magistrates' Court cases in the 'repayment record' and 'payment summary' data agree on how much has been paid in each case. The remaining 9.8% of cases had different payment records in the two datasets. The majority (8.6%) comprised of records where the 'payment summary' recorded a greater amount being paid back for that case compared to the 'repayment record' data. The other 1.1% of cases comprised records where the 'repayment record' data had a greater amount recorded as being paid back compared to the 'payment summary' data.

The percentages above deal with all cases listed in the 'repayment record' and 'payment summary' data during 2004–05 to 2012–13, regardless of whether the case had a fine listed against it or not. Another comparison of the data was conducted, this time restricted to cases that were sentenced to a fine.

When restricted to cases that were sentenced to a fine, the agreement of the amount paid back in the 'repayment record' and 'payment summary' data increased to 95.7%. The remaining 4.3% had different payment records in the two datasets. The majority (3.3%) comprised of records where the 'payment summary' recorded a greater amount being paid back for that case compared to the 'repayment record' data. The other 1.1% of cases comprised records where the 'repayment record' data had a greater amount recorded as being paid back compared to the 'payment summary' data.

For the purposes of this project, in the cases where there was a discrepancy in the payment amounts, the greatest recorded amount was selected for analysis. This was because quality checking of the datasets indicated that the different results were more likely to be due to 'errors of omission' in updating payment details within one of the datasets, rather than through people entering the wrong data for that case.

## **Records of warrant activity for fine default in the Magistrates' Court**

Data on warrant activity were obtained for the Magistrates' Court for the 2004–05 to 2012–13.

The warrant activity data contained the following key variables:

- case ID;
- the type of warrant being issued (including warrants to arrest, warrants to imprison, and warrants to seize property);

- the date at which an individual warrant is issued (some cases can have several different warrants issued against them, thus the number of individual warrants is usually greater than the number of cases);
- the type of activity that occurred in warrant (e.g. warrant executed and fully paid, person arrested, warrant returned unexecuted etc). Each individual warrant in a case can go through several different stages of activity in its life-cycle, from being initially issued to its final outcome (which can involve the warrant being successfully or unsuccessfully executed);
- the date that each activity occurred in warrant; and
- the dollar value amount owed under each warrant.

## Court data methods

### Classifying ‘proven’, ‘not proven’ and ‘diverted’ results in the Magistrates’ Court

An order handed down in the Magistrates’ Court for a contested matter was classified as either ‘proven’, ‘not proven’, or ‘diverted’.

‘Proven’ matters are those where an order was handed down which established a finding of guilt on the charge. This included orders such as:

- adjourned undertakings;
- conviction and discharge (under section 73 of the *Sentencing Act 1991 (Vic)*);
- community-based orders;
- community correction orders;
- combined custody and treatment orders;
- dismissal (under section 76 of the *Sentencing Act 1991 (Vic)*);
- drug treatment orders;
- fines;
- imprisonment;
- intensive correction orders;
- partially suspended sentences of imprisonment;
- wholly suspended sentences of imprisonment;
- youth justice centre orders; and
- any sentencing orders made under Commonwealth legislation.

‘Diverted’ matters were those where the person was given a diversion plan. The person must acknowledge responsibility for their offence/s, however this is not regarded as a finding of guilt.

‘Not proven’ matters are those where an order is handed down with the charges being finalised with no finding of guilt. They can include:

- charge sent to another court due to committal hearing;

- not proven and discharged;
- not proven and dismissed; and
- struck out.

In addition, data were obtained for the 2009–10 to 2012–13 time period on ‘not proven’ charges to try and obtain further details on why a charge was not proven. This dataset contained the following variables:

- case ID;
- matter ID/charge number;
- date at which charge was given ‘not proven’ disposition;
- type of ‘not proven’ disposition;
- several variables which attempt to disentangle the reason for the ‘not proven’ disposition, such as:
  - struck out-withdrawn;
  - duplicate charge;
  - defendant deceased;
  - abuse of process;
  - no appearance of prosecution;
  - entered in error;
  - no appearance of the informant;
  - no jurisdiction to hear charge;
  - merits of the case;
  - no evidence led by prosecution;
  - insufficient evidence to support a conviction;
  - successful submission of ‘no case to answer’; and
  - other reasons (not further specified).

Despite these data being made available, the majority of ‘not proven’ charges were coded as ‘struck out-withdrawn’ with no further detail as to what caused the charge to be withdrawn. The remaining categories of ‘not proven’ charges were used less frequently.

## **Calculating the total fine amount owed in each case in the Magistrates’ Court**

When a case is sentenced to a fine, it can sometimes result in more than one charge receiving a fine. This can take the form of:

- several charges sharing the same aggregate fine;
- several charges being given individual non-aggregate fines; or
- some charges in the case sharing an aggregate fine while other charges in the same case receive a non-aggregate fine (although it is less common for this to occur).

When it comes to paying the fine, the dollar amount owed for the whole case is the most important, as opposed to the amount owed under individual charges. Because of this, the data for contested matters in the Magistrates' Court were examined in order to calculate the amount owed for each case as a result of a fine sentence.

The method by which the fine amount owed was calculated went as follows:

- the sentencing outcomes for each case were examined to see whether the case received a fine;
- if the case did not receive a fine, then the fine amount owed was calculated as \$0.00;
- if the case received an aggregate fine then the aggregate fine was counted once for the entire case;
- if the case received two or more aggregate fines in the case (an uncommon occurrence) then each unique aggregate fine was counted once for the case and summed together (e.g., if a case had two charges which had an aggregate fine of \$100 and three charges with an aggregate fine of \$500, then the total fine for the case would be calculated as \$600);
- if the case received a non-aggregate fine, then each non-aggregate fine would be summed together from the individual charges which received them (e.g., if five charges were each given a non-aggregate fine of \$6, then the total fine in the case would be \$30);
- if the case had both aggregate and non-aggregate fines, then the aggregate and non-aggregate fines would be calculated separately (using the methods outlined above), and the total of the aggregate and non-aggregate fines would be summed to obtain the total fine owed in the case (e.g., if two charges received an aggregate fine of \$500 and another three charges received non-aggregate fines of \$20, then the total fine in the case would be \$560).

There are other types of court orders which can result in a person being required to pay money (e.g., compensation orders or costs orders), or as conditions of other sentences (e.g., adjourned undertakings, good behaviour bonds). The amounts owed under these other orders were not calculated, due to the data not being available, and because these orders were beyond the scope of this project.

## **Classifying whether a court fine was fully paid, partially paid or not paid in the Magistrates' Court**

For each case that was sentenced to a fine, it was important to examine whether it had paid any portion of the amount owed. To this end, data were compared between cases that were sentenced to a fine, and any payment records that could be found for that case. The procedure for doing this was as follows:

- the procedures for calculating the fine amount owed in the case was followed, as described under the sub-heading 'Calculating the total fine amount owed in each case in the Magistrates' Court';
- the procedures for calculating total amount that had been paid for each case was followed, as described under the sub-heading 'Payment records for cases in the Magistrates' Court';
- data-matching was conducted on these two sets of data using the case ID variable;
- if there was no record of payment available for the case within the payment records data, then it was assumed that \$0 had been paid;

- for each case, the amount that was recorded as being paid was divided by the fine amount owed in the case, in order to obtain the percentage of amount owing that had been successfully paid;
- the percentage created from this procedure for each case would be analysed as follows:
  - if the percentage obtained from this procedure was 0%, then the case would be classified as having 'no payments made';
  - if the percentage was greater than 0% but less than 100%, then the case would be classified as being 'partially paid';
  - if the percentage was equal to or greater than 100%, then the case would be classified as being 'fully paid';
  - a case can pay back more than 100% of the value of the fines owed, because the payment records data collects information on payments for other orders in addition to fines;
  - it is possible for a case to pay a sufficient amount to cover the fine, but still experience default proceedings if they do not meet their payment obligations to other orders. However the issue of failing to meet the obligations of non-fine orders is beyond the scope of this paper.

