Fines, Infringements and Homelessness

Submission to the Sentencing Advisory Council Fines and Infringements Project

October 2013

pilch homeless persons' legal clinic

17/461 Bourke St Melbourne VIC 3000
Tel: (03) 8636 4408 | Fax: (03) 8636 4455
www.pilch.org.su

Acknowledgments

The PILCH Homeless Persons' Legal Clinic (**HPLC**) gratefully acknowledges HPLC volunteers, Peter Martin and Annabelle Craft, for their contribution to this submission. We also thank our pro bono lawyers who assist approximately 200 clients with fines and infringements related to homelessness every year. In addition to assisting individuals to address their overwhelming infringements, this dedicated work provides the evidence base for this submission. Finally, we express our sincere gratitude to the participants in 'In the Public Eye – personal stories of homelessness and fines', Anthony, Emma, Darren, Richard, Julia and Hamish, whose insights have informed this submission.

Chris Povey, Lucy Adams & Chris Holt

PILCH Homeless Persons' Legal Clinic

www.pilch.org.au/hplc

www.pilch.org.au/hplc/inthepubliceye

www.facebook.com/homelesslaw

www.twitter.com/homelesslaw

Contents

1. Executive summary 1

1.1 Overview 1

1.2 Recommendations 2

2. Fines, infringements and homelessness – the links and the impacts 3

2.1 Homelessness and public space offences 3

2.2 Disproportionate financial impact 3

2.3 Ending up in court 5

3. A complex, costly and ineffective system 6

3.1 The complexity and the costs 6

3.2 The impact of a complex system – protracted and often ineffective 7

4. A preventative focus – discretion and warnings 10

4.1 Use of discretion by issuing officers 10

4.2 Training, alternatives and a protocol 12

4.3 Leadership, legislation and evaluation 14

5. A simpler, fairer system for dealing with infringements 15

5.1 Improved internal review process – critical to early exit 15

5.2 No backward step – opting in to prosecution 18

5.3 A central agency to manage fines and infringements 19

6. Greater flexibility and more options for resolving fines and infringements 21

6.1 Establishing special circumstances – definition and evidence 21

6.2 Mechanisms for victims of family violence to exit the system 24

6.3 Work and development orders – more flexible ways to address fines 25

6.4 Manageable amounts – concession-based fines 27

7. Minimising the impact of enforcement on struggling people 28

7.1 Personal service of seven day notices 28

7.2 Licence and vehicle sanctions – unanticipated consequences 29

7.3 Vulnerable people should not be imprisoned for unpaid fines 29

Annexure 1: PILCH Homeless Persons' Legal Clinic 31

Annexure 2: IWG Responses to SAC Consultation 32

Annexure 3: Infringements System Diagrams 33

Annexure 4: In the Public Eye – personal stories of homelessness and fines 34

1. Executive summary

1.1 Overview

The PILCH Homeless Persons' Legal Clinic (**HPLC**) welcomes the opportunity to contribute to the Sentencing Advisory Council's Court Fines and Infringement Fines Project (**SAC Consultation**), which we hope will shape significant reforms to the infringements system and reduce the negative impact of the current system on struggling individuals, legal and social services and the courts.

As an organisation which provides pro bono legal services to clients who are homeless or at risk of homelessness, the HPLC is well placed to comment on a number of issues raised the SAC Consultation. A summary of the HPLC and the work we undertake is attached at **Annexure 1**.

Our submission is informed by:

- **Casework** – Evidence gathered from our day-to-day work as a specialist legal service for people who are homeless or at risk of homelessness. The HPLC assists approximately 200 clients each year who have accrued fines during periods when they were experiencing homelessness, mental illness, substance dependence and/or family violence. Through this work, we see that the current fines and infringements system imposes a significant burden on struggling individuals and fails to address the underlying causes of the offending conduct. We also see the way in which the complex, inefficient processes impose a substantial resource drain on the various agencies involved in the fines and infringements system, including enforcement agencies, the courts and the legal and social services that assist people to deal with their fines.
- **Consultation** – Insights gained through the HPLC project, 'In the Public Eye – personal stories of homelessness and fines' (**In the Public Eye**). Through In the Public Eye, the HPLC captured the views and experiences of six people who have experienced, or continue to experience, homelessness who had been caught up in Victoria's fines system. The participants talk about being targeted by issuing officers, the impossibility of paying fines on limited incomes and the complexity of the process required to address fines and infringements. The project was launched on 13 August 2013 by the Attorney-General, The Honourable Robert Clark. It is available here: www.pilch.org.au/hplc/inthepubliceye.
- **Collaboration** – Participation in working groups and advisory bodies dealing with the operation and impact of the infringements system. In particular, the HPLC participates in the Infringements Working Group (**IWG**), a joint working group of the Federation of Community Legal Centres (Victoria) and the Financial and Consumer Rights Council. The HPLC has a seat on the Infringements Standing Advisory Committee (**ISAC**) and looks forward to contributing to the ISAC workshops throughout November 2013. The HPLC also participates in the working group convened by the City of Melbourne in conjunction with the United Nations Global Compact Cities Programme, comprising enforcement agencies, the Department of Justice, the Magistrates' Court, community lawyers and financial counsellors to develop a model policy for enforcement agencies to use when internally reviewing special circumstances applications. The model policy is expected to be released in November 2013.

The HPLC has significant experience with Victoria's fines and infringements system. We are committed to supporting reforms that improve its operation for individuals, services, government and the courts.

We have focussed our responses on aspects of the SAC Consultation that the HPLC can comment on based on direct evidence from our casework. For specific responses to the SAC Consultation questions, we refer to and endorse the recommendations of the IWG to the SAC Consultation attached at **Annexure 2**.

1.2 Recommendations

10 key recommendations for a simpler, fairer more efficient infringements system

1. **A preventative focus** – training, guidelines and monitoring and evaluation are needed to support officers who issue infringements (including police officers, PSOs, council workers and ticket inspectors) to reduce the number of infringements given to people with special circumstances. We refer you to the NSW Government *Protocol for Homeless People in Public Places* as an example of a best practice framework. These measures should be accompanied by strong leadership within enforcement agencies and a legislative requirement for issuing officers to consider special circumstances before issuing infringements.
2. **Early exit** – legislative, procedural and practical reforms are needed to make the internal review process more accessible and to make sure people will not be worse off if they try to address their infringements early.
3. **No backward step** – the Infringements Registrar (or an equivalent body) should be able to revoke enforcement orders and cancel the underlying infringement unless the enforcement agency 'opts in' to prosecution. If the enforcement agency does not take steps to prosecute the matter within the prescribed timeframe, the infringement should be cancelled without the need for a court appearance.
4. **Central agency** – a central agency should have access to information about fines and infringements across all stages, including infringements, enforcement orders, infringement warrants and open court fines. This agency should manage payment plans, administer work and development orders, provide oversight of special circumstances processes and monitor and publicly report on decision-making of enforcement agencies and the use of discretion.
5. **Special circumstances** – the definition of special circumstances should be amended to recognise circumstances that contributed to the offending conduct, rather than expressly caused it. This change should be accompanied by a less rigid approach to evidence, which recognises that people who have experienced periods of homelessness and isolation have often been disengaged from support services during the period of offending.
6. **Mechanisms for victims of family violence to exit the system** – the infringements system should recognise the role family violence plays in victims accruing infringements (both when fleeing violence or when a violent partner incurs fines in the victim's name) and provide mechanisms for victims to exit the system.
7. **Work and development orders** – Victoria should introduce a system modelled on NSW work and development orders to allow people to address infringements through non-monetary means such as education and training, counselling, drug and alcohol rehabilitation or community work. This option should be available from the point of issue, but it should not be a substitute for a well managed, effective special circumstances system.
8. **Concession-based fines** – for people with eligible concession cards, infringements should be 20% of the standard rate.
9. **Enforcement safeguards** – the processes for enforcement should have safeguards to prevent disadvantaged clients being exposed to harsh sanctions for unpaid fines. These include retaining the requirement that seven day notices must be personally served and making sure clear processes are in place for identifying people who should be given other options for dealing with their fines and infringements before having sanctions imposed.
10. **Imprisonment as a last resort** – vulnerable people should not be imprisoned for unpaid fines. Legislative and procedural reforms must make sure imprisonment is a last resort.

2. Fines, infringements and homelessness – the links and the impacts

2.1 Homelessness and public space offences

The HPLC has provided targeted legal services to people experiencing or at risk of homelessness for over a decade, and in this time fines and infringements has remained the single biggest legal issue affecting our client group.[1]

Between 1 July 2012 – 30 June 2013, the HPLC took 310 enquiries from people seeking assistance with fines and infringements. We opened 166 new matters for clients needing legal assistance with fines and infringements directly related to homelessness.

There are 22,789 homeless Victorians including those staying in refuges, temporary accommodation or rooming houses, sleeping in cars or couch surfing and 1092 people who sleep rough.[2]

People experiencing homelessness are: (1) more likely to get fines and infringements because they are forced to carry out their private lives in public places; and (2) less likely to be able to address the fines and infringements through payment or navigating the complex legal system.

The types of fines and infringements that people experiencing homelessness commonly receive are for 'public space offences' directly related to homelessness, including begging, being drunk in public, possessing an open container of liquor, littering, using offensive language, and conduct on public transport (for example, not having a ticket, smoking on the platform or having feet on the seat). People sleeping in their cars or travelling between crisis accommodation often also incur fines for parking or tollway offences.

The HPLC's responses to the SAC Consultation are informed by, and limited to, the evidence we have access to through assisting clients with fines and infringements directly related to homelessness.

2.2 Disproportionate financial impact

A fine for being drunk in a public place is approximately $600 and a fine for not having a valid public transport ticket or for having your feet on the seat is $212. The average weekly wage in Australia is $1422.70 (as at May 2013);[3] and the weekly income of a person on Newstart Allowance is $248.50 i.e. 17.5% of the average weekly earnings.

This means that an infringement for not having a ticket on public transport is 85% of a Newstart recipient's weekly income. A fine for being drunk in public is 240% of that weekly income.

In addition, enforcement fees and costs are added to the original infringement penalty at different stages of the infringements system. The table below shows that by the time an infringement reaches warrant stage, fees and costs can cause the original penalty to gather and increase significantly with additional fees charged. A person's poverty and special circumstances may mean that they are unable to pay their fines or

[1] See Public Interest Law Clearing House, Annual Report 2012 – 2013 (2013) which shows that 43% of the HPLC's casework is providing advice and representation to clients with fines and infringements related to homelessness.
[2] Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness 2011*, Australian Government, Canberra (2012).
[3] Australian Bureau of Statistics (ABS), *Average Weekly Earnings, Australia* (May 2013) (available at: http://www.abs.gov.au/ausstats/abs@.nsf/Products/6302.0~May+2013~Main+Features~Australia?OpenDocument).

to engage with the review process within required timeframes. Infringements and penalty costs and fees can become overwhelming debts and cause significant stress and financial strain for disadvantaged Victorians.

Costs in the infringement process – costs are added to the original amount of an infringement penalty at these stages in the infringements process

	Cost added	Total
Sample infringement penalty (not having a ticket on public transport)	-	$212
Penalty reminder notice issued	$23.10	$235.10
Notice of enforcement order issued	$77	$312.10
Warrant issued	$56	$368.10

Sources: *Infringements (General) Regulations 2006* (Vic); *Government Gazette* G16, 18 April 2013

The participants in *In the Public Eye* spoke about being overwhelmed financially and psychologically by their infringements:

- Julia* found herself homeless after having to leave private rental. During her time staying in emergency accommodation and couch surfing she accrued about $2000 in fines for travelling on public transport without a ticket and failing to vote. She said:

  > *When you are unemployed or on a pension, it's pretty difficult to survive as it is … you don't have a spare $200 to give to a fine and if you're homeless as well it's even more stressful because it's already stressful not having a place of your own.*[4]

- Darren has been homeless on and off for almost 15 years and has struggled with alcohol addiction since his teens. A combination of these two factors has resulted in him getting about $15,000 in fines. He said:

  > *I'd cop another one and another one and it just got overwhelming. I was unable to pay due to the fact I was only on Newstart at that time and living in boarding houses which were pretty much a third of my payment.*[5]

In summary, what we see through our work is that the burden of multiple infringements, the threat of enforcement and the financial pressure, including the escalating cost of infringements as they progress to enforcement order and warrant stage, exacerbate the stress and social exclusion of homelessness.

[4] PILCH Homeless Persons' Legal Clinic, *In the Public Eye – personal stories of homelessness and fines*, Julia (2013) (available at: www.pilch.org.au/hplc/inthepubliceye/julia) (* name has been changed).
[5] Ibid, Darren (available at: www.pilch.org.au/hplc/inthepubliceye/darren).

2.3 Ending up in court

For people who can afford to pay their fines, it's possible to avoid going to court, contesting an infringement and potentially receiving a criminal record. People experiencing financial hardship who receive infringements for the same offences cannot afford to exit the system. In addition to poverty, the HPLC's clients may experience one or more of the acute hardships that can accompany homelessness (including mental illness, disability or substance dependence) which can make it difficult to engage with the unwieldy processes required to address the infringements.[6]

The combination of an inability to pay, complex personal circumstances and a flawed and complicated infringements system means that the HPLC commonly sees clients entering the court system via the following avenues:

- An inconsistent approach to internal review and the legislative requirement under s 25(3) of the *Infringements Act* 2006 (Vic) (**Infringements Act**) causes clients to be referred to court under when an application for internal review on the basis of special circumstances is rejected (see part 5.1 below);
- A person's chaotic circumstances at the time of offending and the unpredictability and inconsistency of the current internal review process mean that clients with special circumstances are unlikely to deal with their infringements until they reach enforcement order or infringement warrant stage. In the HPLC's experience, even when enforcement orders are revoked on the basis of special circumstances under s 66 of the Infringements Act, clients are required to appear in court because the enforcement agency has not 'opted out' of prosecution under s 69 of the Infringements Act (see part 5.2 below); and
- If a person is unable to pay or engage with the complex process to address their infringements at an earlier stage, infringements escalate, warrants are issued and that person can be arrested and sentenced under s 160 of the Infringements Act.

Ultimately, while the judicial system represents an important safeguard for many people, the stress it imposes on vulnerable people who have received fines and infringements and the burden on services and court resources, mean that in many cases it is an inappropriate mechanism for dealing with unpaid fines. This submission proposes a range of reforms that would mean the courts remain as a safeguard rather than a catch-all basket for a range of fines and infringements matters that could be more effectively and efficiently resolved outside court.

[6] A recent review of over 400 of the HPLC's files revealed that of our clients: 24% have severe mental health issues; 23% have drug and alcohol dependence issues; and 17% have multiple complex needs. For the purposes of the file review, 'multiple complex needs' referred to more than one of: severe mental health issues, drug and alcohol dependence, cognitive impairment, domestic violence and challenging behaviour. We note that these needs are likely to be under reported as they were only recorded if the client's needs were expressly identified on the file in the context of legal assistance provided.

3. A complex, costly and ineffective system

3.1 The complexity and the costs

The HPLC knows through our casework that once vulnerable people enter the infringements system, it is extremely difficult to exit. To help understand the resource implications of the current infringements system, the HPLC engaged an independent consultant to undertake a high level analysis of Victoria's infringements system.[7]

The consultant reviewed 13 infringements files run by the HPLC and mapped the complex way in which fines and infringements progress through multiple stages and involve a number of agencies and decision-makers.

