The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria

Report
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The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria

Report

Sentencing Advisory Council
May 2014
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Preface

Court fines and infringement penalties are the most common sanctions for criminal behaviour imposed in Victoria. For most members of the community, the only interaction they will experience with the criminal justice system as offenders is as the recipient of an infringement notice, most likely for a driving- or parking-related offence.

While infringement offending is of a relatively low level of seriousness when compared with offending sentenced in the courts, the sheer volume of infringement notices issued each year (some 6 million in 2012–13) means that their enforcement has far reaching consequences for the credibility of the criminal justice system.

Similarly, given the large number of sentences handed down in Victorian courts that are fines, the enforcement of court fines affects both the credibility of, and judicial confidence in, the imposition of fines as a sentence.

Currently, a substantial number of people do not pay their court fines and infringement penalties. Around a third of all infringement penalties are not paid prior to enforcement action, and around two-fifths of Magistrates’ Court fines are neither paid nor discharged.

Until a fine or penalty is paid or discharged, the recipient has effectively avoided the penal consequence of their offending behaviour. Enforcement – through payment, or through discharge by non-monetary means – is therefore crucial to achieving the purposes of an infringement penalty or the purposes of sentencing for which a fine was imposed.

This report represents the Sentencing Advisory Council’s response to the Attorney-General’s request for advice on the imposition and enforcement of fines as a sentence by Victorian courts. This report also presents recommendations in relation to the Attorney’s request for advice on particular matters, such as the number of infringement penalties heard in open court, the conversion of fines to an order for community work or an order for imprisonment, and harmonising the enforcement procedures for court fines with those for infringement penalties.

One of the challenges of this project has been to review an area of law that is presently undergoing significant reform. At the same time as the Council’s review, the government’s own project of fines reform has been underway, addressing a number of the issues raised by the terms of reference. The Council has liaised closely with the Department of Justice in relation to the government’s intended reforms.

In this report, the Council considers the court system and the infringements system as interrelated parts of a broader criminal justice system. It has therefore developed its recommendations on the basis that the same principles that apply to the imposition of fines as a sentence – such as proportionality, totality, and equality – should, wherever possible, apply to the infringements system.

In applying these principles to the infringements system, it is intended that fewer cases will end up in open court and that more infringement matters will be resolved earlier.

A system for the enforcement of fines and penalties that is grounded in principle is one that enhances the credibility of both the monetary sanctions imposed and the processes employed for their collection or discharge.

The enforcement of court fines has a long history, demonstrating a gradual movement away from imprisonment as the default response to the non-payment of court fines.
Over a number of decades, the infringements system in Victoria has developed on an *ad hoc* basis, gradually expanding to encompass a wide range of offending behaviour, with an increased focus on offences that threaten public safety. Similarly, the range of enforcement measures available to the infringements system has expanded, to the extent that there are currently more enforcement mechanisms available to enforce infringement penalties than court fines, despite the fact that court fines are generally imposed for more serious offending than infringement penalties.

A broad view of the current enforcement of court fines and infringement penalties reveals a fragmented system that focuses on individual fines and penalties, rather than focusing on the person on whom the criminal sanction was imposed. Each court enforces only those fines imposed within its jurisdiction. This system is separate from the enforcement of infringement penalties, which occurs through primarily administrative processes.

Just as a court is required to consider the entirety of a person’s circumstances in order to impose a just sentence, the criminal justice system, when enforcing fines and penalties, necessarily requires the same holistic consideration particularly as many people who receive court fines also have outstanding infringement penalties.

Shifting the focus from ‘paper to person’ requires centralisation and harmonisation of the current enforcement systems. To that end, the Council’s recommendations seek to harmonise the mechanisms and procedures for the enforcement of court fines and infringement penalties.

A key recommendation in this report is the establishment of a centralised administrative body that will manage and enforce both court fines and infringement penalties. The report also contains recommendations regarding the particular functions of the body, and recommends the harmonised availability of enforcement mechanisms in respect of both fines and penalties.

A unified, consistent, and harmonised approach to the management and enforcement of court fines and infringement penalties is also likely to enhance the credibility and fairness of, and compliance with, fines and penalties, and in doing so, benefit all stakeholders — fine and penalty recipients, enforcement agencies, the courts, and the community as a whole.
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The Council would also like to thank the Department of Justice Library, Mr Stephen Farrow, Ms Hilary Little, Ms Narelle Sullivan, Ms Katharine Brown, and Mr Liam Grigg for their assistance in the preparation of this report.
Glossary

Attachment of earnings order  An order from a court to a person’s employer requiring the employer to deduct money from the person’s salary in order to pay the person’s infringement penalty debt.

Attachment of debts order  An order from a court requiring a person or entity that owes a ‘debt’ to an infringement debtor (most commonly a bank) to deduct money from the person’s account in order to pay the person’s infringement penalty debt.

Civic Compliance Victoria (CCV)  An organisation that administers infringement penalties for enforcement agencies. Although CCV is not an enforcement agency itself, it handles public enquiries on behalf of many enforcement agencies (although not for public transport or parking infringement notices). CCV also handles public enquiries relating to outstanding infringement penalties that have led to enforcement orders and infringement warrants.