### **Classifying whether a warrant was successfully executed, unsuccessfully executed or had no action taken on warrant yet in the Magistrates' Court**

When a warrant is issued in a case, it can go through several different events before it is eventually resolved, either successfully or unsuccessfully. The main discussion in this report usually talks about the last known activity that occurred in each warrant rather than any of the events that occurred prior.

The warrants data used for this project lists the events that occur under each warrant, up to and including how they were resolved. To achieve this, the last known activity that occurred for each warrant was identified according to the following procedure:

- individual warrants were identified by matching the following variables:
  - the case ID that the warrant was assigned to;
  - the type of warrant being issued (e.g., warrant to imprison, warrant to arrest or warrant to seize property);
  - the date at which the warrant was created;
- once individual warrants were identified within each case, the date at which each activity occurred in the warrant was examined;
- once all the relevant dates had been examined, the most recent activity date list for each individual warrant was selected to see the last known status of the warrant;
- warrants were then classified as being 'successfully executed', 'unsuccessfully executed', or having had 'no action taken on warrant yet', depending on what occurred in their most recent activity date;
- for a warrant to be classified as 'successfully executed' the following activity needs to be recorded as occurring during its most recent date:
  - the warrant is fully paid/paid within tolerance;
  - part payments are received;

- parties listed on the warrant elect to do community work;
- parties listed on the warrant elect a mixture of community work and monetary payment;
- the amount owed in the warrant is converted into an existing custodial sentence;
- parties listed on the warrant are arrested and brought back to court;
- parties listed on the warrant are imprisoned for payment default;
- for a warrant to be classified as ‘unsuccessfully executed’ the following activity needs to be recorded as occurring during its most recent date:
  - the warrant is recalled/returned unexecuted by the court or Sheriff;
  - the warrant is cancelled and re-issued;
  - a decision is made to take no further action on the warrant;
  - there is a ‘nulla bonna’ result when executing warrant (i.e., the parties listed on the warrant do not have sufficient assets to seize in order to satisfy the warrant);
  - the warrant has expired;
- for a warrant to be classified as having ‘no action taken on warrant yet’ the following activity needs to be recorded as occurring during its most recent date:
  - the warrant is filed at Sheriff’s office;
  - the address of parties listed on the warrant is no longer current;
  - the warrant is created but no other activity has occurred yet.

The data on warrant activities also had some limitations:

- a warrant that has ‘no action taken yet’ is likely to change in future as enforcement activity occurs. However, these warrants are placed into this category because no activity has occurred yet during its most recent recorded date;
- the warrants data on people being imprisoned for fine default is likely to be an overestimate, based on consultation with stakeholders and comparisons with other data sources. It may be that this group may include the population that were already in prison for previous matters, or people that are about to be given a custodial sentence for other charges;
- in rare instances, a warrant can have activity occurring during its most recent date which can be classified as being in two or more of the aforementioned categories (e.g., a warrant which resulted in the person fully paying the outstanding amount, accompanied by the same warrant being recalled unexecuted). The general rule when this occurs is as follows:
  - if the most recent date on the warrant includes an event which places it in the ‘successfully executed’ category, then it will be classified as such, despite other events which can place it in the ‘unsuccessfully executed’ or ‘no action taken yet’ categories (e.g. a warrant is more likely to be recalled unexecuted because the outstanding amount is fully paid, rather than the reverse);
  - if the most recent date on the warrant includes an event which places it in the ‘unsuccessfully executed’ category, then it will be classified as such over other events which would place it in the ‘no action taken yet’ category (e.g., a warrant is filed at the Sheriff’s office, and later in the same day is recalled by the Court);
  - this issue affected nearly 0.0% of the cases with fines in the Magistrates’ Court during 2004–05 to 2012–13;

- in rare instances, a warrant can have activity occurring during its most recent date which does not have sufficient information to classify it in one of the three aforementioned categories. In this instance, they would be placed into the 'unknown' category. This accounted for nearly 0.0% of the cases with fines in the Magistrates' Court during 2004–05 to 2012–13.

## **Classifying whether an imprisonment-in-lieu order made in court results in imprisonment**

One of the enforcement sanctions a case can experience for fine default is to have an imprisonment-in-lieu order handed down. An imprisonment-in-lieu order notifies the offender in the case that they must meet their payment obligations to the court, or risk facing imprisonment. A warrant to imprison also needs to be issued by the court to authorise the Sheriff to carry out the sanction. Not every person who receives an imprisonment-in-lieu order will have a warrant to imprison issued against them, and not every warrant to imprison will be successfully executed.

In order to assess the extent to which an imprisonment-in-lieu order eventually results in imprisonment, the following steps were taken:

- cases which had fines as part of their sentence were identified;
- the cases which had fines were further divided between those with imprisonment-in-lieu orders and those which did not;
- cases with fines and imprisonment-in-lieu orders were further divided between those with warrants to imprison and those without these warrants;
- the cases with warrants to imprison were examined on the warrant most recent date of activity to see how the warrant had resolved itself (see discussion under the sub-headings 'Classifying whether a warrant was successfully executed, unsuccessfully executed or had no action taken on warrant yet in the Magistrates' Court');
- much of the same data limitations mentioned in the sections on 'Classifying whether a warrant was successfully executed, unsuccessfully executed or had no action taken on warrant yet in the Magistrates' Court' also applies in regard to the status of the warrants to imprison.

## **Using consumer price index (CPI) to calculate the real dollar value of fines over time**

Figure 3 of the report calculates whether the real value of fines handed down in the Magistrates' Court has changed over time. In order to do this, data on the nominal value of fines being handed down in court was converted to real values using the consumer price index (CPI).

Converting nominal dollar value of fines to real dollar values for Figure 3 involved the following procedure:

- the total fine amount owed in each case in the Magistrates' Court during 2004–05 to 2012–13 was calculated according to the method described in 'Calculating the total fine amount owed in each case in the Magistrates' Court';
- each case sentenced to a fine was divided into the financial year in which they received the fine;

- for each financial year, the median value of the total fine amounts owed in each case were calculated. The median was chosen instead of the mean so that it would be unaffected by outliers;
- CPI figures were obtained from the Australian Bureau of Statistics (ABS) *Consumer Price Index* (Cat No. 6401.0) time series spreadsheets (Tables 1 and 2. CPI: All groups, Index numbers and percentage changes);
- CPI figures by the ABS are updated on a regular basis. At the time of analysing the data for figure 3, the September 2013 edition of this data was used, as it was the most recent edition;
- CPI figures for Melbourne in the December period of each financial year (2004–05 to 2012–13) were obtained from the ABS spreadsheets. The December period CPI was used as it was the mid-way point during each financial year being studied;
- December 2012 was chosen as the period of time which had the ‘real dollar values’ for the nominal fine amounts to be converted into. The December 2012 period was chosen because it was the mid-way point of the most recent financial year of fines data which was available (2012–13);
- to convert all the nominal dollar values into December 2012 dollar values the following formula was used:
  - December 2012 real dollar value=nominal dollar value of fine multiplied by (December 2012 CPI value divided by December CPI value of the financial year which has the nominal dollar value);
- for example, to convert fines received in 2004–05 into their equivalent 2012–13 values the following formula was used:
  - December 2012 real dollar value=2004–05 nominal dollar value of fine multiplied by (December 2012 CPI value divided by December 2004 CPI value).