The consultant also conducted interviews with a number of representatives from the Department of Transport, Department of Justice, the Magistrates' Court and Victoria Police.

The diagrams at **Annexure 3** map the life cycle of an infringement and the various options for dealing with infringements at different stages, including the different agencies involved in the infringements system. The report, *What's the Cost? Infringements System Review*, makes the following observations:

- The infringements process is long and complex with multiple agencies and changing options. There is no central collection point for the required information, making the process more complex and time-consuming.
- People with special circumstances need professional help (legal, health and community) to navigate the complex system.
- Clients often struggle to resolve issues at infringement notice or penalty reminder stage. This can be because of the client's special circumstances and the complexity of the process (including that infringements can be listed with a number of different issuing agencies).
- The internal review process is underutilised for the following reasons:
  - there is variability within the internal review process due to limited capability and capacity across enforcing agencies;
  - internal review does not allow for multiple cases from different agencies to be addressed concurrently (i.e. separate applications have to be made to each enforcement agency);
  - some agencies have an objective internal review function with clear processes, guidelines and systems to support the internal review. Other agencies have non-standardised processes for considering special circumstances applications. This often leads to inconsistent outcomes.
- Due to the complexity of the infringements system and clients' special circumstances, the option of applying for revocation of an enforcement order under s 65 of the Infringements Act becomes the default position for the majority of the HPLC's clients. Clients with special circumstances need legal assistance to navigate the review process.
- Duration of cases can vary, with cases analysed taking between **6 months** and **2.5 years** to resolve. The average time taken to resolve an infringements matter was **14 months**.

The consultant found:

[7] See PILCH Homeless Persons' Legal Clinic, *What's the Cost? Infringements System Review* (publication forthcoming).

It is difficult to gain a system wide view of activity costing and there is no visibility of the cost to society. This is due to siloed and inaccessible information across stakeholders.

Clients are moved in between process stages and stakeholders, often in loops, returning to law firms or agencies multiple times. This can be stressful and result in failures to appear before courts, impacting ability to resolve cases.

The consultant considered the resource implications of running infringements matters for the HPLC. The HPLC's outreach-based service model relies on the pro bono services of member law firms to assist clients to resolve their infringement matters.[8] Using the sample of 13 infringements files, the consultant found that the average cost to law firms of running an infringements matter was **$19,825**. One case required an investment equivalent to **$54,000** in fees to resolve.

3.2 The impact of a complex system – protracted and often ineffective

In addition to being complex, inefficient and costly for services and the courts, the HPLC sees through our work that the current infringements system is:

- almost impossible for disadvantaged or vulnerable people to navigate without assistance; and
- not necessarily effective in terms of assisting people to address the underlying causes of offending – the process is protracted and it imposes strain on people which can be a distraction from their recovery and engagement rather than a component of it.

a) Escalating fines and the need for support

The lack of a safe and secure home means that you are carrying out most of your life in public places. You are reliant on public transport, experiencing severe financial hardship and may be dealing with other complex hardships including deteriorating mental health or escalating substance use. Homelessness also makes you very visible to issuing officers. All of these factors mean that, during periods of homelessness, people can accrue thousands of dollars in fines and infringements for a range of different behaviours.

By way of example, of the 13 HPLC files analysed by the consultant in *What's the Cost? Infringements System Review*, on average, individuals accumulated 18 infringements each, valued at $6,363 per person, with one case having up to 61 infringements for a single person, with a total value of $17,237.

The consultant also observed that clients become caught in the 'Infringements Trap':

Due to the time required to navigate through the infringements system, many individuals who have special circumstances may reoffend while they are in the process of dealing with their fines. This means they can have various infringements at different stages and can become caught in the infringements system. These clients require ongoing support and resources to deal with further infringements and can find themselves unable to exit the infringements system or to fully resolve their infringements issues.

The complexity of the system and the difficulty of addressing fines and infringements were also identified by the participants in In the Public Eye. Hamish* said:

[8] The HPLC runs weekly or fortnightly clinics at Melbourne Citymission, VACRO, HomeGround Housing Services, Northside Geelong, Central City Community Health Centre and Salvation Army St Kilda Crisis Contact Centre. Legal services are provided at our host agencies by pro bono lawyers from law firms: Allens Linklaters, Clayton Utz, Corrs Chambers Westgarth, Herbert Smith Freehills, King & Wood Mallesons, Minter Ellison and Harwood Andrews.

There is no way I could've dealt with the fines by myself, the only way I did was with the help of workers and a lawyer. The letters kept coming and to deal with them there was lots of writing, it was all a bit much. On clearing the fines the judge took in to account the fact that I haven't had any fines for almost two years. The way I stopped getting fines is that I stopped catching the tram. I have to ride or walk everywhere. I only buy tickets for appointments.

…

Getting the fines sorted was like a weight lifted, like going to the dentist and having the pressure released. It's a good feeling. It encourages me to get my stuff a bit more organised and together, start working again.[9]

The escalation of fines during periods of homelessness and the complexity of the system for addressing the fines leaves struggling people overwhelmed and often needing intensive legal and non-legal support to resolve their infringements.

b) Fining vulnerable people is not necessarily effective

For most of the HPLC's clients, being issued with infringements during periods of homelessness does not act as a deterrent or play a role in preventing further offending.

For the HPLC's clients and, by definition, all people with special circumstances, the offending conduct is caused by a mental illness, substance dependence and/or homelessness. The offending is prevented through supporting a person to address these underlying causes of their conduct.

Recognising this, it is worth considering whether issuing vulnerable people with special circumstances is an effective way of addressing problematic conduct in public places.

The HPLC also sees that, while the respectful, fair way in which the Special Circumstances List deals with people in its court can have therapeutic benefits, overall, the protracted and onerous process for resolving infringements exacerbates the strain people experiencing homelessness are already under and does little to help them address the underlying causes of their offending.

The case study in part 4.1 below deals with an HPLC client, Scott, who battles chronic alcohol dependence, depression and anxiety, has an acquired brain injury and has cycled in and out of homelessness for most of his adult life.

Scott provides a compelling example of a person – one of many – who should arguably not be caught up in the infringements system in the first place. The prospect of being fined for public drunkenness does not act as a deterrent for him because his behaviour is dictated by addiction and homelessness; and nor does it provide an incentive for him to recover. Scott is making an admirable and committed effort to engage with support services to assist him with his rehabilitation and he indicates that he is motivated to do this by the needs of his children and his health rather than the stressful legal proceedings. The fact that he suffered countless barriers to overcoming his 20 year alcohol dependence is not addressed by criminalising what is a health and social issue.[10]

Scott's ability to stay engaged with his support workers and HPLC lawyers throughout the process is a credit to him. Many clients suffering similar levels of hardship and dealing with the chaos that homelessness

---

[9] PILCH Homeless Persons' Legal Clinic, *In the Public Eye – personal stories of homelessness and fines*, Hamish (2013) (available at: www.pilch.org.au/hplc/inthepubliceye/hamish) (* name has been changed).

[10] See also HPLC Senior Lawyer, Lucy Adams, 'A Glass Half Empty: Perspectives on Criminalising Homelessness and Alcohol Dependence' *Parity: Policing Homelessness* 25(2) (2012).

brings with it lose contact with their lawyers because of the inordinate delays between them seeking assistance and resolution of their matter.[11]

In summary, fining people with special circumstances rarely has the preventative effect that it might otherwise have for people whose conduct is not influenced so heavily by severe hardship. Furthermore, the complexity of the current system and its drawn out nature can impact negatively on a person's recovery through imposing further strain and preventing them from moving on with their lives.

[11] By way of example, the HPLC analysed all matters closed by the HPLC between 1 January 2010 and 1 July 2010. This analysis showed that of the 195 files closed, 47 were closed due to loss of contact, a figure that represents 24.1% of all file closures. PILCH Homeless Persons' Legal Clinic, *Keeping In Touch – Strategies to Engage and Remain in Contact with Homeless Clients: Report of the PILCH Homeless Persons' Legal Clinic Lost Contact Project* (October 2010) (available at: http://www.pilch.org.au/Assets/Files/Keeping%20in%20touch%20-%20final%20report.pdf).

4. A preventative focus – discretion and warnings

As parts 2 and 3 of this submission identify, once a vulnerable person enters the infringements system, it is difficult for them to exit and significant costs are imposed on those individuals as well as the services, enforcement agencies and courts involved in the infringements process.

Furthermore, for many people with special circumstances, being given an infringement doesn't prevent or deter further offending, instead it imposes an unmanageable financial penalty that exacerbates their existing hardship.

In 2010, the Victorian Attorney-General, the Honourable Robert Clark, asked:

> *How is it just that those with mental illness or other serious and genuine personal problems can clock up thousands of dollars of automatically generated fines without some human intervention that finds out what is going on and sorts out a way forward?*[12]

A critical point at which human intervention has a role to play is when the decision is made to issue an infringement or not.

Issuing officers, including police officers, PSOs, council workers and ticket inspectors, need to be better equipped to make decisions about people experiencing complex circumstances, including homelessness, mental illness, substance dependence, family violence and disability.

Officers should be provided with training and guidelines to support them to use their discretion to choose alternatives to fining people, including linking people with services and issuing warnings instead of fines.

This proactive, preventative approach will reduce costs and improve outcomes.

4.1 Use of discretion by issuing officers

The *Attorney-General's Guidelines to the Infringements Act* state:

> *[T]he Infringements Act does not require that enforcement agencies consider 'special circumstances' at the issuing stage. However, if issuing officers are to exercise such discretions, then each enforcement agency must have a code of conduct to guide officers with the responsibility for issuing infringement notices in the discharge of their responsibilities.*
>
> *The code should take into account the nature of the business of the issuing agency and the role and functions of its issuing officers.* ***The code should focus on principles of the infringements system with respect to fairness and the recognition of individual circumstances, and deal with the appropriateness of issuing infringements to people with obvious special circumstances.***[13]

Many enforcement agencies have codes and run training on issuing cautions and warnings. Unfortunately, in the HPLC's experience, this discretion is often not exercised in practice.

The following case study illustrates the time and resources involved in having an individual's fines revoked on the basis of special circumstances; a burden that could have been avoided if discretion had been exercised by the officers who issued the fines.

---

[12] Attorney-General Robert Clark, *Towards a Just and Fair Victoria* (edited version of speech opening Human Rights Week panel discussion at Telstra Theatre, Exhibition Street, Melbourne) (8 December 2010).
[13] *Attorney-General's Guidelines to the Infringements Act 2006* cl 3 (emphasis added).

Case study: Discretion, reduced resources and better outcomes

Special circumstances

Scott was homeless and suffered from depression and anxiety, an acquired brain injury and chronic alcohol dependence.

When he approached the HPLC for assistance, Scott had six infringement warrants for being drunk in a public place.

The evidence from Scott's support workers and health professionals referred clearly to his acute hardship and the links with his offending. He had suffered from alcohol dependence for over 20 years and had been homeless on and off for a decade. Because of his homelessness, Scott's addiction was very visible.

The HPLC helped Scott to apply for revocation of the enforcement orders on the basis of his special circumstances.

The court process

At the hearing in the Special Circumstances List, the court ordered that the matter be adjourned without conviction subject to Scott undertaking to be of good behaviour and to continue to engage with drug and alcohol counselling.

During the period of the undertaking, Scott's relationship broke down, he became separated from his children and had to live in a rooming house. These stresses impacted on his rehabilitation and Scott was issued with further fines for being drunk in public.

Scott and his lawyers appeared in court on three more occasions. Almost two years after he first sought assistance, Scott was able to show the court that he had been sober for over six months and he had not committed any further offences since the last hearing.

Resources required

The infringements for being drunk in public were dismissed. It had taken two years, four court appearances and 13 supporting letters from Scott's GP, drug and alcohol counsellor, housing worker and psychologist to address Scott's six infringements.

Since that time, despite long periods of sobriety and a commendable effort at recovery, Scott has had another relapse and has been issued with further fines for being drunk in public. The HPLC will again assist Scott to apply to have these fines waived on the basis of his special circumstances.

In the above example, the issuing officers (in that case Victoria Police) were in a difficult position: they had concerns about Scott's conduct in a public place, but they were dealing with a person who had clear special circumstances i.e. he was experiencing homelessness and alcohol dependence which caused him to be unable to control the offending conduct. In the absence of training, guidance and alternatives, the officers issued Scott with infringement after infringement. He became caught up in the infringements system, requiring multiple court appearances and, ultimately, was not aided in his recovery by this process.

Infringements are not always the most appropriate mechanism for addressing public space offences. Legal, policy and practice-based changes are needed to support officers to better identify when an infringement should be issued and when alternatives should be considered.

4.2 Training, alternatives and a protocol

The HPLC appreciates that officers who issue fines, including police, PSOs, ticket inspectors and council workers, are required to make difficult on-the-spot decisions in the face of competing obligations (eg. ticket inspectors are responsible for addressing fare evasion on public transport, but they are also dealing with a range of different people with vastly different circumstances). Officers need to be supported to balance competing priorities, consider people's individual circumstances, deal appropriately with vulnerable people and weigh up alternatives to issuing fines and infringements.

The HPLC recommends:

- **Training** – All new and existing issuing officers within enforcement agencies should be given comprehensive training about the complex circumstances that may affect the people they're dealing with, including homelessness, mental illness, substance dependence, poverty and family violence. This training should involve people with a direct experience of these circumstances, who can play an effective role in improving understanding and addressing any pre-existing stereotypes or assumptions that issuing officers may have.
- **Alternatives** – Importantly, if issuing officers are not presented with alternatives to fining people, they will inevitably resort to fines as a way of managing problematic conduct in public places, even where it is not an appropriate or effective way of dealing with that conduct.
- **Protocol** – Victorian enforcement agencies should work with government and non-government agencies to develop a protocol similar to the NSW Government Protocol for Homeless People in Public Places (**NSW Protocol**) that aims to: avoid unnecessary interactions with people experiencing homelessness; ensure that where interactions do occur they are appropriate and respectful; and support officers to consider options other than fines and charges when dealing with people experiencing homelessness.

Responding effectively to homelessness – NSW Government Protocol for Homeless People in Public Places

Aims and signatories

The NSW Protocol aims to 'help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their homeless status' and to 'provide a framework for interactions between officials and homeless people in public places'.[14]

Signatories to the NSW Protocol are: Housing NSW, NSW Police Force, Community Services, Department of Premier and Cabinet, Office of Environment and Heritage, NSW Health, RailCorp, State Transit Authority of NSW, Sydney Harbour Foreshore Authority, Sydney Olympic Park Authority, Aboriginal Affairs and Ambulance Service of NSW.[15]

Guidance on appropriate responses

The NSW Protocol acknowledges that 'like all other members of the public, homeless people have a right to be in public places … at the same time respecting the right of local communities to live in a safe and peaceful environment'.

The NSW Protocol provides that **a homeless person is not to be approached unless**:

[14] Family & Community Services Housing NSW, *Protocol for Homeless People in Public Places: Guidelines for Implementation* (May 2013) 4, 5 (**NSW Protocol**) (emphasis added).
[15] Ibid 4.