Community correction order  A non-custodial sentence requiring the offender to complete certain conditions (such as unpaid community work, education, and treatment) under the supervision of a community corrections officer. The community correction replaced the community-based order in January 2012.

Community work permit  An agreement (between a person and the Sheriff) under which the person discharges his or her infringement penalties by performing unpaid community work.

Corporation  In this report, ‘corporation’ refers to a body corporate, as used in the Sentencing Act 1991 (Vic) and the Infringements Act 2006 (Vic).

Court fine  A monetary penalty imposed by a court as a sentence.

Enforcement  Action to recover unpaid court fines and infringement penalties.

Enforcement agencies  Organisations empowered to deal with offending by issuing infringement notices. For example, Victoria Police is authorised to prosecute speeding offences by issuing infringement notices. There are over 130 enforcement agencies in Victoria. These include the Department of Transport, Planning and Local Infrastructure, local councils, hospitals, tertiary institutions, and statutory bodies like the Environment Protection Authority.

Enforcement order  An order made by the Infringements Court to enforce an unpaid infringement penalty plus any added costs.

Fine conversion order  An order to perform unpaid community work resulting from an application by the person fined, made under section 55(1)(d) of the Sentencing Act 1991 (Vic).

Fine default unpaid community work order  An order to perform unpaid community work resulting from a default hearing, made under section 62(10) or section 62A of the Sentencing Act 1991 (Vic) or section 160(3)(e) of the Infringements Act 2006 (Vic).
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td><strong>Infringement Management and Enforcement Services (IMES)</strong></td>
<td>Infringement Management and Enforcement Services (IMES) is a business unit of the Department of Justice that is primarily responsible for managing the end-to-end infringements system in Victoria.</td>
</tr>
<tr>
<td><strong>Infringement notice</strong></td>
<td>A notice to a person alleging the commission of an infringement offence and inviting the person to expiate the offence through the payment of an infringement penalty. The notice also contains information on the person's rights in relation to challenging the infringement penalty in court as well as information about how to pay.</td>
</tr>
<tr>
<td><strong>Infringement offence</strong></td>
<td>An offence for which an infringement notice may be issued.</td>
</tr>
<tr>
<td><strong>Infringement penalty</strong></td>
<td>The fixed amount of money to be paid as a penalty for an offence set out in an infringement notice.</td>
</tr>
<tr>
<td><strong>Infringement warrant</strong></td>
<td>A warrant issued by an infringements registrar at the Infringements Court to enforce an unpaid infringement penalty. An infringement warrant allows a Sheriff's officer to take certain enforcement actions.</td>
</tr>
<tr>
<td><strong>Infringements Court</strong></td>
<td>The venue of the Magistrates' Court that registers and enforces unpaid infringements.</td>
</tr>
<tr>
<td><strong>Infringements registrar</strong></td>
<td>An officer of the Infringements Court who administers the processing and enforcement of unpaid infringement penalties.</td>
</tr>
<tr>
<td><strong>Instalment order</strong></td>
<td>An order made under the Sentencing Act 1991 (Vic) that allows a court fine to be paid by two or more instalments.</td>
</tr>
<tr>
<td><strong>Official warning</strong></td>
<td>A formal power under the Infringements Act 2006 (Vic) for an enforcement agency to issue a warning in place of an infringement notice.</td>
</tr>
<tr>
<td><strong>Payment order</strong></td>
<td>An order of the Infringements Court that extends the amount of time a person has to pay the fine set out in an enforcement order or infringement warrant, or that allows the person to pay by instalments over time, rather than as a lump sum.</td>
</tr>
<tr>
<td><strong>Payment plan</strong></td>
<td>An agreement with an enforcement agency that gives a person extra time to pay a fine, or allows the person to pay the fine by instalments over time, rather than as a lump sum.</td>
</tr>
<tr>
<td><strong>Penalty reminder notice</strong></td>
<td>A reminder notice issued by an enforcement agency after an offender does not pay an infringement penalty or take other action to deal with the matter by the due date on the infringement notice. This notice requires the offender to pay or take other action within 28 days and carries a fee in addition to the infringement penalty.</td>
</tr>
<tr>
<td><strong>Revocation</strong></td>
<td>Cancellation of an enforcement order or an infringement warrant by the Infringements Court. Revocation does not end the prosecution of an infringement matter unless an agency files a notice of non-prosecution with the Infringements Court within 21 days of receiving notice of revocation.</td>
</tr>
</tbody>
</table>
**Sheriff**  
An officer of the Supreme Court of Victoria who is responsible for enforcing warrants, including court fine default warrants and infringement warrants. The Sheriff’s Office is separate from Victoria Police.

**Sheriff’s officer**  
An officer (also called a bailiff) of the Supreme Court of Victoria who has been directed by the Sheriff of Victoria to enforce warrants.

**Special circumstances**  
Circumstances, including a mental or intellectual disability or disorder, disease or illness, or a serious addiction to drugs or alcohol or a volatile substance that have resulted in an inability to understand or control the behaviour that resulted in an infringement notice. Special circumstances also include homelessness where it has caused the person to be unable to control the offending conduct.