## Court fines in the Children’s Court

The data used for analysing court fines and enforcement sanctions in the Children’s Court jurisdiction were in a similar format to the data for the Magistrates’ Court, and similar procedures were used to analyse them. Due to the extent of the similarities, this section will highlight key differences with the Children’s Court data, and will refer back to the relevant discussion in the Magistrates’ Court data to provide further detail.

### Contested matters: Children’s Court data

Data for contested matters in the Children’s Court was extracted from the Courtlink system using Cognos software in a similar manner to data from the Magistrates’ Court and for the identical time period of 2004–05 to 2012–13 (see discussion under the sub-heading ‘Contested matters: Magistrates’ Court data’).

Most of the key variables and limitations as described for the Magistrates’ Court also applied for the Children’s Court data. However, the following key differences in the Children’s Court data emerged:

- the Children’s Court only deals with natural persons, not corporations; and
- there is no identifier available to distinguish matters that originated from the infringements system.



## Other Children's Court data

### Records of enforcement sanctions used for fine default in the Children's Court

Data were obtained for the Children's Court on cases which received:

- a youth supervision order for fine default;
- probation for fine default; or
- an order to seize property for fine default.

The time period which these datasets covered was 2004–05 to 2012–13, in line with the time period being studied for contested matters in the Children's Court.

For each of the datasets the following key variables were identified:

- case ID;
- enforcement sanction used;
- date at which enforcement sanction was handed down; and
- length of youth supervision order or expiry date of the probation order.

Data on the dollar value of property to be seized was not available.

Data-matching based on case IDs was used to link these enforcement orders back with the data on contested matters and CAYPINS hearings in the Children's Court jurisdiction.

### Payment records for cases in the Children's Court

Similar data to that outlined in the section 'Payment records for cases in the Magistrates' Court' was obtained to examine payment data in the Children's Court.

An examination was also done on the 'repayment records' and 'payment summary' data for the Children's Court to find out how closely they matched. The data match was as high as 99.6% for the Children's Court with the remaining 0.4% being different between the two datasets. Of the 0.4% of cases which had different records, 0.3% of the records had a greater amount being paid back according to the 'payment summary' data, and 0.1% had a greater amount being paid back according to the 'repayment records'.

### Records of warrant activity for fine default in the Children's Court

Similar data to that outlined in the section 'Records of warrant activity for fine default in the Magistrates' Court' was used to examine warrants issued in the Children's Court. The main difference is that the Children's Court can only issue warrants to seize property.

## Data methods

### Classifying proven, not proven and diverted results in the Children's Court

An order handed down in the Children's Court for a contested matter was classified as either 'proven', 'not proven' or 'diverted'.

'Proven' matters are those where an order is handed down which establishes a finding of guilt on the charge. This can include orders such as:

- accountable undertakings;
- fines;
- good behaviour bonds;
- probation;
- proven and dismissed (under section 360 (1)(a) of the *Children, Youth and Families Act 2005* (Vic);
- non-accountable undertaking;
- youth supervision order;
- youth attendance order;
- detention in a youth justice centre; or
- detention in a youth residential centre.

'Diverted' matters are those where the person was given a diversion plan. The person must acknowledge responsibility for their offences, however this is not regarded as a finding of guilt. The only diversion program with reliable data in the Children's Court is for the ROPES program.

'Not proven' matters are those where an order is handed down with the charges being finalised with no finding of guilt. They can include:

- charge sent to another court due to committal hearing;
- not proven and discharged;
- not proven and dismissed; and
- struck out.

Data on the 'not proven' matters were obtained for the Children's Court for the 2009–10 to 2012–13 period, similar to the material that was obtained for the 'not proven' matters in the Magistrates' Court (see the section on 'Classifying "proven", "not proven" and "diverted" results in the Magistrates' Court'). Like the Magistrates' Court data, the majority of the 'not proven' in the Children's Court consisted of charges which were 'struckout-withdrawn' with no further detail as to what caused the charge to be withdrawn.

## **Calculating the total fine amount owed in each case in the Children's Court**

The method for calculating the fine amount owed in Children's Court cases was identical to that used for the Magistrates' Court (see 'Calculating the total fine amount owed in each case in the Magistrates' Court' for details).

## **Classifying whether a court fine was 'fully paid', 'partially paid' or 'not paid' in the Children's Court**

The method of classifying whether a Children's Court case had successfully paid off their fines was identical to that used for Magistrates' Court cases (see 'Classifying whether a court fine was "fully paid", "partially paid" or "not paid" in the Magistrates' Court' for further details).

## **Classifying whether a warrant was 'successfully executed', 'unsuccessfully executed' or had 'no action taken on warrant yet' in the Children's Court**

The Children's Court can only issue warrants to seize property, therefore some of the final warrant outcomes in the Magistrates' Court do not occur in the Children's Court.

The method of classifying whether a Children's Court warrant was 'successfully executed', 'unsuccessfully executed' or had 'no action taken on warrant yet' was otherwise identical to that of the Magistrates' Court (see 'Classifying whether a warrant was "successfully executed", "unsuccessfully executed" or had "no action taken on warrant yet" in the Magistrates' Court' for further details).

## **Re-offending data**

A key consideration for examining reoffending following a fine was the extent to which a fine was paid. Fine repayment information was contained in a separate extract of data to the reoffending database and therefore the Council, using a common case identifier, merged information about repayment from the repayment data into the reoffending database. Not all fine repayment records were able to be found in the reoffending database (80.6% were located). Any reoffending record without a matching repayment record was excluded from all reoffending analyses.

A risk of using sentencing data to measure reoffending following sentence is that a sentence an offender receives following an 'index' sentence is for offending that occurred prior, rather than subsequent, to the index sentence. Such a scenario is rare but arises because sometimes there is a significant delay between the offence date and prosecution date. Counting such an event as a 'reoffending event' would result in an inflation of the rate of reoffending following sentence. The Council took steps to minimise the level of this so-called 'pseudo' reoffending by considering offence dates and excluding all subsequent sentencing episodes whose offences occurred prior to the sentencing date of the index episode. The offence date was not available for approximately 5% of sentencing records; in such cases, the sentencing date of subsequent sentencing episodes was used. Consequently, a small level of pseudo reoffending may have been included in the reoffending rates.

In comparing reoffending rates across subgroups of people within data, it is important to control for the amount of time available to reoffend; otherwise, differences found in

reoffending rates may be due to exposure time rather than characteristics of the subgroups. The two-year post-offending period used to examine reoffending was determined using the difference between the date of the first subsequent sentence, if there was one, and the date of the index sentence. The reason the date of offence was not used was because in a small percentage of cases, the offence date in the reoffending database was not available.

The Council's reoffending database only includes one offence per case. Often cases have multiple offences. Where this occurs the 'most serious' offence associated with the most severe sentence in the case is used. The rank of sentences set out in the *Sentencing Act 1991* (Vic) is used to determine the most severe sentence while the National Offence Index (Australian Bureau of Statistics, 2009, *National Offence Index* Cat no.1234.0.55.001) is used to determine the most serious offence.

## Infringement penalties

### Data sources

#### IMES data on the infringements system

IMES provided the Council with the data files reported to them by agencies that issue infringements. This data covered six month intervals over a four year period from July 2009 to June 2013. A total of 132 agencies provided data to IMES at least once over this four year period.