– they request assistance
– they appear to be distressed or in need of assistance
– an official seeks to engage with the person for the purpose of information exchange or provision of a service
– their behaviour threatens their safety or the safety and security of people around them
– their behaviour is likely to result in damage to property or have a negative impact on natural and cultural conservation of environment, including cultural heritage, water pollution and fire risks
– they are sheltering in circumstances that place their or others' health and safety at risk (for example, staying in derelict buildings, high risk areas)
– they are a child who appears to be under the age of 16
– they are a young person who appears to be 16 to 17 years old who may be at risk of significant harm
– they are a child or young person who is in the care of the Director-General of the Department of Family and Community Services or the parental responsibility of the Minister for Family and Community Services.

The Protocol is an agreement by government organisations to respond appropriately to homeless people who are in public places and acting lawfully. It doesn't prevent agencies from acting where health or safety is at risk or a breach of the peace or unlawful behaviour has occurred. **It encourages officials to consider the individual's circumstances when enforcing laws and to use discretion which takes account of 'the complex needs of homeless people, including mental health issues, drug and alcohol misuse and cognitive impairment'**.[16]

Implementation and evaluation

Guidelines for Implementation have been published and it is recommended that the NSW Protocol is addressed in induction training for all new staff and in development training for existing staff. Housing NSW developed a 'Protocol Training Package' to support organisations to adopt and implement the protocol.

Signatories are also advised to conduct internal monitoring and review of the NSW Protocol and its implementation and impact. The Protocol will be reviewed every two years.

While the NSW Protocol does not provide clear guidance on the use of discretion, it creates awareness of the range of services that are available to provide support to people experiencing homelessness. In some cases, linking people with these services will be an alternative to fines or charges. A similar public space and homelessness protocol in Victoria could play a significant role in supporting issuing officers to exercise their discretion in a way that prevents homeless people entering the infringements system when their needs could be more appropriately dealt with by heath, housing and support services.

The HPLC submits that an agreement similar to the NSW Protocol could deliver significant benefits to enforcement agencies in Victoria by providing clarity and guidance about when to approach people experiencing homelessness (and when not to) and what the particular circumstances, hardships and needs

[16] Ibid 6 (emphasis added).

of people sleeping rough might be. The protocol would provide guidance to officers about appropriate interactions and use of discretion.

4.3 Leadership, legislation and evaluation

For the protocol and accompanying training to have an impact throughout different enforcement agencies and issuing officers, strong leadership is essential.

By way of example, NSW Police Superintendent Allan Sicard has played a strong leadership role in relation to homelessness in NSW. He has publicly recognised the role of police in being the first point of contact for people experiencing homelessness:

> *If you look at what [the police] … do, we are there 24/7. So we actually see these people at the early stages. If we know who we can refer it to we're actually intervening early, and making a difference … If we can intervene early, it's a lot easier to place those people before they become homeless.*[17]

This kind of 'support from the top' of the idea that officers on the ground have a role to play in identifying people experiencing or at risk of homelessness and linking them with services is critical in bringing about organisational change.

The implementation of the protocol should also be reported on and evaluated, including by monitoring how often issuing officers are using their discretion to issue warnings or cautions rather than fines, when and how officers are linking people with support services and in what circumstances.

Given the significant impact that a preventative approach could have on the infringements system and on people with special circumstances, the HPLC also supports the introduction of a legislative requirement for issuing officers to consider special circumstances before issuing an infringements.

A combination of improved support (through training and guidance) and strong leadership, backed up by public reporting and a legislative requirement, would ensure that fewer people with special circumstances get caught up in the infringements system. These reforms recognise the difficult role issuing officers have and provide them with a clear framework for exercising their discretion.

[17] Superintendant Allan Sicard quoted in Sally Sara, 'PM urged to act on homelessness' *PM* (Australian Broadcasting Association) (5 August 2013) (available at: http://www.abc.net.au/pm/content/2013/s3818634.htm).

5. A simpler, fairer system for dealing with infringements

The overwhelming complexity of the current system, including the multiple agencies, different stages, changing options and multiple avenues into court are highlighted by the diagrams in **Annexure 3**.

Part 4 of this submission deals with the ways issuing officers can be supported to identify when an infringement should be issued and when there are more appropriate ways of dealing with a person's conduct. This early intervention, prevention-based approach will reduce some of the burden that the current system – where infringements are often the first resort – places on disadvantaged individuals, legal and support services and the courts. It will lead to improved efficiency and better outcomes.

Even with these measures, though, people will enter the infringements system who are unable to pay, whose circumstances contributed to the offending conduct or who would benefit from non-monetary options for addressing their fines. As the system currently stands, it is difficult for these people to address their infringements. It is easy for them to become caught in the infringements system and for their matters to escalate resulting in increased fees, greater stress, a risk of enforcement and increased investment from services and the courts to address the infringements.

Legislative and practical reforms are needed to make it easier for people to exit the system.

5.1 Improved internal review process – critical to early exit

a) A confusing and inaccessible system

During periods of homelessness, poor mental health and/or substance use, it is not uncommon for a person to receive infringements for public space offences from a number of different enforcement agencies; for example, Department of Transport for failing to have a ticket on the tram, Victoria Police for being drunk in a public place and the local council for overstaying the parking limit while you were sleeping in your car.

Where someone has infringements issued by multiple enforcement agencies, they must apply separately to each enforcement agency for internal review. Each enforcement agency has its own process and criteria for assessing applications for internal review made under s 22 of the Infringements Act.

This lack of centralisation makes it difficult for people to access information about their infringements and their options for dealing with those infringements. This confusion and complexity is a barrier to people addressing their infringements early and, where appropriate, exiting the system.

b) Why don't people apply for internal review?

In most cases, the HPLC's clients do not deal with their infringements at infringement notice or penalty reminder stage because the same circumstances that are causing the offending (such as chaotic transience, an episode of acute mental illness or escalated substance use), mean that they are not in a position to engage with a complicated legal and administrative process.

However, even those clients who are willing and able to engage with the review process at an early stage may decide not to because of:

- The inconsistent approach to internal review by enforcement agencies, particularly the practice of confirming decisions to issue infringements even when presented with clear evidence of special circumstances; and

– The fact that their matter will be referred to the general list of the Magistrates' Court if their application is rejected i.e. they will not have the benefit of the specialist expertise and approach of the Special Circumstances List.[18]

The consequences of these procedural and legislative problems are that vulnerable people become caught in the infringements system for much longer than they should be. This imposes an unnecessary burden on the individuals, enforcement agencies, legal and social services and the courts.

c) Rejected special circumstances applications

The experience of the HPLC is that many applications for internal review that are supported by strong evidence of special circumstances are rejected. In some cases the enforcement agencies accept that the applicants have special circumstances but still reject that application for the infringement(s) to be withdrawn.

The case study below demonstrates the way in which, even where special circumstances are found to exist by an enforcement agency, the matter may still end up in open court.

Case study: Rejected internal review application required four court appearances

Special circumstances and public drunkenness

Simon came to the HPLC with four infringement notices which had been issued by Victoria Police for being drunk in a public place.

Simon has an acquired brain injury and suffers from a serious mental illness, alcohol and poly-substance dependence and has a history of homelessness.

Application for internal review on the basis of special circumstances

The HPLC advised Simon that even though he had clear special circumstances, based on our previous experience, the prospects of Victoria Police withdrawing his fines were limited. However, Simon was very eager to deal the fines straight away and did not want to incur the extra fees that would be imposed if he waited for the infringements to progress to the Infringements Court.

Simon instructed the HPLC to apply to Victoria Police for internal review of all four infringements on the basis of his special circumstances.

Simon's HPLC lawyers provided Victoria Police with the following evidence:

- psychiatric report from Simon's treating psychiatrist;
- neuropsychological report of a clinical neuropsychologist;
- letter from Simon's treating clinical psychologist; and
- Mental Health Discharge Summary.

The HPLC also provided evidence of Simon's homelessness.

Application rejected

Victoria Police rejected Simon's application for internal review and confirmed the decision to serve the

[18] This is because, when an application for internal review on the basis of special circumstances is rejected (i.e. the enforcement agency 'confirm[s] the decision to serve an infringement notice' under s 22(2)(a)), s 25(3) of the Infringements Act requires the matter to be referred to court. This is not the case for applications for internal review made on other grounds (eg. if an application for internal review on the basis of exceptional circumstances or mistaken identity is rejected, that infringement will continue on its ordinary course).

infringement notices on Simon. This was despite the fact that the HPLC provided strong evidence of Simon's circumstances and their clear relationship with the conduct which constituted the offences.

In a telephone conversation with Victoria Police, the HPLC was informed that the usual approach of Victoria Police is to reject applications for internal review on the basis of special circumstances where the infringement related to a 'street offence'.

Four separate court appearances

Because the application was made on the basis of special circumstances, Victoria Police were required to refer the matter to court under s 25(3) of the Infringements Act.

Each infringement was then dealt with by different police prosecutors at separate hearings. Although Victoria Police had rejected Simon's application for internal review, the prosecutors did not lead evidence at any of the hearings and did not oppose orders discharging the matters unconditionally. On one occasion the Magistrate made no finding of guilt as no evidence was led by the prosecution.

The process of having the fines discharged took nearly 12 months and involved significant resources.

Unpredictable, inconsistent approaches to internal review applications by enforcement agencies and the likelihood of ending up in open court means that people with special circumstances may choose to wait until the Infringements Registrar makes an enforcement order before making an application for revocation.

d) Access to the Special Circumstances List

Once an enforcement order is made, further fees are added (see the table in part 2.2 above), but all infringements can be considered by the Infringements Registrar regardless of the issuing agency (i.e. the Infringements Registrar can consider applications in relation to infringements issued by the Department of Transport, Victoria Police, local councils etc). Because there is a central agency, there is a more consistent approach to applications for revocation at enforcement order stage.

In the HPLC's experience, the most common outcome for our clients is that the Infringements Registrar revokes the enforcement orders on the basis of the client's special circumstances and, because the enforcement agency does not 'opt out' of prosecution, the matter is listed for hearing in the Special Circumstances List of the Magistrates' Court. This is a protracted process that imposes an unnecessary resource burden on enforcement agencies, legal and support services and the courts.

Importantly, though, clients have their matter heard in the Special Circumstances List, the specialist list in the Magistrates' Court specifically set up to deal with people with experiencing homelessness, mental illness and/or substance dependence. In the HPLC's experience, the specialisation and expertise within the Special Circumstances List means that this jurisdiction is well placed to consider the complex hardships of people appearing before it.

The Special Circumstances List is the most appropriate jurisdiction for people with high levels of vulnerability. An appearance in the general list of the Magistrates' Court is a more stressful, more unpredictable, less therapeutic experience for people with special circumstances and the risk of this is a barrier to people applying for internal review.

e) Greater oversight of decisions

The internal review process is a critical juncture at which vulnerable people should be able to exit the infringements system. As explained above, this process is not currently working. One of the key problems with the internal review process is that different enforcement agencies have different approaches to

assessing applications for internal review. There is inconsistency and uncertainty about what evidence enforcement agencies require and what factors they will consider when deciding whether or not to withdraw an infringement on the basis of a person's special circumstances.[19]

In particular, as identified in the case study in part 5.1(c), enforcement agencies may refuse to withdraw infringements even where special circumstances are clearly established and supported by strong evidence. The reasons for rejecting these applications are unclear and this lack of transparency is a major impediment to the effective operation of the internal review process.

The HPLC strongly supports greater oversight of decisions made by enforcement agencies, including an avenue to have those decisions reviewed by a central agency.

When a person makes an application for internal review on the basis of special circumstances and the enforcement agency confirms the decision to issue the infringement (i.e. rejects the application of internal review), the HPLC proposes that the these matters should:

- On application, be reviewed by a new centralised body;
- If no application is made, proceed on their ordinary course with all alternative ways of addressing the infringements being available; or
- If appropriate, be referred to the Special Circumstances List for consideration.

Review of these decisions would encourage greater rigour and consistency in decision-making and ultimately reduce the burden on the courts.

5.2 No backward step – opting in to prosecution

The HPLC has significant experience assisting clients to apply for revocation of enforcement orders on the basis of their special circumstances. As we have discussed throughout this submission, the HPLC assists a highly vulnerable client group who often have clear special circumstances. Subject to the problematic evidentiary requirements discussed in part 6.1, the majority of the applications for revocation that the HPLC makes on behalf of clients are successful i.e. the Infringements Registrar is satisfied on the evidence that the person's mental illness, substance dependence and/or homelessness caused them to be unable to understand or control the conduct that constituted the offence.

Despite this, most HPLC special circumstances matters require a court appearance. This is because, even where an individual makes a successful application for revocation of an enforcement order, the Infringements Registrar is required to list the matter for hearing unless the enforcement agency requests non-prosecution under s 69 of the Infringement Act.

If the enforcement agency does not 'opt out' in writing in 21 days, the matter is listed for hearing in the Special Circumstances List of the Magistrates' Court.[20]

---

[19] The HPLC has participated in the working group convened by the City of Melbourne, in conjunction with the United Nations Global Compact Cities Programme, made up of enforcement agencies, the Department of Justice, the Magistrates' Court, community lawyers and financial counsellors. The working group has prepared a non-binding model policy for enforcement agencies to use when internally reviewing a special circumstances application, which aims to: improve the internal review process for people with special circumstances; assist enforcement agencies and applicants to comply with their legal responsibilities under the Infringements Act and the requirements of procedural fairness; provide a guidance framework for enforcement agencies in dealing with special circumstances internal review applications to promote transparency and consistency in decision making; afford consideration to the common difficulties experienced by people with special circumstances; and outline the information required to be submitted for an application to be considered in full. We understand that the model policy will be released in late 2013.

[20] Because of our geographical operation in and around Melbourne, it is most common for these hearings to be listed in the Special Circumstances List. We note, though, that this specialist list only sits in Melbourne and Collingwood, so vulnerable people in suburban, regional and rural areas will not have access to it.

This means that vulnerable clients, who have already been found to have special circumstances are required to appear in court in order to be sentenced under the *Sentencing Act* 1991 (Vic) (**Sentencing Act**).

A court appearance in these circumstances is stressful for clients, burdensome for services and a drain on court resources.

The HPLC is strongly of the view that there should be 'no backward step' i.e. the Infringements Registrar (or an equivalent body) should be able to revoke enforcement orders and cancel the underlying infringements.[21] The enforcement agency should be provided with notice of this decision and, should they wish to prosecute the matter, they can opt in within a prescribed period prior the infringement notice being cancelled. If the enforcement agency takes these steps, the matter should be listed in the Special Circumstances List. If they do not, the infringement will be cancelled and the matter will be resolved.

Importantly, enforcement agencies would still have the option of having the matter brought before the court if they have particular concerns, for example community safety or repeat offending, but they would need to make a conscious decision to do this rather than court being the default position when no action is taken.

This would reduce the burden on the Special Circumstances List and would allow many clients' matters to be resolved more quickly, often without the anxiety of a court appearance or the need for intensive legal and non-legal support.

5.3 A central agency to manage fines and infringements

a) Multiple agencies, stages and options

It is not uncommon for HPLC clients to present with multiple matters at different stages, including infringement notices with different agencies, enforcement orders, infringement warrants and open court fines.

Depending on the nature and stage of the infringement, a person may need to deal with one or more of a range of enforcement agencies, the Infringements Court, Civic Compliance, the Sherriff's Office and the Magistrates' Court. As this submission identifies, this complexity leads to confusion, inconsistency, inefficiency and poor outcomes.