These separate datasets were collated into a single spreadsheet. This enabled the Council to examine a range of issues not addressed in the standard Attorney-General annual reports, including: (a) annual trends across agencies, and (b) rates of requests for review and the outcomes of these reviews, by agency and also by broad agency types.

#### Infringement warrant enforcement hearings in the Magistrates' Court

Data for infringement warrant enforcement hearings (under section 160 of the *Infringements Act 2006* (Vic)) in the Magistrates' Court was extracted from the Courtlink system using Cognos software but as a separate dataset from the 'contested matters in the Magistrates' Court' dataset.

For this report data was obtained on infringement warrant enforcement hearings for the 2009–10 to 2012–13 time period.

For the infringement warrant enforcement hearings the following key variables were identified:

- case ID;
- matter ID/charge number;
- offence description of each matter (without stat ref);
- natural person/corporation status of the offender/accused;
- the prosecuting agency involved;
- the type of enforcement orders given for each matter which can include:

- community work;
- imprisonment-in-lieu orders; or
- a full or partial discharge of the amount owing;
- the date at which each order was given.

The limitations of these data included:

- information on the infringement amount originally owed in the case was not available, which made it impossible to calculate how successful any payments made in the case were in reducing the amount owed; and
- for the cases which received a discharge on the amount owing, data was not available to identify the extent of the discharge (e.g. whether the amount owed was completely discharged, or only partially discharged, or the extent of the partial discharge).

## Other data

### ***Records of warrant activity for fine default for infringement warrant enforcement hearings in the Magistrates' Court***

The same data which were described in the section 'Records of warrant activity for fine default in the Magistrates' Court' also provided information on warrants issued in the infringement warrant enforcement hearings and were therefore used to examine this topic.

## Data methods

### **Classifying whether a warrant was 'successfully executed', 'unsuccessfully executed' or had 'no action taken on warrant yet' for infringement warrant enforcement hearings**

The method of classifying whether a warrant in an infringement warrant case was 'successfully executed', 'unsuccessfully executed' or had 'no action taken on warrant yet' was identical to the procedure described under the sub-heading 'Classifying whether a warrant was "successfully executed", "unsuccessfully executed" or had "no action taken on warrant yet" in the Magistrates' Court'.

### **Classifying whether an imprisonment-in-lieu order made in court results in people being imprisoned**

The method of classifying whether an imprisonment-in-lieu order made at an infringement warrant enforcement hearing led to actual imprisonment was analysed in an almost identical way to imprisonment-in-lieu orders for contested matters in the Magistrates' Court (see 'Classifying whether an imprisonment-in-lieu order made in court results in people being imprisoned' for further details).

The main difference with regard to infringement warrant enforcement hearings is that all the cases were examined to see whether they received an imprisonment-in-lieu order, rather

than restricting the analysis to cases which received a court-sanctioned fine (infringement warrant enforcement hearings are not contested matters, and so cannot receive any type of sentence).

## **CAYPINS hearings in the Children's Court**

Data for CAYPINS hearings in the Children's Court were extracted from the Courtlink system using Cognos software but as a separate dataset from the 'contested matters' in the Children's Court.

For this report data on CAYPINS hearings for the 2007–08 to 2012–13 time period was obtained.

For the CAYPINS hearings the following key variables were identified:

- case ID;
- matter ID/charge number;
- the statutory reference and offence descriptions for each matter;
- the type of order which the registrar gives for each infringement which can include:
  - confirming that the infringement should be paid in full;
  - confirming the infringement but with a reduction in the amount owed;
  - the registrar cancelling the infringement;
  - allowing the prosecuting agency to cancel the infringement;
  - allowing the child to contest the infringement in the Children's Court;
- the original infringement amount owed, at case level;
- the reduced infringement amount owed, at case level (if the registrar chooses this option);
- the date at which the order was handed down; and
- the prosecuting agency for the infringement.

Some limitations of the CAYPINS data included:

- While CAYPINS records which matters are transferred to the Children's Court, there is currently no way to track the matter after it leaves the CAYPINS system. This is because matters are given a new case ID when they arrive at the Children's Court, which cannot be linked back to the case ID they had during the CAYPINS hearing.
- There is also no data available at the moment to find out which infringements completely bypassed the CAYPINS system and were transferred directly to the Children's Court (if any).

## **Other data**

### **Records of enforcement sanctions used for payment default in CAYPINS**

The same data which were described in the section 'Records of enforcement sanctions used for fine default in the Children's Court' also contained information on enforcement sanctions issued in CAYPINS cases and were therefore used to examine this topic.

## **Payment records for cases in CAYPINS**

The same data which were described in the section 'Payment records for cases in the Children's Court' also contained information on payments made in CAYPINS cases and were therefore used to examine this topic.

## **Records of warrant activity for fine default in CAYPINS**

The same data which were described in the section 'Records of warrant activity for fine default in the Children's Court' also contained information on warrant activity in CAYPINS cases and were therefore used to examine this topic.

## **Discharges of community work orders from Corrections Victoria**

Data were obtained from Corrections Victoria to examine the outcomes of community work for people that performed this activity to pay off their infringement penalty or court fine.

The main findings from this data were presented in Figure 23 and Figure 24.

Community work from the infringements system was comprised of community work permits.

Community work resulting from court fines was comprised of a combination of the following orders:

- fine conversion orders;
- fine default unpaid community work orders; and
- community-based orders for fine default.

In both these graphs, the outcomes of community work orders are classified as being "successfully discharged", "unsuccessfully discharged" or "not counted discharge". These categories were set by Corrections Victoria and retained in the figures.

Successful and unsuccessful discharges of community work orders are self-explanatory. The "not counted discharge" category is comprised of community work orders which were not completed, but with valid reasons.

The data list the following as being included in the "not counted discharge" category:

- cancellation by application-unwilling
- cancellation by application-unable
- cancellation by application
- confirmed
- death
- no further action
- set aside
- varied
- warrant withdrawn

## Data methods

### **Calculating the total infringement amount owed in each case in CAYPINS**

CAYPINS data already provide information on the amount that needed to be paid back for each case after the registrar had heard the matter, so very few additional calculations were needed.

If the registrar confirms that the infringement should be paid in full, then the amount owed in the case will be based on the original infringement amount recorded for that case.

If the registrar chooses to reduce the amount that needs to be paid on the infringement, then the amount owed in the case will be based on the reduced infringement amount recorded for that case.

If the infringement is cancelled by either the registrar or the prosecuting agency, or is taken to the Children's Court as a contested matter, then it is assumed that the amount owed for that infringement will be \$0.

### **Classifying whether a court fine was “fully paid”, “partially paid” or “not paid” in CAYPINS**

The method of classifying whether a CAYPINS case had successfully paid off their fines was almost identical to that used for Magistrates' Court cases (see “Data methods: Classifying whether a court fine was “fully paid”, “partially paid” or “not paid” in the Magistrates' Court” for further details).

The only difference is that if all infringements in a case were cancelled (by either the registrar or the prosecuting agency) or if all infringements are transferred to the Children's Court, then they would be placed in a new “no payment required” category.

### **Classifying whether a warrant was “successfully executed”, or “unsuccessfully executed” or had “no action taken on warrant yet” in CAYPINS**

CAYPINS enforcement hearings can only issue warrants to seize property, therefore some of the final warrant outcomes in the Magistrates' Court do not occur in CAYPINS.