This lack of centralisation is problematic in terms of:

- getting access to information (including details of fines and infringements);
- working out what the options are for addressing the fines and infringements (they are different at each stage);
- taking steps to address the fines and infringements, including through an application for review or revocation, a payment plan or community work (again, different options are available depending on what stage the matter is at); and
- resources (it takes a significant investment of resources to assist clients to resolve their matters, often involving multiple applications for revocation and multiple court appearances).

A particular deficiency of the current system is that a person cannot pay open court fines through Centrepay and must attend the Magistrates' Court to pay fines in person. Furthermore, for someone who is trying to

[21] See, eg, the Infringements Registrar's power to revoke the enforcement order and cancel the infringement notice under s 66(4)(b) of the Infringements Act.

chip away at their fines through payment plans, the financial and administrative obligations may involve separate payments to one or more enforcement agencies, the Infringements Court and the Magistrates' Court. Each agency has a different minimum instalment requirement, which means that the combined total of the payment plans can impose unmanageable financial obligations on low income people.

b) The role for a central agency

In light of the problems identified above, the HPLC strongly supports the establishment of a centralised body to deal with fines and infringements issued by different agencies or courts and at various stages.

A central agency would overcome a number of the practical and administrative barriers to addressing infringements at an early stage and would make it more likely that people are able to exit the infringements system appropriately and efficiently.

The HPLC recommends that the central agency should:

- Provide oversight and review decisions of enforcement agencies;
- Determine applications for revocation and cancel infringements (unless the enforcement agency 'opts in' to prosecution within the prescribed timeframe (see part 5.2 above));
- Publish guidelines that ensure consistency when conducting internal reviews;
- Identify people who are accruing multiple fines and may benefit from early intervention to prevent escalation;
- Manage work and development orders (refer to part 6.3 below);
- Process applications for payment plans and fee waivers for infringements, enforcement orders and open court fines; and
- Monitor and publicly report on the infringements process (including the decision-making of enforcement agencies in relation to use of discretion and internal review).

Where a person has some recent infringements and some that have progressed to enforcement order stage, the central agency should be able to deal with all of these infringements. This would avoid the inefficiency that exists when people wait for infringements and penalty reminders to 'catch up' so that one application for revocation can be made in relation to all the enforcement orders.

A streamlined, centralised system would be more accessible for clients and far more effective from a service's perspective (because a client can be assisted with all outstanding fines and infringements via one application). While it would require investment to operationalise this recommendation, it would ultimately reduce the resources used by enforcement agencies, the Infringements Registrar and the courts to administer the current overlapping and convoluted processes.

6. Greater flexibility and more options for resolving fines and infringements

As we have discussed throughout this submission, the current fines and infringements system imposes a significant burden on struggling individuals and does not address the underlying causes of the offending. It also imposes a substantial resource drain on the various agencies involved in the fines system, including enforcement agencies, the courts and the legal and social services that assist people to deal with their fines.

In addition to the recommendations for early intervention in part 4 and procedural reforms in part 5, there is a need for more flexibility and a wider range of options so that the infringements system is better placed to recognise and respond to hardship.

Hardship needs to be recognised earlier and options need to be available for the life cycle of the infringement, for example, payment plans and work and development orders should all be available from the point of issue to the point of enforcement.

Practical and legislative reforms are needed to make sure that people experiencing homelessness can resolve their fines more easily and avoid being caught up in the system. These reforms include:

- **Establishing special circumstances (definition and evidence)** – Amending the definition of special circumstances under the Infringements Act to recognise circumstances that contributed to the offending conduct, rather than expressly caused it. This change should be accompanied by a less rigid approach to evidence that recognises that people who have experienced periods of homelessness and isolation were often disengaged from support services for relevant periods.
- **Mechanisms for victims of family violence to exit the system** – Amendments should recognise the role family violence plays in victims' accruing infringements (both when fleeing violence or when a violent partner incurs fines in the victim's name).
- **Work and development orders** – Allowing people to address infringements through non-monetary means such as education and training, counselling, drug and alcohol rehabilitation or community work.
- **Concession based fines** – Introducing concession-based infringements so that it is feasible for people on low incomes to pay infringements if they want to or other options are not available.

6.1 Establishing special circumstances – definition and evidence

a) Current definition of special circumstances

The Infringements Act defines special circumstances to include:

- a mental or intellectual disability, disorder, disease or illness or a serious addiction to drugs, alcohol or a volatile substance within the meaning of the *Drugs, Poisons and Controlled Substances Act* 1981 (Vic) where that condition results in the person being unable to:
  - understand that conduct constitutes an offence; or
  - control conduct that constitutes an offence; and

- 'homelessness' that results in the person being unable to control conduct which constitutes an offence.[22]

A person may be defined as 'homeless' for the purposes of special circumstances if the person:

- is living in crisis accommodation, transitional accommodation or any other accommodation provided under the *Supported Accommodation Assistance Act* 1994 (Cth); or
- has inadequate access to safe and secure housing, including where the only housing they have access to:
  - damages, or is likely to damage, their health;
  - threatens their safety;
  - marginalises them through failing to provide access to adequate personal amenities or the economic and social supports that a home normally affords; or
  - places them in circumstances which threaten or adversely affect the adequacy, safety, security and affordability of that housing.[23]

b) A contributory link to the offending

In the HPLC's experience, the majority of our clients are able to satisfy the causal nexus set out in s 3 of the Infringements Act i.e. they are able to establish that their mental illness or substance dependence resulted in them being unable to understand or control the offending conduct (for example, not buying a ticket on public transport, being drunk in a public place, having their feet on the seats).

In the case of homelessness, however, we see that the current definition of special circumstances causes people who should be able to exit the system to be caught in it because they are unable to satisfy the enforcement agency or the Infringements Registrar that their homelessness caused the offending conduct.

The following case study illustrates this problem.

Case study: homelessness found not to cause the offending

Violence, homelessness and infringements

Violet received 53 infringements for parking offences and for travelling on public transport without a ticket. Violet incurred the infringements over an 18 month period when she was left homeless after fleeing a violent relationship.

Application for revocation on the basis of special circumstances

The HPLC applied to the Infringements Court on behalf of Violet to have these enforcement orders revoked on the basis of her homelessness.

Attached to the application were letters outlining Violet's housing history from a number of housing support services, which confirmed that she had been homeless at the time she received the infringements. However, the Infringements Court requested further information setting out how Violet's homelessness contributed to the offending conduct.

We responded to the Infringements Court's request with an amended application that included a cover letter detailing the causal link between Violet's homelessness and her infringements. The letter discussed

[22] *Infringements Act* 2006 (Vic) s 3.
[23] Infringements (General) Regulations 2006 (Vic) s7; *Supported Accommodation Assistance Act* 1994 (Cth) s 4.

the chaotic and transient period of Violet's life and set out how this resulted in her being unable to control the offending conduct i.e. because of the chaos, transience and poverty that came with her homelessness, Violet exceeded parking limits and travelled on public transport without a ticket.

Request for more evidence

The Infringements Court again requested further information, advising that it could not accept the cover letter as evidence of the causal link, and that only a report from a housing service would be sufficient evidence. It further advised that this report must include details of Violet's:

- current living arrangements;
- the type of homelessness she experienced, and the reasons for the homelessness;
- how long she had been homeless;
- whether she was homeless at the time of the offending conduct and, if so, how the homelessness contributed to the conduct;
- whether she suffers from any other illnesses (for example, a mental disorder or drug addiction);
- whether she takes any medication;
- whether she is undergoing any treatment or rehabilitation; and
- how long it is envisioned that she will be homeless.

The Infringements Court also informed the HPLC by telephone that where an application concerned multiple fines but there were only grounds to revoke some of them, the application as a whole would be rejected because the court could not 'split up' the group of fines and deal with them differently.

Outcome – protracted and unresolved

The HPLC obtained a further supporting letter from a housing support service and submitted an amended application for the third time. The HPLC advised that we were unable to obtain any further information and requested that the Infringements Court make a decision on the material before it.

In response, the Infringements Court requested further information, again requesting a report including the information set out above.

The HPLC intends to write to the Infringements Court again requesting a decision be made on the basis of the material before it.

If Violet's application is rejected, the HPLC will provide advice on the merits of an application under section 68 of the Infringements Act to have the matter heard in open court.

The HPLC supports the requirement of a nexus between the person's circumstances and the offending in the definition of special circumstances. However, in light of the harsh consequences of the current definition of special circumstances and the causal link it requires, the HPLC recommends that the definition of special circumstances should be amended to include circumstances that contributed to the offending conduct rather than directly caused it. This definition would better recognise that people experiencing homelessness, substance dependence and/or mental illness are often dealing with a number of complex and overlapping hardships all of which may contribute to their offending. We hope that this amended definition will also encourage a less rigid approach to evidence (discussed below).

The HPLC recognises that many people will experience hardship outside the definition of special circumstances who should also have avenues for exiting the system. This section discusses these options.

c) A less rigid approach to evidence

The current approach of enforcement agencies and the Infringements Registrar to evidence required to satisfy the definition of special circumstances can be, in the HPLC's experience, an overly rigid one.

Enforcement agencies have differing requirements making it difficult to understand what they require for a successful internal review application on the basis of special circumstances. The Infringements Registrar requires supporting documentation from a GP, psychologist, psychiatrist or, in the case of homelessness, a homelessness worker, that is less than 12 months old.

As the case study in part (b) above shows, for people who have been isolated and disengaged throughout extended periods of homelessness, obtaining the required evidence can be a barrier to successful revocation applications.

Moreover, it is extremely difficult to access low or no cost supporting documentation. In many cases, the medical professionals have asked for $300 - $600 for a medical report to support a special circumstances application. The HPLC cannot fund these costs and the HPLC's clients are not in a position to pay.

The HPLC strongly recommends a more flexible approach to the evidentiary requirements in establishing special circumstances, which recognises the realities of the hardship and social isolation that often accompany special circumstances.

6.2 Mechanisms for victims of family violence to exit the system

Family violence is the single most significant cause of homelessness in Australia.[24] Approximately 40% of the HPLC's clients are women, many of whom have experienced family violence.

The HPLC sees that family violence can cause women to incur infringements in two main ways:

- Women get infringements when they become homeless after fleeing violence and they sleep in their cars, move between shelters and friends' couches and may be driving or catching public transport between accommodation and services; or
- Violent partners incur driving infringements in the client's name, which she is unable to deal with through nomination because the time for nomination has passed or she is too fearful to nominate her ex-partner, because he will be notified.

The current system does not make it easy for these women to exit the infringements system.

As part of the current nomination process clients are required to complete a statement describing either the personal details of the nominated driver or, if the driver is unknown, the details of what efforts have been made to try to identify who was driving at the time of the offence.

If a client is unable to identify the other driver because of reasons linked to family violence, another option is that she accepts responsibility for the offences and applies for revocation on the basis of special circumstances or exceptional circumstances. Whilst family violence can exacerbate a victim's other problems such as mental illness or homelessness, family violence itself is not a circumstance which is recognised in the definition of special circumstances in the Infringements Act as a ground for withdrawal or revocation.

---

[24] See Australian Institute of Health and Welfare, *Specialist Homeless Services Data Collection: March Quarter 2012* (2012).

This gap makes it difficult for women who have experienced family violence to have related infringement matters dealt with appropriately and equitably by our justice system.

The HPLC recommends that:

- The definition of special circumstances is amended to include victims of family violence i.e. so the legislation recognises that family violence can contribute to a victim's offending conduct; and
- It is made easier for victims of family violence to nominate drivers, including more flexible timeframes for nominating drivers in situations which involve family violence and the evidentiary process for establishing that a victim of family violence was not the driver should be simplified (for example, a requirement that the victim makes a declaration that they were not the driver of the vehicle, rather than directly nominating the other driver in circumstances where the driver has been or is the perpetrator of the violence).

6.3 Work and development orders – more flexible ways to address fines

a) Community work in the current system

The Infringements Act provides that where an individual is arrested under an Infringement Warrant, a sheriff's officer can assess that person's eligibility to complete unpaid community work in respect of outstanding fines. If an individual is eligible and consents to completing unpaid community work, the sheriff's officer can issue a Community Work Permit (**CWP**) as an alternative to imprisonment.

A CWP will only be available where the total amount of outstanding fines is equal to or less than $14,436 (i.e. 100 penalty units or 500 hours of community work). A person must also satisfy the sheriff's officer that they have the capacity to complete community work and are reasonably unlikely to breach the conditions of the CWP.

In practice, many of the HPLC's clients are not eligible for CWPs because:

- they have a significant number of fines which exceed $14,436; or
- their circumstances mean that the sheriff's officer determines that they do not have capacity to complete the work, for example, due to a mental or physical disability. Vulnerable individuals also often have difficulty complying with the conditions of their CWP, which may require an individual with substance dependence not to consume drugs or alcohol without providing for treatment of their problem.

Where people experiencing financial hardship are suitable for a CWP, they must wait for their infringement or infringements to progress to the enforcement stage before they can deal with them through non-monetary means. This is an extremely inefficient and costly approach and has the potential to deliver poor outcomes for vulnerable clients.

In particular, individuals are sometimes required to complete unpaid community work that they do not have the capacity to undertake. As a result, they are at risk of breaching their CWP and may face imprisonment under s 160 of the Infringements Act.

By way of example, in the case study discussed below in part 7.3, an HPLC client named Sarah was required to complete unpaid community work. Sarah is a 40 year old single mother with two young children who has struggled with drug and alcohol dependence since her early 20s. At the time she was placed on a CWP, her sister had recently died and she had been involved in a violent relationship. Sarah has also been diagnosed with anxiety and depression and has experienced homelessness with her children. Sarah breached her CWP and a Magistrate ordered Sarah to pay $780 and made an imprisonment in lieu order. If Sarah did not make the payment, a warrant to imprison would be issued and she would be jailed without being brought back before the court (under s 160 of the Infringements Act).

As it currently stands, community work is an enforcement mechanism rather than a flexible option to allow vulnerable people to address their infringements through non-monetary means that allow them to address the causes of the offending conduct. It is a mechanism that is in need of significant reform.

b) An improved system for community work

Vulnerable or disadvantaged people should have the opportunity to deal with their fines through non-monetary means as soon as they receive them. People should be able to participate in rehabilitative and therapeutic programs, education activities or community work. These programs should be supported by government and accessible to all Victorians.

In New South Wales, individuals with unpaid fines can apply for a Work and Development Order (**WDO**).

An adult or a child[25] may apply for a WDO if he or she:

- has a mental illness;
- has an intellectual disability or cognitive impairment;
- is homeless;
- is experiencing acute economic hardship; or
- has a serious addiction to drugs, alcohol or volatile substances.[26]

A WDO may require a person to do one or more of the following activities:

- unpaid work for, or on behalf of, an approved organisation;
- medical or mental health treatment in accordance with a health practitioner's treatment plan;
- educational, vocational or life skill courses;
- financial or other counselling;
- drug or alcohol treatment; or
- a mentoring program (if under the age of 25).[27]

A person undertaking an approved activity will pay off fines at a rate of $30 per hour.[28] On successful completion of a WDO, the fine is taken to be paid.[29]

In New South Wales a fine must have become an enforcement order before an individual can apply for a WDO. However, if a fine has not reached the enforcement stage, a person can apply for an enforcement order for the purposes of applying for a WDO. No cost applies to such an application.[30]

The WDO scheme in New South Wales offers considerably more flexibility to vulnerable and disadvantaged individuals who cannot afford to pay their fines. It is targeted at supporting individuals to address the underlying causes of offending through building skills and improving their health and wellbeing.

The HPLC strongly supports the introduction of work and development orders similar to those available in New South Wales. It is imperative, however, that the system is able to balance our special circumstances

[25] NSW Attorney-General, *Work and Development Order Guidelines* (2012) 4.
[26] *Fines Act 1996* (NSW), s 99B(1)(b).
[27] *Fines Act 1996* (NSW), s 99A.
[28] NSW Attorney-General, *Work and Development Order Guidelines* (2012) 18.
[29] *Fines Act 1996* (NSW), s 99E(1)(a).
[30] NSW Attorney-General, *Work and Development Order Guidelines* (2012) 4.

mechanisms with the WDO process. WDOs are one option for struggling clients to address their fines and infringements. For some people, where their mental illness, substance dependence or homelessness (and, as recommended, experience of family violence) contributed to the offending, it may still be appropriate for people to have their infringements withdrawn on the basis of their special circumstances. WDOs should not be introduced or relied on to the exclusion of an accessible, efficient special circumstances process.

6.4 Manageable amounts – concession-based fines

As discussed in part 2.2 above, fines and infringements have a disproportionate impact on low income people.

The examples cited are that for a Newstart recipient, a fine for being drunk in public of approximately $600 is 240% of weekly income; and a fine for not having a valid public transport ticket or for having your feet on the seat of $212 is 85%.

These amounts are manifestly unmanageable for low income earners.

While in many cases, payment will not be the best option for the client (because a special circumstances application or work and development order will be more appropriate), it is important that the reformed infringements system has a variety of options in place to allow disadvantaged people to address their fines. Some people may want to resolve their infringements through payment and, for this to be a possibility, the system needs to recognise that people on very low incomes cannot pay the same amount as people on average to high incomes.

As part of *In the Public Eye*, Anthony commented:

> *Well I know the fines really don't work, so making the system better … you could maybe have a concessional fine for people on concession, because if you are looking at someone on unemployment benefits a $207 transit fine is probably 80% of…their weekly income so maybe … drop it to 40 bucks. It will still hurt them in the pocket [but] realistically they can still pay it.*[31]

As mentioned above, the average weekly income of a person on Newstart Allowance is $248.50, which is 17.5% of the average weekly income in Australia ($1422.70 at May 2013).[32]

Accordingly, the HPLC recommends that for eligible people, infringements should be set at 20% of the standard rate.[33]

[31] PILCH Homeless Persons' Legal Clinic, *In the Public Eye – personal stories of homelessness and fines*, Anthony (2013) (available at: www.pilch.org.au/hplc/inthepubliceye/anthony).
[32] ABS, above n 3.
[33] The HPLC endorses the IWG's submission that reduced fines should be made available to holders of: a health care card; a pensioner concession card; a Commonwealth seniors health card; a VPT asylum seeker concession card; or any other card that certifies the holder's entitlement to Commonwealth health concessions.

7. Minimising the impact of enforcement on struggling people

The impact of the enforcement action for unpaid fines and infringements on vulnerable people can be severe and often has unanticipated or unintended flow-on consequences. Practical and legislative reforms are needed to make sure vulnerable people are not subjected to harsh enforcement measures, such as licence cancellation or imprisonment, which will further entrench their disadvantage. The system needs to be able to distinguish between people who cannot pay their fines and people who will not. In the HPLC's experience, it's too common for extremely disadvantaged people to bear the brunt of enforcement when they should have been assisted to exit the system long before their infringements escalated to this point.

The recommendations throughout this submission are aimed at making sure fewer people progress through the system to enforcement stage. That said, people will always slip through and the processes for enforcement should have safeguards to prevent disadvantaged clients being exposed to harsh enforcement for unpaid fines.

The HPLC recommends:

- The requirement that seven day notices are personally served should be retained;
- Clear processes should be put in place for identifying people who should be given other options for dealing with their fines and infringements, including through an application for revocation or participating in rehabilitative programs, education activities or community work, before having sanctions imposed; and
- Vulnerable people should not be imprisoned for unpaid fines – legislative and procedural reforms must make sure imprisonment is a last resort.

7.1 Personal service of seven day notices

We understand that there is concern that the current requirement that seven day notices are personally served on individuals places a burden on the Sherriff's Office and that this requirement may be removed from the Infringements Act.

The HPLC strongly recommends that this requirement is retained.

For individuals experiencing homelessness and transience or whose lives are in crisis, personal service is an essential mechanism for prompting them to seek assistance. The HPLC frequently see clients who have only become aware that they have fines after being issued with a seven day notice by a sheriff's officer. This may be due to the fact they were homeless at the time they incurred the fines or they incurred them during a tumultuous period such as an episode of psychosis or relapse.

The face-to-face interaction is critical for people to understand:

- the urgency of their matter;
- what their options are; and
- the need to seek assistance.

The fact that a person has had personal contact with a sheriff's officer is also a key indication for lawyers, financial counsellors and workers that a person's matter is urgent (without this, it would be difficult to identify during an initial phone call or consultation what stage the matter is at).

Personal service of a seven day notice is one of the final points at which vulnerable people can be assisted to address their infringements and exit the system prior to being the subject of sanctions. While we appreciate the resource commitment required to administer this process, it is a crucial component of making sure struggling people are able to access the assistance they need to understand their options and engage with the system before enforcement.

7.2 Licence and vehicle sanctions – unanticipated consequences

Sanctions such as vehicle registration restrictions, vehicle clamping and driver's licence restrictions can have unanticipated consequences for vulnerable infringement offenders. It is important that the full impact of sanctions is considered when determining whether or not to extend the use of these sanctions.

For example, a person who has outstanding infringement warrants for travelling on public transport without a ticket during a period of homelessness or mental illness is now temporarily housed and trying to hold down employment. If he or she is the subject of a vehicle, registration or licence related sanction, he or she may be unable to maintain employment, could not transport children and, as a result of loss of income, would be at risk of re-entering homelessness for rent arrears.

Any changes made to the use of sanctions for fines and infringements need to include clear processes for identifying people who should be given other options for dealing with their fines and infringements, including through an application for revocation or participating in rehabilitative programs, education activities or community work, before having a sanction imposed. Without such processes, these sanctions risk entrenching disadvantage and inflicting hardship that is disproportionate to the offending.

7.3 Vulnerable people should not be imprisoned for unpaid fines

The HPLC assists numerous clients facing imprisonment for unpaid fines under s 160 of the Infringements Act. In addition to the obvious impact for the affected individuals, this situation imposes a significant resource burden on legal service providers.

The recent decision of the Supreme Court of Victoria Court of Appeal in *Victoria Police Toll Enforcement v Taha*; *State of Victoria v Brookes* [2013] VSCA 37 (**Taha**) found that Magistrates have a duty to inquire about a person's circumstances before sentencing them to prison for unpaid fines.[34]

We are optimistic that the decision in Taha will result in fewer disadvantaged people being jailed for unpaid fines. In discharging this duty to inquire, we hope Magistrates will be better able to identify infringement offenders' disabilities such as mental illness or intellectual disability, or other special circumstances, and make less punitive orders, such as discharging fines.

In response to the decision in Taha, the Government has introduced amendments to the Infringements Act that create a limited right of rehearing for some clients sentenced to prison for unpaid fines. People will have a right to a rehearing where, at the time of the first hearing, the following factors were not taken into account by the Court or were not before the Court:

- the client's mental or intellectual impairment, disorder, disease or illness;
- the client's special circumstances; or

[34] See PILCH Homeless Persons' Legal Clinic, *Case Note – Magistrates have a duty to inquire before sentencing people to prison for unpaid fines* (March 2013) (available at: http://www.pilch.org.au/Assets/Files/HPLC-TahaCaseNote.pdf).

– evidence that would make the decision to imprison the client excessive, disproportionate and unduly harsh.

Whilst we welcome these reforms, the HPLC submits that the Infringements Act should provide the same protections as the Sentencing Act. The proposed amendments do not go far enough and do not provide the minimum protections in the Sentencing Act. The amendments do not provide a right of rehearing for clients who were given a partial discharge and a period of imprisonment in the event of default at the initial hearing, so vulnerable people can still be sentenced to imprisonment without any ability to have this decision reviewed on the merits.

The following case study illustrates how highly vulnerable people can be at risk of imprisonment in the current fines and infringements system.

Case study: Single mother and victim of family violence facing jail for unpaid fines

Special circumstances

Sarah is a 40 year old single mother with two young children. She has struggled with drug and alcohol dependence since her early 20s and things were made harder by the death of her sister and a violent relationship. Sarah has also been diagnosed with anxiety and depression and has experienced homelessness with her children.

Sarah received a number of infringements for driving offences. She was unable to pay the infringements, so they progressed to warrant stage and Sarah was arrested and ordered to complete community work. Sara was not able to complete her community work and she was brought before a Magistrate. The Magistrate ordered Sarah to pay $780 and made an imprisonment in lieu order, which meant that if Sarah didn't make the payment, a warrant to imprison would be issued and she would be jailed without being brought back before the court (under section 160 of the Infringements Act).

When Sarah sought the assistance of the HPLC, she had defaulted on her repayment and there was an active warrant to imprison her for seven days.

Sarah's HPLC lawyer prepared a detailed affidavit setting out Sarah's circumstances, including her experience of family violence, substance dependence, mental illness and history of homelessness. Comprehensive supporting material was provided, including letters from Sarah's treating professionals and a character reference.

The HPLC's application to have the warrant to imprison cancelled was successful. The Magistrates' Court cancelled the warrant and discharged Sarah's fines and Sarah was able to continue to care for her children and move toward completing her studies.

If Sarah had not been able to obtain legal representation (like many vulnerable clients), it is highly likely that she would have been imprisoned.

The HPLC is strongly of the view that vulnerable people should not be jailed for unpaid fines and infringements. Imprisonment must be a last resort and there must be legislative and procedural safeguards to prevent people with special circumstances and other hardship going to jail for fines and infringements that they're not in a position to pay.

Annexure 1: PILCH Homeless Persons' Legal Clinic

The Public Interest Law Clearing House (**PILCH**) is an independent, not-for-profit organisation. We exist to help build a world that is just and fair – where systems are more accessible and accountable, rights are respected and advanced and laws are fairer. Our unique contribution to this vision is to partner with pro bono lawyers to develop and strengthen pro bono capacity and strategically match this with unmet legal need.

PILCH facilitates pro bono legal services in Victoria and New South Wales to individuals and organisations in need, and addresses injustice through law reform, policy work and legal education.

The Homeless Persons' Legal Clinic (**HPLC**) is a program of PILCH.

The HPLC is a specialist legal service for people experiencing or at risk of homelessness.

Free legal services are offered by the HPLC on a weekly basis at eight outreach locations that are already accessed by people experiencing homelessness, including crisis accommodation centres and social and family services.[35]

Since its establishment in 2001, the HPLC has provided assistance to over 5000 people experiencing or at risk of homelessness.

In addition to providing legal services, the HPLC undertakes a range of law reform and public policy activities. These activities are intended to identify and seek to change laws and policies that impact in a disproportionate or discriminatory way on people experiencing homelessness.

The HPLC also conducts a range of capacity building activities, including community legal education and consumer participation activities.

In 2005, the HPLC received the national Human Rights Law Award conferred by the Human Rights and Equal Opportunity Commission in recognition of its contribution to social justice and human rights. In 2009 it received a Melbourne Award for contribution to community in the City of Melbourne.

[35] Host agencies include Melbourne Citymission, VACRO, HomeGround Housing Services, Northside Geelong, Central City Community Health Centre and Salvation Army St Kilda Crisis Contact Centre. Legal services are provided at our host agencies by volunteer lawyers from law firms: Allens Linklaters, Clayton Utz, Corrs Chambers Westgarth, Herbert Smith Freehills, King & Wood Mallesons, Minter Ellison and Harwood Andrews.

Annexure 2: IWG Responses to SAC Consultation

INFRINGEMENTS WORKING GROUP – RESPONSES TO SENTENCING ADVISORY COUNCIL FINES AND INFRINGEMENTS PROJECT

References

- Infringements Working Group, *Position Paper: A simple, fair and effective infringements system for all Victorians* (July 2013) (**IWG Position Paper**).
- Youthlaw's Position Paper on the Children and Young Persons Infringement Notice System, *A Fairer Fines System for Children – Key Issues and Recommendations* (**CAYPINS Position Paper**).
- Monash University's Criminal Justice Research Consortium, *An examination of the impact of unpaid infringement notices on disadvantaged groups and the criminal justice system – towards a best practice model* (February 2013) (**Monash University Report**).

NO.	QUESTION	SUMMARY OF RESPONSE
INFRINGEMENT MATTERS HEARD IN OPEN COURT		
1.	**Why Do Infringement Matters End Up in Open Court**	
1.1.	What are some of the key issues arising from the number of infringement matters heard in open court?	There are a number of issues that arise from the number of infringement matters heard in open court. These are addressed in detail in the IWG Position Paper and throughout this submission. There are five case studies included in the IWG Position Paper and each highlights one or more key issues with infringement matters heard in open court, including: – The disproportionate impact of the current system on people experiencing poverty – people who can afford to deal with their infringements by payment can avoid the stress of going to court, contesting an infringement and potentially receiving a criminal record. People experiencing poverty cannot afford to exit the system; – People with special circumstances are pleading guilty to offences where they did not have control over the behaviour that resulted in the fine; – The system imposes a significant resource burden on services, courts and enforcement agencies; – Officers who issue fines are not supported to use their discretion to issue warnings rather than fines; – Applications for internal review on the basis of special circumstances frequently result in the matter being referred to open court; – Victims of domestic violence struggle to deal with fines incurred by violent partners; – People have significant difficulty consolidating matters at different stages and are often required to attend multiple court hearings; – People with special circumstances who have driven on toll roads without a pass are often left

NO.	QUESTION	SUMMARY OF RESPONSE
		with large outstanding costs orders that cannot be met even when their infringements are dismissed; and – Vulnerable people are imprisoned for unpaid fines.
1.2.	Why are cases going to court and are there other ways that they could be resolved?	Refer to questions 6 and 7 below regarding early intervention and internal review.
1.3.	Are there pressure points in the system that are driving cases to court that could be dealt with 'upstream'?	Refer to questions 6 and 7 below regarding early intervention and internal review.
2.	**Number of Infringement Matters Heard in Open Court**	
2.1.	Is there a problem with the number of infringement matters heard in open court?	–
2.2.	Is the number of matters determined in open court a consequence of the total number of infringements issued, or are there other pressures/influences?	Refer to questions 6 and 7 below regarding early intervention and internal review.
3.	**What Infringement Offences End Up in Open Court?**	
3.1.	Are there any issues with particular offences or offence categories?	–
3.2.	Are there any particular reasons for the increase in the offence of 'unregistered vehicle in a toll zone' being heard in open court?	–
4.	**Proven / Not Proven Rates for Infringement Offences in Open Court**	
4.1.	What are the reasons why a lower proportion of some infringement offences (such as parking and toll zone offences) are proven? i. Established defences? ii. Matter withdrawn by agency after listing at court? iii. Failures to attend by agencies? iv. Legal 'loopholes' in relation to certain offences? v. Failures 'up stream'? vi. Other reasons?	–
4.2.	Could many of the infringement cases that are 'not proven' have been dealt with earlier in the system without requiring open court?	–
5.	**Outcomes for Infringement Offences in Open Court**	
5.1.	Do infringement cases heard in open court often receive more or less favourable outcomes than the infringement penalty?	–