The method of classifying whether a CAYPINS warrant was “successfully executed”, “unsuccessfully executed” or had “no action taken on warrant yet” was otherwise identical to that of the Magistrates' Court (see “Data methods: classifying whether a warrant was “successfully executed”, or “unsuccessfully executed” or had “no action taken on warrant yet” in the Magistrates' Court” for further details).



## Calculating the percentage of the population holding a concession card

Data on the number of people that had concession cards for each state/territory during 2012–13 were obtained from the Commonwealth Department of Social Services (private email).

Population data were obtained from the ABS to help calculate the percentage of people that had concession cards in each state/territory.

- population data was sourced from the ABS *Australian Demographic Statistics, Mar 2013* (Cat 3101.0) Time-series spreadsheets Table 4: Estimated Resident Population, States and Territories (Number);
- population figures by the ABS are updated on a regular basis. At the time of analysing obtaining the population data, the March 2013 edition was used, as it was the most recent edition;
- the December 2012 population for each state/territory was used to estimate the percentage of people that had concession cards. The December 2012 period was chosen as it was the mid-way point for the 2012–13 financial year used in the concession card data.

There were no data available about whether people on concession cards had different rates of incurring infringements compared to people without concession cards

## Calculating how many infringement charges are heard in open court

### How cases get to open court

Both the Magistrates' and Children's Court can hear infringements in open court in cases where the person or enforcement agency has elected to take the matter to court or where it proceeds to court following an unsuccessful application for internal review by the recipient. IMES data for the Attorney-General's annual report into the infringements system does not break down the number of infringements given to children or adults, nor does it indicate which court eventually receives the infringement.

Another pathway to court for infringements against adults is as a result of enforcement revocation proceedings at the Infringements Court.<sup>1</sup> Infringements for children brought to CAYPINS may also be transferred to the Children's Court if the child elects to do so.

If an application to revoke an enforcement order is granted by the Infringements Court, the enforcement agency then has 21 days to file a request for non-prosecution, that is, to withdraw the matter and cease the prosecution. If the matter is not withdrawn it is automatically listed for hearing at the Magistrates' Court.

There is no one clear source of data on the number of infringement matters that end up in open court. The Council has attempted to extrapolate numbers based on:

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<sup>1</sup> Infringements against children go through a separate system known as CAYPINS, which also provides the option to take the infringement to the Children's Court. However no information is provided in the Attorney-General's annual report on the number of infringements that use CAYPINS.

- the Attorney-General's annual report into infringements (for data prior to 2012–13);
- unpublished data received from IMES (from the same data sources used to produce the Attorney-General's Annual Report);
- unpublished data received from IMES, from data sources different to those used for the Attorney-General's Annual Report;
- data from the courts.

## **Attorney-General's Annual Report and associated data**

IMES data for 2012–13 indicates that there were 5,820,383 infringements issued in 2012–13. An estimated 1.1% were heard in open court (63,992 infringements). These 63,992 infringement notices—which could be heard in either the Magistrates' Court or the Children's Court—comprised those which:

- the recipient elected to take to court (60,641 infringement notices);
- the enforcement agency took to court following an application for internal review not based on special circumstances (485 infringement notices); and
- the enforcement agency took to court following an application for an internal review based on special circumstances (2,866).

Both the Magistrates' Court and the Children's Court can hear infringements in open court in cases where the person or enforcement agency has elected to take the matter to court or where it proceeds to court following an unsuccessful application for internal review by the recipient. The Attorney-General's Annual Report and its associated data does not indicate which court eventually receives the infringement.

Another pathway to court for infringements against adults is as a result of enforcement revocation proceedings at the Infringements Court.

If an application to revoke an enforcement order is granted by the Infringements Court, the enforcement agency then has 21 days to file a request for non-prosecution, that is, to withdraw the matter and cease the prosecution. If the matter is not withdrawn it is automatically listed for hearing at the Magistrates' Court.

In 2012–13, there were 36,203 successful applications for revocation, including 26,108 revocations made on the ground of 'special circumstances' (which would be eligible to be heard in the Magistrates' Court Special Circumstances List), and 10,095 revocations made on grounds other than special circumstances.

There is no information in the Attorney-General's Annual Report on the number of infringements that proceed to court following a successful application for revocation. However, even if none of these was withdrawn, it is possible that a proportion of infringement recipients in this category elected to pay the infringement once they realised that the agency was not opting out and the matter would be proceeding to court. This is probably less likely for those who successfully sought a review on the ground of special circumstances. Given that in 2012–13, 28,438 charges were heard on the Special Circumstances List, it is fair to assume that most or all of these cases continue onto court if the agency does not opt out following a successful enforcement review.

If an application to revoke an enforcement order is not granted by the Infringements Court the recipient has the option to appeal the unsuccessful revocation to the Magistrates' Court. This occurred in the case of 15,708 infringements in 2012–13.

In summary, IMES data used to create the Attorney-General's Annual Report indicates the following key points:

- There were 5,820,383 infringement notices issued in 2012–13.
- For 60,641 of these infringements, the infringement recipient elected to take (or the enforcement agencies referred) the matter to either the Magistrate's Court or the Children's Court.
- Another 485 infringements were referred to either the Magistrate or Children's Court following an unsuccessful application for internal review by the infringement recipient (excluding internal reviews based on special circumstances).
- Another 2,866 infringements were referred to either the Magistrates' Court or the Children's Court following an unsuccessful application for internal review based on special circumstances.
- There were 36,203 infringements for which an application to revoke an enforcement order was successful at the Infringements Court, including 26,108 enforcement order revocations based on special circumstances. All of these could have been heard in the Magistrates' Court if the original enforcement agency did not withdraw the infringement after the application to revoke the enforcement order was granted and the infringement recipient did not pay the infringement once the matter was listed. It is likely that some, but not all, of these matters proceeded to court. Data from the Special Circumstances List suggests that all or most of the 26,108 revocations probably proceeded to court.
- For a further 15,708 infringements the refusal of the Infringements Court to revoke an enforcement order was successfully objected to and the matters were dealt with in the Magistrates' Court.

Taking all of the above into account, a total of 63,992 infringement penalty matters were referred to either the Magistrates' Court or the Children's Court as a result of either the infringement recipient electing to take, or the enforcement agency referring, the infringement to court, or through the matter proceeding to court after the internal review process.

Up to 36,203 additional infringement matters may have been heard in the Magistrates' Court as a result of the agency not filing a request for non-prosecution following a successful revocation by the Infringements Court and another 15,708 infringement matters were dealt with in the Magistrates' Court after a successful objection to the Infringements Court refusing to revoke enforcement proceedings. If so, the combination of these figures would mean that a maximum 2% of the 5,820,383 issued during 2012–13 ended up in open court.

## **Unpublished IMES data**

In addition to the information used to create the Attorney-General's Annual Report, IMES was very cooperative in providing additional data to the Council on infringements heard in open court from other sources.

Because of the different ways in which different infringement 'types' are managed by IMES, these data was only available for offences classified as 'Type 1' offences and not the full range of infringements which are included in data from the Attorney-General's Annual Report.

'Type 1' offences are offences for which infringement notices are issued by Victorian Government enforcement agencies only (excluding the Department of Transport). Infringements issued by local governments are *not* included in this category. For this reason, caution should be used when interpreting this data, as local governments account for nearly

one-third of infringement notices issued (29.4% of infringements issued in 2012–13 were issued by local governments).

Type 1 enforcement agencies include the following:

- Victoria Police;
- Roads Corporation (VicRoads);
- Traffic Camera Office;
- Taxi Services Commission (TSC);
- Victoria Police Toll Enforcement Office (CityLink);
- Consumer Affairs Victoria (CAV);
- Director, Transport Safety (Victoria);
- Department of Sustainability and Environment and Department of Primary Industries (DPI) (now Department of Environment and Primary Industries (DEPI));
- Victoria Police Toll Enforcement Office (Eastlink);
- Department of Planning & Community Development (now Department of Transport, Planning and Local Infrastructure (DoTP&LI));
- Education & Early Childhood Development; and
- Corrections Victoria (yet to issue an infringement).

IMES (and Civic Compliance Victoria) manages the infringement notices of Type 1 enforcement agencies *from the time of issue*. For this reason, IMES has comprehensive data for this group.

Type 2 infringements—which were not included in the unpublished IMES data—are all of those infringements (primarily from local government) that are registered with the Infringements Court *at the enforcement stage*, resulting in the issue of a penalty reminder notice, and then an enforcement order. For this reason IMES does not have data about court election for these type of offences, as the election to court occurs prior to infringements being lodged for enforcement.

For Type 1 offences, there were 22,559 infringements for which one of the parties elected for the matter to be heard in open court in 2012–13, comprising:

- 22,313 infringements transferred to the Magistrates' Court by the infringement recipient; and
- 246 infringements transferred to the Magistrates' Court by the infringement agency.

There was no corresponding information on how many infringements for children were taken to the Children's Court (outside of CAYPINS).

This figure (of 22,559 infringements) is much smaller than the count of 60,641 infringements for which court was elected, from the IMES data used to create the Attorney-General's Annual Report. This is likely to be due to the remaining 38,082 infringements falling outside of the scope of 'Type 1' infringements.

Currently, there are no data to indicate whether infringements at the election stage went to the Magistrates' Court or the Children's Court. It is expected that most were heard in the Magistrates' Court, particularly as this category would include infringement penalties for

offences such as parking offences and other local government-issued offences, which are more likely to apply to adult offenders.

## **Courts data**

Courts data allowed the Council to identify some, but not all, of the cases and charges heard in court that originated as infringement matters. In the 2012–13 financial year, the Council identified 45,715 charges in the Magistrates' Court as originating from an infringement matter, including:

- 28,438 infringement charges that were heard by the Magistrates' Court Special Circumstances list, following:
  - a successful application by the infringement recipient to the Infringements Court to revoke an enforcement order on the ground of 'special circumstances';
  - the enforcement agency not filing a request for non-prosecution;
- 17,277 infringement-originating charges which appeared on the general list. These would comprise a combination of cases:
  - in which one of the parties elected to take the matter to court,
  - that flowed to court through the internal review process, and
  - that flowed to court following an application for revocation (other than those cases in which the matter proceeded to the Special Circumstances List following a successful application for revocation of the enforcement order based on special circumstances).

According to the Magistrates' Court data, a total of 419,423 charges were finalised as a plea or a contested matter during that year. This would mean that the charges marked as originating from infringements would represent 10.9% of charges finalised that year. However this is likely to be an underestimate, as some matters that originally started as an infringement may not be marked as such in the Magistrates' Court data. For instance, a person who receives an infringement for offences such as drink driving, drug driving or excessive speeding (over 130km/hr and/or 25km or more over the speed limit) can object to these infringements. If an objection is lodged, the infringement notice is cancelled, and a charge sheet must be filed. For this reason, it was not possible to distinguish between infringement-originating and charge-originating offences of this nature in the Magistrates' Court data.

An additional 12,730 infringement matters were dealt with through CAYPINS. Of these, CAYPINS also recorded that 72 infringement matters were transferred to the Children's Court as a result of the CAYPINS hearing.

Unfortunately, the Children's Court data is not linked to CAYPINS, and so there is no way to trace the CAYPINS infringement matters when they arrive at the Children's Court. There is also no record of charges in the Children's Court which were originally infringement matters but arrived in open court through methods other than CAYPINS (for example, where a child has elected to take the matter to court, or through internal review processes).

## **Differences in what each data source says about infringements in open court**

Currently, there is no unified data-recording system that can track the progress of infringement matters from the time they were originally issued, to their final resolution, if that resolution was in open court.

The IMES database is focused on infringement matters, from the time they are originally issued (for Type 1 offences), and as they make their way through the various stages of the enforcement and warrant stages (for Type 1 and Type 2 offences).

While IMES has some data on infringement matters that go to open court, there is only limited data on which court hears these infringement matters. There are no data linking individual infringement matters to their court appearance, nor the type of result handed down at the court hearing.

The Magistrates' Court dataset allows identification of some charges which started as infringement matters and holds data about the sentence or disposition they receive. The Magistrates' Court dataset does not, however, link these records back to the infringement activity prior to the matter's arrival in court, or at which part of the cycle a particular infringement matter was transferred to the court system.

The Children's Court dataset does not contain an identifier to indicate which charges started as an infringement matter. The CAYPINS division maintains its own separate records on the type of infringement matters it hears, and how they are resolved. It is not possible, however, to track infringement matters which start in CAYPINS, if they are subsequently transferred to the Children's Court. Both the CAYPINS dataset and the Children's Court dataset do not contain data on what occurred with a particular infringement, prior to it arriving within their jurisdiction.

The Council is of the view that improved technology and record keeping must accompany the centralisation of the management of court fines and infringement penalties. There should be the ability to track the flow of cases from their beginning to their resolution within the infringement penalty enforcement system, including where that resolution occurs in court.

## **Estimates of how many infringements are in open court**

Due to the limitations in each data source it was not possible to provide a unified picture of how many infringements arrive in open court. The Council has, however, extrapolated the following from the data that was available.

Unpublished IMES data for the Attorney-General's Annual Report estimates that 63,992 infringements were referred to the Magistrates' Court or the Children's Court due to an election to take the infringement to court or through the internal review process.

Unpublished data from IMES indicates that, of these 63,992 infringements, at least 22,559 went to the Magistrates' Court by election. There is no information about in which of these two courts the remaining 41,433 were heard. However the Council would estimate that most of these were heard in the Magistrates' Court as they include a considerable proportion of local council offences (e.g. parking) which are more likely to be given to adults.

In addition, IMES data indicates that, for 2012–13, 36,203 applications to revoke an enforcement order were granted by the Infringements Court, including 26,108 revocations on the ground of special circumstances. For another 15,708 infringements, revocation of an enforcement order was granted by the Magistrates' Court. If all of these revocations were pushed to open court, this would represent another 51,911 infringements that would have proceeded to the Magistrates' Court.

Summing up the data from IMES, this would indicate that there was a minimum of 74,470 infringements which were heard in the Magistrates' Court (based on the 22,559 infringements elected to go to the Magistrates' Court and the 51,911 infringements given

successful revocations). Assuming that all the 41,433 unknown infringements were also heard in the Magistrates' Court, this could increase the number of infringements headed to court to 115,903.

The Magistrates' Court in 2012–13 heard 419,423 charges. Its own data indicates that 45,715 of these charges originated from the infringement system, or 10.9% of charges. If the statistics from IMES are used however, this percentage would increase to 17.8% (assuming a more conservative 74,470 infringements made their way to the Magistrates' Court) or 27.6% (assuming 115,903 infringements arrived). (For some infringement offences, such as drink driving, it is not possible to distinguish between those that originated as an infringement penalty notice and those that originated with a charge]. Therefore it can be assumed that the number of infringements heard in the Magistrates' Court is higher than the courts data suggests.