NO.	QUESTION	SUMMARY OF RESPONSE
5.2.	Is there a sense that court is the only opportunity for some people to receive mitigation of the infringement fine?	–
5.3.	Is there a view that some infringement offences have disproportionate penalties? What are the implications of this?	**Refer to the IWG Position Paper, part 4(a).** Amounts payable for different infringements are disproportionate to the seriousness of the offence. By way of example, a fine for the offence of failing to produce a concession card for public transport is (at 1 July 2013) is $212, compared to an infringement for exceeding the speed limit by less than 10km/hour which is $180. The second offence involves a risk to public safety and yet the infringement amount is less than the public transport offence that carries no such risk. For community members who can afford to deal with their infringement by payment, it is possible to avoid the stress of going to court, contesting an infringement and potentially receiving a criminal record. People experiencing poverty who receive infringements for the same offences cannot afford to exit the system. People with special circumstances are pleading guilty to fines where they had no control over the behaviour that resulted in the fine.
5.4.	Is a perception of disproportion influencing people's decisions to have their matters determined in open court?	Yes.
5.5.	Does this affect the credibility of the infringements system?	Yes. Refer to the Monash University Report (eg. part 2.3 regarding disproportionate fine amounts).
6.	**Discretion and Warnings**	
6.1.	Is there a problem with the current practice of issuing warnings?	Yes. The *Attorney-General's Guidelines to the Infringements Act* state: > [T]he Infringements Act does not require that enforcement agencies consider 'special circumstances' at the issuing stage. However, if issuing officers are to exercise such discretions, then each enforcement agency must have a code of conduct to guide officers with the responsibility for issuing infringement notices in the discharge of their responsibilities. > The code should take into account the nature of the business of the issuing agency and the role and functions of its issuing officers. The code should focus on principles of the infringements system with respect to fairness and the recognition of individual

NO.	QUESTION	SUMMARY OF RESPONSE
		circumstances, and deal with the appropriateness of issuing infringements to people with obvious special circumstances. Many enforcement agencies have codes and run training on issuing cautions and warnings. Unfortunately, this discretion is often not exercised in practice and, accordingly, further reforms are needed. Refer also to the CAYPINS Position Paper, section 3(a) – warnings should be the first response by issuing officers to all children.
6.2.	If so, how should the system be improved?	Refer to question 6.3 below.
6.3.	How extensive should those reforms be? i. Further training of officers on the use of informal and official warnings? ii. Guidelines for the use of warnings? iii. Legislatively emphasising the importance of warnings? iv. Court power to recommend official warnings (e.g. where no priors)? v. Other approaches?	**Refer to the IWG Position Paper, recommendation 6.** – **Issuing officers to warn not fine:** Issuing officers should exercise their discretion to warn rather than fine people with special or exceptional circumstances. Guidelines and training should be strengthened to support issuing officers to appropriately exercise the discretion by giving warnings or referrals rather than issuing infringement notices to people with special circumstances. There should be evaluation processes to monitor how often issuing officers are using their discretion to issue warnings rather than fines and in what circumstances. Refer also to the CAYPINS Position Paper, recommendation 1. The Infringements Act should require enforcement agencies to consider special circumstances at the issuing stage.
7.	**Internal Review of Infringement Fines**	
7.1.	Are there any issues / problems / comments in relation to the internal review process?	Yes. **Refer to the IWG Position Paper, recommendations 1, 3 and 6 and the case study in part 5(a).** The case study in part 5(a) of the IWG Position Paper deals with a 19 year old man, Mourad, who suffers from Post-Traumatic Stress Disorder and a personality disorder and has experienced homelessness since he was 15. Mourad received a fine from Victoria Police for spitting when he was at the train station. His application for internal review on the basis of his special circumstances was rejected and (under s 25(3) of the Infringements Act), the matter was referred to open court.

NO.	QUESTION	SUMMARY OF RESPONSE
		People with special circumstances should not be caught in the infringements system; they should be able to exit as early as possible. If an enforcement agency finds there are special circumstances at the internal review stage they should withdraw the infringement notice. As Mourad's case study shows, this happens inconsistently in practice. The inconsistent approach to internal review applications results in many people with special circumstances choosing to wait until enforcement orders are made by the Infringements Court to make an application for revocation on the basis of those special circumstances. By doing this, those people are typically able to have their matter heard in the Special Circumstances List rather than open court, but with a significant delay and with additional costs being added to the fines as a consequence.
7.2.	Is there a need for reform?	Yes.
7.3.	If so, how should the review system be improved?	**Refer to the IWG Position Paper, recommendations 1, 3 and 6.**
7.4.	How extensive should those reforms be? i. Online applications? ii. Guidelines? iii. Greater oversight? iv. A centralised, independent special circumstances review body? v. A centralised, independent review body? vi. Other approaches or mechanisms?	**Refer to the IWG Position Paper, recommendations 1, 3 and 6.** – **One central agency:** There should be one central agency that deals with all infringements, including determining applications for review of both infringements and enforcement orders. – **Infringement withdrawn where special circumstances are found on review**: Where a person applies for review on the basis of special circumstances, the central agency should withdraw infringements where special circumstances are found to exist, except where conduct seriously endangers community members. People should not be penalised for trying to address their fines at an earlier stage. – **Centralised guidelines & criteria for establishing special circumstances:** The central agency should develop and make publicly available guidelines and criteria for determining special circumstances, as well as a non exhaustive list of acceptable evidence for proving those circumstances. Guidelines and criteria should be consistent across all levels of enforcement. We strongly support greater oversight of first instance decisions, including an avenue to have those decisions reviewed. Review of these decisions would encourage greater rigour and consistency of decision-making and ultimately reduce the burden on the courts.
7.5.	Should an agency have the ability to reduce the amount of an infringement fine after internal review?	–

NO.	QUESTION	SUMMARY OF RESPONSE
8.	**Special Circumstances and Infringement Fines**	
8.1.	How could the system better handle special circumstances cases, particularly in regional areas?	**Refer to the IWG Position Paper, all recommendations.** Refer also to the CAYPINS Position Paper, section 5(f).
8.2.	Does the requirement of a direct causal link between the special circumstances and the offending behaviour prevent resolution of worthy cases?	Yes.
8.3.	Should the link be broadened to cover situations where the behaviour *contributed* to the offence? Would this raise any problems?	Yes, the link should be broadened. If the rationale for the 'special circumstances' system is that those people are less culpable by reason of their special circumstances, that category should include persons whose circumstances contributed to (not just caused) their offending. For example, homelessness does not cause a person to own an unregistered vehicle. However homelessness may contribute to a person's decision to buy a cheap unregistered vehicle to use as shelter in a way which lessens that person's 'criminal' culpability. Similarly, a person who has an opiate addiction may be treated by methadone which has the effect of causing drowsiness or lack of concentration, which in turn contributes to the person forgetting to validate their Myki. While the substance addiction did not cause the offending conduct, it contributed to the person being on methadone, which in turn contributed to the offence, and which logically lessens the offender's culpability in an equivalent way.
8.4.	Should the link with offending be removed altogether, so that people *presenting* with special circumstances at the time of internal review or an application for revocation may be considered? Would this raise any problems?	No, but there should be options for people who experience hardship at the time of the review or determination to deal with their infringements other than through payment. **Refer to the IWG Position Paper, recommendations 3 and 5.** – **Proportionate fines:** Fines should be proportionate to an individual's ability to pay. – **Reduced fines for health care card holders:** People in financial hardship on health care cards should be issued with a reduced or concession fine amount.♦ – **Take into account all factors behind receipt or non payment of fines:** The system should consider all factors that lead to individuals receiving infringements or failing to deal with them in time, including poverty / long-term financial hardship, gambling addiction,

♦ See also eligibility for concession-based fines discussed in question 12.2.

NO.	QUESTION	SUMMARY OF RESPONSE
		domestic violence and age and maturity. – **Deal with fines by non monetary means:** Where appropriate, disadvantaged community members should have the opportunity to deal with their fines as soon as they receive them by non monetary means, including by participating in rehabilitative and therapeutic programs, education activities or community work. These programs should be supported by government and accessible to all Victorians. – **Make it easier for victims of family violence to nominate drivers:** There should be more flexible timelines for nominating drivers in situations which involve family violence and the evidentiary process for establishing that a victim of family violence was not the driver should be simplified.
9.	**The Special Circumstances List in the Magistrates' Court**	
9.1.	After an internal review on the basis of special circumstances, should infringement fines that are confirmed be automatically referred to court?	No. **Refer to the IWG Position Paper, recommendation 7.** – **Court should be a last resort:** Most people, especially those with special needs, should be able to deal with their infringements through easy-to-access paper applications rather than needing to personally appear in a court.
9.2.	If so, should those infringement fines be heard on the Special Circumstances List?	When a person makes an application for internal review on the basis of special circumstances and the enforcement agency finds that special circumstances exist, but decides to confirm the infringement (eg. because of concerns regarding public safety), these matters should: – be reviewed by the new centralised body; or – in the absence of a centralised body, be heard in the Special Circumstances List. **Refer to the case study in part 5(a) of the IWG Position Paper.** In this case study, a young homeless man with Post-Traumatic Stress Disorder, psychosis, a personality disorder and a history of self-harm was given an infringement for spitting at the train station. He applied to Victoria Police for internal review on the basis of his homelessness and mental illness, but the infringement was confirmed. He was then required to appear in open court, when he should not have been required to go to court at all. The Special Circumstances List is a specialist jurisdiction that is well equipped to deal with the complex circumstances of people such as this client. It is the appropriate jurisdiction for these matters.
9.3.	Do people with special circumstances often avoid internal review to instead proceed to the enforcement stage in	Yes.

NO.	QUESTION	SUMMARY OF RESPONSE
	order to be listed on the Special Circumstances List?	
9.4.	Should a person with a matter listed for hearing on the Special Circumstances List be required to plead guilty?	No.
9.5.	Is there an internal inconsistency that access to the Special Circumstances list requires both: i. an inability for a person to understand or control his or her conduct; and ii. the ability of a person to understand his or her conduct and proceedings sufficiently to admit guilt?	Yes.
9.6.	Would a diversion model (not requiring a guilty plea) work better for people with special circumstances?	Not always. Some people with special circumstances should have their fines unconditionally discharged.
9.7.	If so, how should it operate?	–
9.8.	How are special circumstances cases handled in courts that do not have a Special Circumstances List? Are there any problems with this?	–
10.	**Other Key Problems of Issues Relating to Infringement Fines in Open Court**	
10.1.	Are there any other key problems / feedback / solutions to issue of infringement cases heard in open court?	CityLink civil penalties being enforced through the infringements system. **Refer to the IWG Position Paper, part 5(f).** The case study in part 5(f) of the IWG Position Paper refers to a woman, Fiona, who accrued over 250 infringements, totalling approximately $50,000, for travelling on toll roads without an e-tag. Fiona battled substance dependence and mental illness. Three separate applications for revocation on the basis of special circumstances were needed to address Fiona's infringements. This took almost a year. Ultimately, with support of an advocate, Fiona appeared in the Special Circumstances List where the court ordered Fiona to enter into a six month undertaking and pay $350. Her matter was otherwise resolved but Fiona had $10,000 in CityLink enforcement costs awarded against her. Victoria Police would not consider the withdrawal of any infringements because there were too many and the Judicial Registrar had no power to waive any of the costs (despite recommending that CityLink not pursue them). Fiona still has these costs outstanding on her court record and no means of paying them off. As Fiona's case study highlights, people with special circumstances who have driven on toll roads without a pass are still liable to pay the $40 costs associated with the infringement (see *Melbourne City Link Act* 1995 (Vic) s 76; *EastLink Project Act* 2004 (Vic) s 206B).

NO.	QUESTION	SUMMARY OF RESPONSE
		Even where the Court or Registrar proves and dismisses a CityLink infringement on the basis of special circumstances, the Court or Registrar is not empowered to waive the $40 administration fee. As a result, clients are often left with a large outstanding costs order that cannot be met due to their disadvantaged circumstances. The IWG strongly suggests that Transurban (CityLink) develops a clear policy that it will not enforce administrative costs orders ($40 for each fine) against people found to have special circumstances.
HARMONISING THE ENFORCEMENT MECHANISMS AND PROCEDURES		
11.	**Payment of Court Fines and Infringement Fines**	
11.1.	What are some of the most common reasons for non-payment of court fines or infringement fines?	Financial and personal hardship. Fines are excessive and disproportionate, not reflecting the low income or lack of income of children. Refer to the CAYPINS Position Paper, section 4(a).
11.2.	Are there particular offences that have high rates of non-payment, and if so, why?	–
11.3.	How could the court fine and infringement fine systems be reformed to improve payment rates?	It needs to be easier for people to pay both financially and practically. In practical terms, people should be able to pay through Centrepay, BPay and automatic transfer and have their payment plans combined. Payment for all fines and infringements (including open court fines) should be made to one agency. Regarding the disproportionate financial impact of fines and infringements on low income people, **refer to the IWG Position Paper, recommendations 3, 4 and 5**. – **Proportionate fines:** Fines should be proportionate to an individual's ability to pay. – **Reduced fines for health care card holders:** People in financial hardship on health care cards should be issued with a reduced or concession fine amount.♦ – **Take into account all factors behind receipt or non payment of fines:** The system should consider all factors that lead to individuals receiving infringements or failing to deal with them in time, including poverty / long-term financial hardship, gambling addiction, domestic violence and age and maturity.

♦ See also eligibility for concession-based fines discussed in question 12.2.