There was much less information about Children's Court matters that may have started as infringements. CAYPINS indicates that it transferred 72 infringements to the Children's Court in 2012–13, accounting for 0.2% of the Children's Court matters heard that year. If it is assumed that the additional 41,433 unknown infringements were all sent to the Children's Court then infringement matters would account for more than 100% of the contested matters heard by the Children's Court that year. Neither of these two extreme results are likely to provide a realistic estimate of how many Children's Court matters started from the infringement system. The true percentages is likely to be somewhere between the two scenarios, but there was insufficient data to be able to pinpoint it with any degree of accuracy.

A further challenge to the Council's analysis is that other events may also cause data from IMES and the courts to not be fully comparable. Examples of these include:

- delays between the date that an infringement is sent to court, and the date it is listed for hearing, which could occur in a different financial year;
- the possibility of infringing agencies choosing to withdraw the matter instead of taking it to open court, but not providing this information to IMES (particularly after a successful revocation);
- the Magistrates' Court or the Children's Court hearing infringement matters, but not coding all the charges which started as infringements. This may occur in cases where an accused is facing a combination of criminal and infringement matters in the same hearing; and
- infringement recipients changing their minds and choosing to pay or resolve the infringement after they had decided to elect to take the matter to court or apply for internal review.

## Summary

Estimating the number of infringements heard in open court is complicated due to the data being collected by separate bodies and the range of events that can occur between when an infringement is first issued to the time when it arrives within the court system.

The Magistrates' Court data indicates that 10.9% of charges in 2012–13 originated from the infringements system. However, if the Magistrates' Court data is used in conjunction with the IMES data, it is likely that an estimated 17.8% to 27.6% of charges heard in the Magistrates' Court originated as infringement matters.

Estimates of Children's Court matters starting as infringements were much less reliable, and not enough information was available to pinpoint the percentage with any degree of accuracy.

A number of problems exist with estimating the impact of infringements on the court system due to the lack of a unified database to track individual infringements. In particular, there is a gap between data in the infringements system and data in the court system and it is very difficult to match this data. A greater degree of data-sharing between individual infringement agencies, IMES, and the courts would likely produce better estimates as to the proportion of infringements making their way to court.

Regardless of the problems with the various data sources, the small percentage of overall infringements that are taken to court still amount to a reasonably significant proportion of the court's workload. The Magistrates' Court data reveals a minimum of 10.9% of its charges heard in 2012–13 originated from the infringements system; this figure increases to at least 17.8% if conservative assumptions from IMES data are used in these estimates. Of the infringement-originating charges heard in court, the Magistrates' Court data indicates that 62.2% were those in the Special Circumstances List.

Given the variations between datasets, the impact of time delays on matters reaching court, and missing information on the exact pathway of all infringement cases, it is not possible to give a precise figure with respect to the number of infringement cases that proceed to open court. However, the Council estimates that between 45,715 (10.9%) and 115,903 (27.6%) of the 419,423 charges heard in the Magistrates' Court in 2012–13 originated from the infringements system. The most likely figure is somewhere closer to 20%. Estimates with respect to the Children's Court are not sufficiently reliable to estimate the percentage of matters that started as infringements.

## **Infringement offences most commonly heard in court**

Table 1 sets out the statutory references for the reference offences mentioned in Table 12 and Table 13 in Chapter 8, which deal with common infringement-originating offences making their way into the Magistrates' Court. It also lists the number of penalty units that each offence attracts if it were to proceed by way of an infringement.

For some offences heard in the Magistrates' Court, the Council could not distinguish those that originated by infringement from those that originated by charge and summons. For example it was not possible to distinguish what proportion of drink driving offences originated as infringements. As this offence is one of the most prevalent in the Magistrates' Court and can be dealt with as an infringement in certain circumstances, it is possible that it would have been in the top fifteen list if the Council had been able to identify how the cases originated.



**Table 1: The 14 infringement-originating reference offences heard in the Magistrates' Court 2009–10 to 2012–13**

Rank	Offence name	List of statutory references
1	Drive unregistered in toll zone (Citylink & Eastlink)	Drive unregistered in Citylink toll zone: s 73 <i>Melbourne Citylink Act 1995</i> (Vic); and Drive unregistered in Eastlink toll zone: s 204 <i>Eastlink Project Act 2004</i> (Vic)
2	Exceed speed limit	Exceed speed limit: Rule 20 <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules
3	Parking infringement	Park for longer than indicated: Rule 205 <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules; and Fail to purchase parking ticket/fail to obey ticket: Rule 207 <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules
4	Public transport ticket offence	Combines the offences of failing to buy / use valid/appropriate ticket on public transport and use concession/exemption public transport ticket when not entitled. The individual offences covered are as follows: <ul style="list-style-type: none"> <li>• travel without valid ticket: <i>Transport Act 1983</i> (Vic) s. 221.3;</li> <li>• fail to produce valid ticket on request: <i>Transport Act 1983</i> (Vic) s. 221.4;</li> <li>• fail to produce evidence of entitlement to concession: <i>Transport Act 1983</i> (Vic) s. 221.4A;</li> <li>• obtain concession ticket by fraudulent means: <i>Transport Act 1983</i> (Vic) s. 221.5;</li> <li>• fail to comply with request-produce ticket or evidence of concession entitlement: <i>Transport Act 1983</i> (Vic) s. 221AA.2;</li> <li>• fail to produce valid ticket for inspection: <i>Transport (Passenger Vehicles) Regulations 2005</i> (Vic) r. 45;</li> <li>• fail to validate ticket before entering premises: <i>Transport (Ticketing and Conduct) Regulations 2005</i> (Vic) r. 10;</li> <li>• fail to have valid ticket on public transport vehicle: <i>Transport (Ticketing) Regulations 2006</i> (Vic) r.6.1;</li> <li>• fail to have valid ticket in public transport premises: <i>Transport (Ticketing) Regulations 2006</i> (Vic) r.6.2;</li> <li>• fail to produce valid ticket on public transport vehicle: <i>Transport (Ticketing) Regulations 2006</i> (Vic) r.7.2;</li> <li>• fail to produce valid ticket on public transport premises: <i>Transport (Ticketing) Regulations 2006</i> (Vic) r.8.2;</li> <li>• fail to produce evidence of concession entitlement on public transport vehicle: <i>Transport (Ticketing) Regulations 2006</i> (Vic) r.9.3;</li> <li>• fail to produce evidence of entitlement to concession ticket before entering premises: <i>Transport (Ticketing) Regulations 2006</i> (Vic) r.10.3;</li> <li>• transfer ticket to other person without authorisation: <i>Transport (Ticketing) Regulations 2006</i> (Vic) r.17.1;</li> <li>• fail to surrender ticket on request: <i>Transport (Ticketing) Regulations 2006</i> (Vic) r.19.2;</li> <li>• fail to carry out additional actions to validate ticket: <i>Transport (Ticketing) Regulations 2006</i> (Vic) r. 20.1.c;</li> <li>• fail to show driver evidence of concession entitlement: <i>Transport (Ticketing) Regulations 2006</i> (Vic) r. 20.2;</li> <li>• use/attempt to use expired ticket: <i>Transport (Passengers and Rail Freight) Regulations 1994</i> (Vic) r. 202;</li> <li>• fail to surrender ticket when requested: <i>Transport (Passengers and Rail Freight) Regulations 1994</i> (Vic) r. 205;</li> <li>• fail to validate ticket: <i>Transport (Passengers and Rail Freight) Regulations 1994</i> (Vic) r. 206; and</li> <li>• refuse to leave on request for not having valid ticket: <i>Transport (Passengers and Rail Freight) Regulations 1994</i> (Vic) r. 211;</li> </ul>

5	Stop vehicle where not permitted	<p>Disobey “no stopping” sign: Rule 167 <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules;</p> <p>Stop where “clearway” sign applies: Rule 176 <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules;</p> <p>Stop in a loading zone when not allowed: Rule 179.1 <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules;</p> <p>Stop in a loading zone for longer than 30 minutes: Rule 179.2.a <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules;</p> <p>Stop in a loading zone and exceed permitted time limit: Rule 179.2.b <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules; and</p> <p>Stop in disability parking when not entitled: Rule 203.1 <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules;</p>
6	Use/own unregistered motor vehicle	Use or own unregistered motor vehicle on highway: <i>Road Safety Act 1986</i> (Vic) s 7.1
7	Fail to stop at red traffic lights	Fail to stop at red traffic lights: Rule 56 <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules
8	Stop in a permit zone	Stop in a permit zone: Rule 185 <i>Road Safety Road Rules 2009</i> (Vic) and its equivalent in the 1999 Road Rules
9	Fail to give info to identity of driver	Fail to given information relating to the identify of driver: <i>Road Safety Act 1986</i> (Vic) s 60
10	Unlicensed driving	Unlicenced driving: <i>Road Safety Act 1986</i> (Vic) s 18.1.a
11	Place feet on seats/furniture	<p>place feet on seats: <i>Transport Act 1983</i> (Vic) s. 222.3.e; and</p> <p>place feet on seats: Transport (ticketing and conduct) regulations 2005 (Vic) r. 27B;</p>
12	Drink / possess open liquor on public transport	<p>Comprises of the following offences:</p> <ul style="list-style-type: none"> <li>○ drink liquor on public transport: <i>Transport (Passenger Vehicles) Regulations 2005</i> (Vic) r57.1.a;</li> <li>○ possess open liquor on public transport: <i>Transport (Passenger Vehicles) Regulations 2005</i> (Vic) r57.1.b;</li> <li>○ drink liquor on public transport vehicle or premises: <i>Transport (Ticketing and Conduct) Regulations 2005</i> (Vic) r 24.1;</li> <li>○ possess open liquor on public transport vehicle or premises: <i>Transport (Ticketing and Conduct) Regulations 2005</i> (Vic) r 24.2; and</li> <li>○ drink or possess liquor on rail vehicle: <i>Transport (Passengers and Rail Freight) Regulations 1994</i> (Vic) r 317</li> </ul>
14	Drunk in a public place	Drunk in a public place: <i>Summary Offences Act 1966</i> (Vic) s13.
Unranked	Shop theft	Shoptheft: <i>Crimes Act 1958</i> (Vic) s74A

## Calculating the infringement penalty for each offence

The infringement penalties for the “reference offences” listed in the table above were calculated according to the following procedure:

- looking up the relevant legislation for each offence and finding information on the number of penalty units that the offence would have if it proceeded as an infringement matter;
- finding out the financial year in which each of the offences listed in the table were sentenced in the Magistrates’ Court;
- finding out the dollar value of each penalty unit in each financial year;
- multiplying the number of penalty units for each offence with the dollar value of what each penalty unit is worth in the financial year that they were sentenced in;
- for example, using this procedure, toll zone offences (which are worth 1 penalty unit, would have an infringement penalty of \$116.82 during 2009–10 but an infringement penalty of \$119.45 in 2010–11;
- in comparison, an infringement related to placing feet on seats (worth 1.47 penalty units for adults) would be worth \$171.73 in 2009–10 and \$175.59 in 2010–11.

The value of penalty units for each financial year was as follows:

- 2009–10: \$116.82;
- 2010–11: \$119.45;
- 2011–12: \$122.14;
- 2012–13: \$140.84;

Source: Office of the Chief Parliamentary Council

The value of the infringement penalty for each offence was later used to calculate whether the reference offences that were sentenced in the Magistrates’ Court received a lenient or more severe sentence compared to what they would receive in the infringement system (see the discussion on ‘Calculating whether a court sentence for infringeable offences was more or less severe than an infringement penalty’).

## Calculating whether a court sentence for infringeable offences was more or less severe than an infringement penalty

Chapter 8 discusses whether infringement penalties sentenced in the Magistrates’ Court receive a more or less severe sentence in court compared to the infringement penalty for the reference offences listed in Table 12 and Table 13.

In order to analyse this, the following procedures were undertaken:

- data for the reference offences were extracted from the records of contested matters in the Magistrates’ Court for the 2009–10 to 2012–13 time period;
- the outcomes for each matter involving a reference offence was examined to see whether it was ‘proven’, ‘not proven’, or ‘diverted (see section on ‘Data methods: Classifying “proven”, “not proven” and “diverted” results in the Magistrates’ Court’
- proven matters were further classified into whether they were given a sentence that was ‘less severe’ than the infringement penalty, or ‘more severe’ than the infringement penalty. Another category was invented for sentences that were “equally severe” than the infringement penalty, however very few, if any, charges met this criteria and it was largely unused in the analysis;

- a proven matter was considered less severe if it was given a sentence that was lower on the sentencing hierarchy than a fine, or if it received a fine which had a lower dollar value than the infringement penalty for the offence in that financial year;
- the following sentences are lower on the hierarchy compared to a fine:
  - dismissed (under section 76 of the *Sentencing Act 1991* (Vic));
  - convicted and discharged (under section 73 of the *Sentencing Act 1991* (Vic));
  - adjourned undertakings;
- conversely a proven matter was considered more severe if it was given a sentence that was higher on the sentencing hierarchy than a fine, or if it received a fine that had a higher dollar value than the infringement penalty for the offence in that financial year;
- the following sentences are higher on the hierarchy compared to a fine:
  - community-based orders;
  - community correction orders;
  - intensive correction orders;
  - wholly suspended sentences of imprisonment;
  - combined custody and treatment orders;
  - drug treatment orders;
  - partially suspended sentences of imprisonment;
  - youth justice centre orders; and
  - imprisonment;

Some limitations on this method included:

- there was no data on when an infringement was issued for the reference offences available, so it was assumed that the infringement and the court sentence occurred in the same financial year. In reality, an infringement may be issued in a different financial year compared to the year it is sentenced in court, and consequently the infringement penalty may be of a different value compared to what was used in the analysis.
- for some offences, such as exceeding the speed limit, driving or owning an unregistered vehicle, or unlicensed driving there were a range of infringement penalties depending on the severity of the infringement offence. There was insufficient data in the Magistrates' Court to match each of these offences to their appropriate infringement penalty. Instead, the sentences for these offences were compared to both the minimum and maximum infringement penalty possible in classifying whether they received a more lenient or more severe penalty in court. Where these offences are discussed in chapter 8, it will state whether the minimum or maximum infringement penalty was used to classify whether it received a more lenient or more severe penalty in court;
- for parking infringements, the analysis in chapter 8 assumes that the infringement penalty was worth 0.5 penalty units. There was no information on how many parking offences may still be using 0.2 penalty units;
- for public transport ticket offences, place feet on seats, and drink or possess liquor on public transport offences, the infringement penalty for adults was used for Magistrates' Court charges; and

- if a reference offence was given an aggregate fine as its sentence, than the value of the fine could not be disaggregated to the individual offence. As such, many reference offences that received aggregate fines were classified as having a more severe sentence than the infringement penalty, although this may be a reflection of all other charges in the case. In order to counter this, charges that received aggregate fines were discussed separately in chapter 8 compared to charges that received all other sentence types.