NO.	QUESTION	SUMMARY OF RESPONSE
		– **Deal with fines by non monetary means:** Where appropriate, disadvantaged community members should have the opportunity to deal with their fines as soon as they receive them by non monetary means, including by participating in rehabilitative and therapeutic programs, education activities or community work. These programs should be supported by government and accessible to all Victorians. – **Deal with infringement on receipt:** People should be able to take action to deal with an infringement as soon as they receive one.
12.	**Mitigation of Infringement Fine Amounts**	
	Infringement fines – financial hardship	
12.1.	To provide a measure of mitigation for infringement fines, should those people facing severe financial hardship receive a discounted penalty?	Yes.
12.2.	If so, how should eligibility be determined? (e.g. Centrelink recipient? Health Care Card holder? Using eligible cards for Department of Human Services concessions? Other method?)	Reduced fines should be made available to holders of: – A Health Care Card; – A Pensioner Concession Card; – A Commonwealth Seniors Health Card; – A VPT Asylum Seeker Concession Card; or – Any other card that certifies the holder's entitlement to Commonwealth health concessions.
12.3.	What should be the rate of discount?	Fines should be proportionate to an individual's ability to pay. The average weekly earnings in Australia (as at May 2013) are $1422.70. The weekly income of a person on Newstart Allowance is $248.50 i.e. 17.5% of the average weekly earnings. Accordingly, we recommend that fines and infringements for eligible card holders (see question 12.2 above) are set at 20% of the standard rate. By way of example, a fine for not having a ticket on public transport would be $42 i.e. 20% of the current infringement amount of $212.
12.4.	Where not already provided for, should children receive a discounted infringement fine penalty?	Yes. Refer to the CAYPINS Position Paper, recommendation 2.
12.5.	If so, how should this work?	Proof of age – as happens currently with public transport offences for children. Refer to the CAYPINS Position Paper.
	Infringement fines – early 'plea' discount	

NO.	QUESTION	SUMMARY OF RESPONSE
12.6.	To provide an incentive for paying infringement fines and to acknowledge the utilitarian benefit (and possible remorse) of a person accepting responsibility for infringement offences, should there be a prompt payment discount?	Yes.
12.7.	If so, what should the rate of discount be?	–
	Infringement fines – combined discount	
12.8.	Should a person who is facing severe financial hardship and also pays promptly be entitled to a combined discount?	Yes.
	Infringement fines – fairness/parity	
12.9.	To encourage continued compliance and provide fairness to those people who cannot afford to immediately pay an infringement penalty in full, should there be a payment plan completion discount?	Yes.
12.10.	Should the discount be the same rate as a prompt payment discount?	Yes.
12.11.	If not, what should the rate of discount be?	NA.
	Infringement fines – offences	
12.12.	Should a discount apply to all infringement fines, or should there be offences (or categories of offences) to which it should not apply?	–
13.	**Imposition of Court Fines After Consideration of Financial Circumstances**	
13.1.	Should a court be required to consider the financial circumstances of an offender prior to determining whether or not to impose a fine?	–
13.2.	If so, would there be any implications for the hierarchy of sentencing orders in the Sentencing Act 1991 (Vic)?	–
13.3.	What are the policy reasons for a court considering an offender's financial circumstances after deciding to impose a fine? What problems does this create?	–
13.4.	Alternatively, should the current approach under section 50(1) of the Sentencing Act 1991 (Vic) be retained, providing that after deciding to impose a fine, the court considers the financial circumstances of the offender	–

NO.	QUESTION	SUMMARY OF RESPONSE
	when determining the amount of the fine to impose?	
14.	**Consolidation of Information on Outstanding Court Fines and Infringement Fines**	
14.1.	Should the management of court fines and infringement fines be harmonised?	Yes.
14.2.	If so, how should this work?	–
14.3.	Should a person be able to access a single source of information on his or her outstanding court fines and infringement fines?	Yes.
14.4.	Should a court, when determining the amount of a fine to impose, be able to have access to the total amount of outstanding court fines and infringement fines for a person?	No.
14.5.	Are there any risks associated with the consolidation of outstanding fine information?	Providing courts with consolidated fine information has potential to be prejudicial if a court takes other fines into account in sentencing (even though they are not making a finding of guilt).
15.	**Centralisation of Fine Management and Enforcement**	
15.1.	What reforms are required to provide for the harmonisation of court fines and infringement fines? i. IT reforms? ii. A centralised fine payment/enforcement body? iii. Other reforms?	IT reforms and a centralised payment/enforcement body are both required to harmonise court fines and infringement fines. **Refer to the IWG Position Paper, recommendations 1, 2 and 3.**
15.2.	If a centralised fine payment/enforcement body were to be established, what should its functions and objectives be?	Key functions of the centralised body should be to: – Provide oversight and review decisions of enforcement agencies; – Make decisions about applications for withdrawal that are not then referred back to the enforcement agency; – Makes decisions about special circumstances applications; – Identify people who are accruing multiple fines who may benefit from early intervention to prevent escalation; – Manage work and development orders; and – Monitor and publically report on the infringements review process (including the decision-making of enforcement agencies).
15.3.	Which of the following objectives should it include? i. A focus on people rather than individual fines? ii. Centralised payment plans? iii. Centralised community work orders?	The objectives of the centralised body should include all of (i) – (v).

NO.	QUESTION	SUMMARY OF RESPONSE
	iv. Single statements of debt? v. Case management – (e.g. a triaged approach to fine enforcement)? vi. Other objectives?	
15.4.	Are there any reasons why a centralised fine payment/enforcement body should not be established to consolidate payment and enforcement of court fines and infringement fines?	No.
16.	**Enforcement Orders**	
16.1.	Are there any problems with the current operation of the enforcement order stage? If so, how should they be addressed?	Yes. **Refer to the IWG Position Paper, recommendations 1, 2 and 7 and part 5(d).** – **All outstanding infringements dealt with at once:** The system should be capable of dealing with all outstanding infringements that a person is subject to, regardless of the enforcement stage. – **Court should be a last resort:** Most people, especially those with special needs, should be able to deal with their infringements through easy-to-access paper applications rather than needing to personally appear in a court. The case study in part 5(d) of the IWG Position Paper refers to a woman, Mary, who accrued a large number of infringements over a period of several years for a variety of traffic offences. Mary is a long-term victim of domestic violence, has severe depression and Post-Traumatic Stress Disorder and suffered a serious stroke in 2011 which left her with a significant speech impediment. Mary's application for revocation was successful, but the enforcement agencies did not withdraw the infringements, so Mary appeared in the Special Circumstances List in relation to 44 infringements, which were all proven and dismissed. An additional seven fines from the same period of offending later reached enforcement stage and, despite the previous finding of special circumstances, the enforcement agencies did not withdraw these infringements after the enforcement orders were revoked. Mary had to appear in court again when these additional fines were proven and dismissed. A third group of fines then reached enforcement stage and required a third application for revocation.

NO.	QUESTION	SUMMARY OF RESPONSE
		It is common for clients like Mary to present with numerous infringements, at various stages of the enforcement process. It is also common for matters to be listed in various courts or lists, for example, matters listed in the General List of the Melbourne Magistrates' Court, the Special Circumstances List or at a suburban Magistrates' Court. While it is sometimes possible to consolidate all proceedings into a single hearing in the Special Circumstances List, this is quite a complex process and only possible when one matter has already been listed in the Special Circumstances List. The current system is inefficient and places an unnecessary burden on individuals, enforcement agencies, courts and services that assist people with infringements. In addition to the above recommendations, the IWG submits that a finding of special circumstances by the court should lead to an automatic dismissal of any further applications by an enforcement agency for an enforcement order in relation to infringements incurred during the period in which special circumstances have already been found to exist. This would prevent lodgement of infringements with the Infringements Court that will ultimately be proven and dismissed in light of a previous finding of special circumstances.
16.2.	What are the arguments for and against retaining the right to object in the Magistrates' Court against an unsuccessful application to revoke an enforcement order?	It is appropriate to have an avenue for review of a decision to reject an application for revocation. The absence of this right would significantly limit the accountability of Infringements Court decision-makers and on the ability of individuals to avoid arbitrary or unjust outcomes.
16.3.	Should the enforcement of court fines contain an enforcement order stage?	–
16.4.	How do you think a harmonised enforcement order stage should work?	–
17.	**Sheriff: Arrest Warrant Procedures for Court Fines and Infringement Fines**	
17.1.	Should the procedures for a Sheriff's officer to arrest a person under an infringement warrant and the procedures for the Sheriff's officer to arrest a person under a court fine warrant be harmonised?	–
17.2.	Rather than being required to take a person to the police to be bailed, should a Sheriff's officer have the power to bail a person to appear in court on a court fine warrant?	–
17.3.	Should a Sheriff's officer be required to attempt to satisfy a court fine warrant through the seizure of personal property (as is the current approach for an infringement warrant)?	–

NO.	QUESTION	SUMMARY OF RESPONSE
17.4.	Alternatively, should the current approach be retained, so that the power to seize personal property to satisfy a court fine requires an order of the court?	–
18.	**Enforcement Mechanisms for Court Fines and Infringement Fines**	
18.1.	Should the enforcement mechanisms currently available to enforce infringement fines also be available to enforce court fines?	Refer to comments under question 18.2 regarding the impact of certain enforcement mechanisms on struggling clients.
18.2.	Are there any issues with current operation of the following sanctions? i. Seizure of personal property? ii. Vehicle registration restrictions? iii. Vehicle clamping? iv. Driver's licence restrictions? v. Attachment of debt or earnings? vi. Charge on land? vii. Sale of real property? viii. Examination summons?	Sanctions (ii) – (iv) (vehicle registration restrictions, vehicle clamping and driver's licence restrictions) can have unanticipated consequences for vulnerable infringement offenders, which need to be considered when determining whether or not to extend the use of these sanctions. By way of example, a person who has outstanding infringement warrants for travelling on public transport without a ticket (during, for example, a period of homelessness or mental illness), who is now temporarily housed and trying to hold down employment can be the subject of a vehicle, registration or licence related sanction. The impact of this sanction will be enormous – the person will be unable to keep their employment, unable to transport their children and, as a result of loss of income, at risk of re-entering homelessness because they can't keep up with the rent. **We also refer to the case study in the IWG Position Paper in part 5(c).** This case study deals with a 51 year old mother of six children, Sue. During a 22 year violent relationship, Sue's partner accrued about 25 driving and tollway infringements in Sue's name. When Sue left the relationship, she and her children were homeless and staying in refuges for four months. During this time Sue was sent a notice from Vic Roads stating her licence would be suspended due to demerit points. Months later, Sue was driving her car when she was pulled over by Victoria Police and informed that her licence had been suspended. Sue was charged with driving while suspended (carrying a maximum fine of $4225 or a term of four months imprisonment). Any changes made to the use of sanctions for fines and infringements need to include clear processes for identifying people who should be given other options for dealing with their fines and infringements, including through an application for revocation or participating in rehabilitative programs, education activities or community work, before having a sanction imposed. Without such processes, these sanctions risk entrenching disadvantage and inflicting hardship that is grossly disproportionate to the offending.
18.3.	Is there any reason why any of those sanctions should not be available to enforce court fines?	Refer to comments under question 18.2 regarding the impact of certain enforcement mechanisms on struggling clients.

NO.	QUESTION	SUMMARY OF RESPONSE
18.4.	What are the arguments for and against enabling these sanctions to be used at an earlier enforcement stage i.e. before a warrant has been issued?	People should be given every opportunity to address their fines and infringements before being subjected to enforcement.
18.5.	Should the current approach requiring personal service (i.e. use after a warrant) be retained?	Yes. For people who are transient or whose lives are in crisis, personal service is an essential mechanism for prompting them to seek assistance. The face-to-face interaction is critical for people to understand (a) the urgency of their matter; (b) what their options are; and (c) the need to seek assistance. The fact that a person has had personal contact with a sheriff's officer is also a key indication for lawyers, financial counsellors and workers that a person's matter is urgent (without this, it would be difficult to identify during an initial phone call or consultation what stage the matter is at).
18.6.	Are there any other sanctions that should be available for the enforcement of court fines and infringement fines?	–
18.7.	Are there any other enforcement reforms that would improve payment rates?	–
19.	**Guidance for the Use of Enforcement Mechanisms**	
19.1.	Should there be guidelines for the use of enforcement sanctions?	Yes.
19.2.	If so, what form should the guidelines take?	The guidelines should contain steps that assist enforcement officers to minimise the risks identified in question 18.2 above.
19.3.	On the basis of parsimony, (that the least severe sanction required to achieve satisfaction of a warrant be used) should the enforcement mechanisms be structured in a hierarchy?	As identified in question 18.2 above, sanctions which seem less severe on their face, may in fact have more serious consequences for disadvantaged clients. For this reason, guidelines that assist decision-makers to make appropriate decisions about sanctions in light of individual circumstances will be more effective than a strict hierarchy of sanctions.
19.4.	If yes, how would you rank them and what is the reasoning behind your ranking?	–
COMMUNITY WORK		
20.	**Community Work to Pay Infringement Fines and Court Fines**	
20.1.	Should the processes for, and timing of, applying for community work be harmonised for court fines and infringement fines? If so, how and when should it operate?	Yes.
20.2.	Should community work be available for people to convert infringement fines earlier than at default warrant stage?	Yes.

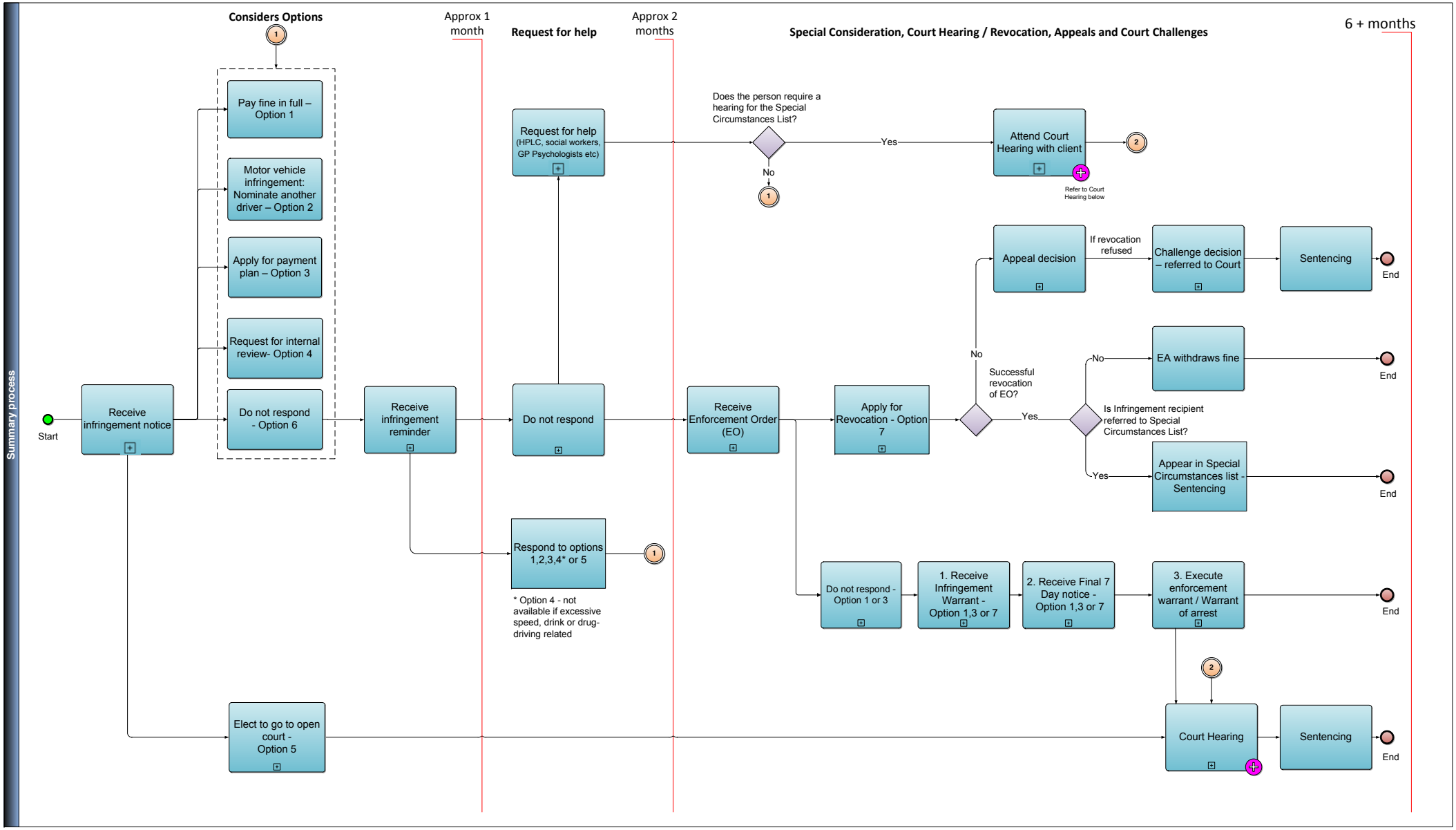
NO.	QUESTION	SUMMARY OF RESPONSE
20.3.	If a centralised fine management/enforcement body was established, should that body have the power to allow conversion of court fines and infringement fines to community work?	Yes.
21.	**Court Powers on Default of Payment of Court and Infringement Fines**	
21.1.	Should the powers of a court when hearing a default of an infringement fine under section 160 of the *Infringements Act* 2006 (Vic) and default of a court fine under section 62(10) of the *Sentencing Act 1991* (Vic) be harmonised?	Yes.
21.2.	If so, how should the court powers be harmonised?	–
21.3.	Should the court have a broad discretion to make orders regarding the defaulting person and the fine, or should the powers be limited (as is the current approach under s 160 of the *Infringements Act 2006* (Vic)) according to the circumstances of the defaulting person?	–
21.4.	Should a court be able to resentence an offender on the default of a court fine?	–
21.5.	If so, should this power be limited to those instances where there has been a change in the offender's circumstances, or should the court be provided with a broad discretion to resentence?	–
21.6.	If a court has the power to resentence a court fine defaulter, is there an equivalent power that could apply to infringement fine defaulters?	–
21.7.	Given that a person in default of an infringement fine has not been found guilty of the offence, should the court have the power to hear the matter (for example, if it appears that the person has a defence)?	–
IMPRISONMENT		
22.	**Imprisonment on Default of Payment of Court Fines and Infringement Fines**	
22.1.	Does the current approach to ordering imprisonment for default of an infringement fine contain sufficient safeguards?	No. **Refer to the IWG Position Paper, part 5(e) and recommendation 3.** – **No imprisonment:** Non payment of fines should never result in imprisonment.

NO.	QUESTION	SUMMARY OF RESPONSE
		The case study in part 5(e) of the IWG Position Paper deals with John who incurred about $30,000 of fines most of which related to toll road offences. At the time John was homeless, recovering from substance dependence and struggling with mental illness. John was arrested for unpaid infringements warrants, but his substance abuse and mental health issues were not made clear to the Magistrate. John's fines were reduced by two-thirds to $10,000 but an imprisonment in lieu order was made. John defaulted on a payment and was taken into custody without being brought back before the court. As a result of the community legal centre's application, the Magistrate heard submissions on John's special circumstances and John was released from custody having already spent 30 days in prison. John's case study is disturbing. John was experiencing special circumstances and unnecessarily spent 30 days in prison on the basis of unpaid fines. We are optimistic that the recent decision of the Supreme Court of Victoria Court of Appeal in *Victoria Police Toll Enforcement v Taha*; *State of Victoria v Brookes* [2013] VSCA 37 (**Taha**) – which found that Magistrates have a duty to inquire about a person's circumstances before sentencing them to prison for unpaid fines – will result in fewer disadvantaged people being jailed for unpaid fines. In discharging this duty to inquire, Magistrates will hopefully identify infringement offenders' disabilities such as mental illness or intellectual disability, or other special circumstances, and make less punitive orders (for example, discharge of the fines). In response to the decision in Taha, the Government has introduced amendments to the Infringements Act that create a limited right of rehearing for some clients sentenced to prison for unpaid fines. People will have a right to a rehearing where, at the time of the first hearing, the following factors were not taken into account by the Court or were not before the Court: – the client's mental or intellectual impairment, disorder, disease or illness; – the client's special circumstances; or – evidence that would make the decision to imprison the client excessive, disproportionate and unduly harsh. The Infringements Act needs to provide the same protections as the Sentencing Act. The proposed amendments don't go far enough and don't provide the minimum protections in the Sentencing Act. The amendments do not provide a right of rehearing for clients who were given a partial discharge and a period of imprisonment in the event of default at the initial hearing (so people in John's situation can still be sentenced to imprisonment without any ability to have this decision reviewed on the merits).

NO.	QUESTION	SUMMARY OF RESPONSE
22.2.	If a court decides to order imprisonment for fine default, subject to compliance with a payment plan, should a person in default of payment be brought back before the court before being imprisoned?	Yes.
23.	**Converting Court Fines of Infringement Fines to Imprisonment While Serving Another Sentence: Concurrency and Cumulation**	
23.1.	Are there any issues arising from the conversion of fines (including infringement fines) to an order for imprisonment, especially when the imprisonment is served concurrently with another sentence of imprisonment?	–
23.2.	Should there be any limitation imposed on the ability of an imprisoned offender to request that they serve a concurrent term of imprisonment in lieu of outstanding infringement fines and court fines?	–
23.3.	Should the current approach, under section 161A(4) of the *Infringements Act 2006* (Vic), that imprisonment for infringement fines must be served concurrently with any uncompleted sentence of imprisonment, be retained?	–
23.4.	Should the current approach, under section 16(2) of the *Sentencing Act 1991* (Vic), that imprisonment for court fines must be served concurrently with any other uncompleted sentence, unless directed by the court, be retained?	–
23.5.	Should the penalty unit conversion amounts for community work and imprisonment be harmonised?	–
23.6.	If so, should one day in prison equate to 4.8 penalty units, consistent with the rate of conversion to community work, or should another rate apply?	–
24.	**Imprisonment for Fine Default Alone**	
24.1.	In your experience, in what circumstances are people imprisoned for fine default alone?	**Refer to the IWG Position Paper, part 5(e) and recommendation 3.**

Annexure 3: Infringements System Diagrams

HPLC – Current Infringement Process (Summary)



Detailed Swimlane

Sheriff

Magistrates' Court

Infringement Registrar (IR)

Enforcing Agency (EA)

Infringement Recipient

HPLC/ Seconded Law Firm

Professionals (housing workers, psychologist, GP, psychiatrist)

Approximately 1 month

Approximately 2 months

Commit Offense

Start

Receive Infringement notice

Infringement Recipient considers options

May request for help.

Option 1 — Pay fine in full

End

Option 2 — Motor vehicle infringement: Nominate another driver

Option 3 — Apply for payment plan

Option 4 — Request for internal review

Option 4 - not available if excessive speed, drink or drug-driving related

Option 5 — Elect to go to open court

Option 6 — Do not respond

Send Issue Penalty

Accept nominated driver?

No

Yes

Respond to options 1,3,4,5 or 6

Option 1,3,4,5 or 6

Accept payment application?

No

Yes

Respond to options 1,2,4,5 or 6

Option 1,2,4,5 or 6

Successful internal review outcome?

No

Yes

Penalty withdrawn

End

Payment plan granted

End

Penalty not withdrawn

Referred to Open Court

6

Penalty withdrawn / reminder

Official warning may be issued

End

Penalty unsettled

Send Issue penalty reminder

Receive Infringement reminder

Respond?

No

Yes

Do not respond

Respond to options 1,2,3,4 or 5

Option 1,2,3,4 or 5

Request for help

Review request for help

Request additional information

3

Appointment with the client

Prepare support letters to HPLC

2

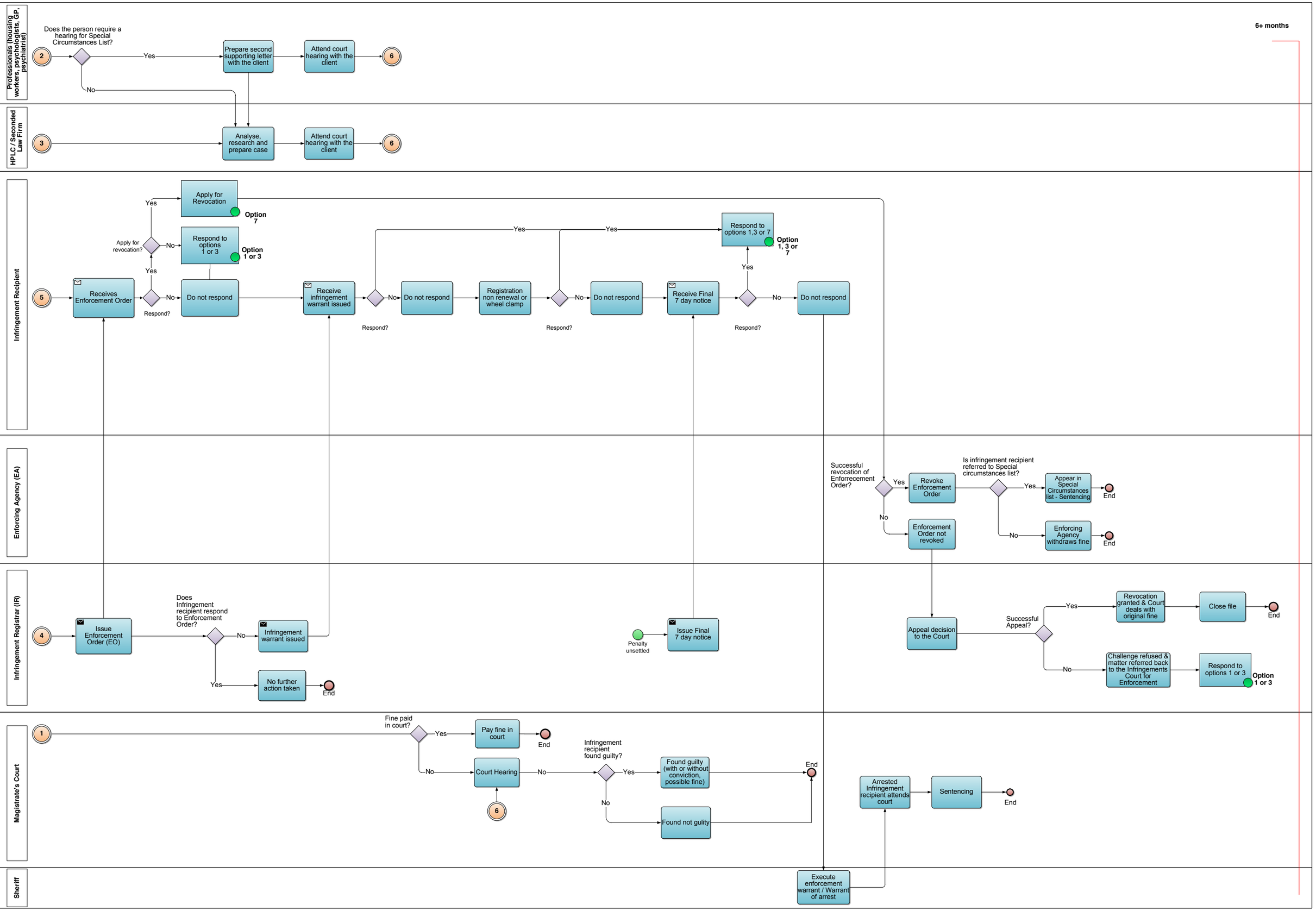
Penalty & cost lodged with Infringement Registrar (IR)

5

Record penalty in Infringement Register

4

1


Professionals (housing workers, psychologists, GP, psychiatrist)
HPLC / Seconded Law Firm
Infringement Recipient
Enforcing Agency (EA)
Infringement Registrar (IR)
Magistrate's Court
Sheriff
6+ months
2
Does the person require a hearing for Special Circumstances List?
Yes
No
Prepare second supporting letter with the client
Attend court hearing with the client
6
3
Analyse, research and prepare case
Attend court hearing with the client
6
5
Receives Enforcement Order
Apply for revocation?
Yes
No
Apply for Revocation
Option 7
Respond to options 1 or 3
Option 1 or 3
Respond?
Do not respond
Receive infringement warrant issued
Respond?
No
Do not respond
Registration non renewal or wheel clamp
Respond?
No
Do not respond
Receive Final 7 day notice
Respond?
No
Do not respond
Yes
Yes
Yes
Respond to options 1,3 or 7
Option 1, 3 or 7
4
Issue Enforcement Order (EO)
Does Infringement recipient respond to Enforcement Order?
No
Infringement warrant issued
Yes
No further action taken
End
Penalty unsettled
Issue Final 7 day notice
Successful revocation of Enforrecement Order?
Yes
Revoke Enforcement Order
Is infringement recipient referred to Special circumstances list?
Yes
Appear in Special Circumstances list - Sentencing
End
No
Enforcement Order not revoked
No
Enforcing Agency withdraws fine
End
Appeal decision to the Court
Successful Appeal?
Yes
Revocation granted & Court deals with original fine
Close file
End
No
Challenge refused & matter referred back to the Infringements Court for Enforcement
Respond to options 1 or 3
Option 1 or 3
1
Fine paid in court?
Yes
Pay fine in court
End
No
Court Hearing
6
No
Infringement recipient found guilty?
Yes
Found guilty (with or without conviction, possible fine)
End
No
Found not gulity
Execute enforcement warrant / Warrant of arrest
Arrested Infringement recipient attends court
Sentencing
End

Annexure 4: In the Public Eye – personal stories of homelessness and fines

This Annexure contains short quotes and a brief background for the six participants in *In the Public Eye*. Their full stories are available at: www.pilch.org.au/hplc/inthepubliceye.

Anthony

"Being homeless and living on the streets, whatever self-confidence I had was wiped … you actually don't get looked at as a human being".

Anthony became homeless in his late 20s. He slept rough and couch surfed for about two years and he received about $3000 in fines for travelling on public transport without a ticket, having his feet on the train seat and possessing an open container of liquor. Anthony now feels hopeful about his future. He is in recovery, has stable housing and is looking forward to returning to work or study.

Emma

"Being a young woman on the streets is quite dangerous, I guess you do have to protect yourself ... I got a lot of fines during my time being on the streets due to not having a ticket … then there was also the fines for beg alms".

Emma became homeless at 16. During her time sleeping on the streets she got fines for not having a tram ticket and for begging. Emma now has two young sons. She is still in unsafe housing but hopes that with the right support she will move to safety soon. Other than her housing issue, she is doing well.

Richard

"I didn't have money for food. I didn't have money for the tram. I tried to go on the tram without getting caught. What I've noticed is that they target the homeless and the uni students".

Richard was homeless for four years after his relationship broke down. He got $4500 in fines for travelling on trams without a ticket. Richard now has stable housing in shared accommodation. He lives close to shops and services and tops up his Myki card with $20 every fortnight.

Julia

"When you are unemployed or on a pension, it's pretty difficult to survive as it is … you don't have a spare $200 to give to a fine and if you're homeless as well it's even more stressful because it's already stressful not having a place of your own".

Julia* found herself homeless after having to leave private rental. During her time staying in emergency accommodation and couch surfing she accrued about $2000 in fines for travelling on public transport without a ticket and failing to vote. Julia hopes to move into stable housing in the next 12 months and go back to university.

Darren

“I’d cop another one and another one and it just got overwhelming. I was unable to pay due to the fact I was only on Newstart at that time and living in boarding houses which were pretty much a third of my payment.”

Darren has been homeless on and off for almost 15 years and has struggled with alcohol addiction since his teens. A combination of these two factors has resulted in him getting about $15,000 in fines. He is now in stable accommodation; working on his recovery and moving towards a better life.

Hamish

“It’s a bit upsetting when you are on a tram or train and you find that whenever there is a ticket officer they immediately bee-line their way to you. It does something to your self esteem”.

“Getting the fines sorted was like a weight lifted, like going to the dentist and having the pressure released. It's a good feeling. It encourages me to get my stuff a bit more organised and together, start working again.”

Hamish* has been homeless since his mid-teens. He got about $13,000 in fines on public transport. He hasn't had any fines in two years.

*Names have been changed