**Time to pay order**  
An order of a court under section 54 of the *Sentencing Act 1991* (Vic) allowing an offender time to pay a court fine.

**Type 1 agency**  
A ‘Type 1’ agency is an enforcement agency that registers infringement penalties with Infringement Management and Enforcement Services (IMES) from the time of issue. Type 1 agencies include:

- Victoria Police;
- VicRoads;
- Traffic Camera Office;
- Taxi Services Commission;
- Victoria Police Toll Enforcement Office;
- Consumer And Business Affairs;
- Director, Transport Safety;
- Department of Environment and Primary Industries;
- Education and Early Childhood Development; and
- Corrections Victoria.

**Type 2 agency**  
A ‘Type 2’ agency is an enforcement agency that lodges infringement penalties to be enforced by the Infringements Court at the default stage. Type 1 agencies include:

- local councils; and
- Department of Transport (now Department of Transport, Planning and Local Infrastructure).
Chapter 4: Harmonising payment and management of court fines and infringement penalties

Recommendation 1: Centralise court fine and infringement penalty management and enforcement

A centralised administrative body should be created to manage the payment and enforcement of all court fines and infringement penalties registered with the body, as outlined by Fines Reform.

Recommendation 2: Administrative body should accept payment of both court fines and infringement penalties through a broad range of methods

Once a court fine or infringement penalty is registered with the administrative body, the body should accept payment through as many methods as practicable, including:

- traditional methods, such as cash (in person), cheque, money order, credit cards (in person and by phone), and EFTPOS (in person);
- scheduled payments, using such methods as Centrepay, direct debit, or BPay facilities;
- Australia Post offices; and
- online methods, such as payment by credit cards online, bank transfers, and bank transfer facilities (e.g. POLi) and PayPal.

Recommendation 3: Administrative body should encourage use of direct debit or Centrepay for payment order

The administrative body should encourage people approved for a payment order to utilise direct debit or Centrepay facilities.

Recommendation 4: Information that should be included in notice from administrative body

When the administrative body notifies a person that a court fine or an infringement penalty has been registered with the body for enforcement, the notice should include:

- a consolidated statement of the recipient’s outstanding court fine and/or infringement penalty debt;
- a breakdown of each component (for example, the amount outstanding in relation to each fine);
- any existing arrangements that the person has in place, for example, an existing payment order;
- all options available to the person and information about how to exercise these options, including paying the fine or penalty through a work and development permit, applying for a payment order, and applying to consolidate the new fine or penalty with an existing payment order;
- information about applying for an adjusted penalty amount on the ground of financial hardship (for infringement penalties); and
- contact details for the administrative body, including information on how to pay and manage fines or penalties online, and a telephone helpline that the person can use to seek further information or assistance.
Recommendation 5: Online management of consolidated debt

The administrative body should provide the facility for a person to access online information about his or her consolidated outstanding debt registered with the administrative body in order to pay and manage fines, including making online applications (for example, for a payment plan).

The administrative body should also make available online resources for organisations (such as financial counsellors) that provide support services to people with court fines or infringement penalties.

Recommendation 6: Administrative body should case manage particular offenders

The administrative body should provide a unique identifier for each court fine and infringement penalty recipient.

The administrative body should have the ability to prioritise high volume and high debt fine or penalty recipients and case manage them throughout the enforcement process, and adequate resources should be targeted to this group.

Alongside the intensive management of high volume and high debt fine or penalty recipients, the administrative body should randomly target lower volume and lower debt fine or penalty recipients, to encourage compliance.

Recommendation 7: Administrative body should develop a compliance model to assist in the case management of fine and penalty defaulters

The administrative body should develop a compliance model, similar to that employed by the Monetary Penalties Enforcement Service in Tasmania, to guide the use of enforcement sanctions and provide for case management and targeting of particular categories of fine and penalty defaulters.

Recommendation 8: Prosecuting high volume tolling infringement offenders

In consultation with the administrative body, the Victoria Police Toll Enforcement Office should establish limits on the acceptable number and frequency of tolling infringement notices it may register with the administrative body against individual offenders over a specified period.

Where an offender exceeds the limit (as set by the Victoria Police Toll Enforcement Office), the administrative body should notify the Victoria Police Toll Enforcement Office and the offender that the offender has been declared a high volume tolling offender.

The Victoria Police Toll Enforcement Office should consider whether to prosecute further offending by that offender by way of a charge and summons to court.

Where outstanding infringement penalties have been paid or discharged, or outstanding tolling infringement warrants have been satisfied or withdrawn, the administrative body should withdraw the high volume tolling offender notice.

Recommendation 9: Administrative body should trial the use of automated SMS reminders

The administrative body should trial the use of automated SMS messaging to remind people to pay prior to the expiry of compliance deadlines, such as prior to the issuing of a warrant.

The administrative body should collect and use email addresses as a means of correspondence with court fine and infringement penalty debtors.
Recommendation 10: Provide adequate IT, communications, and staff resourcing

The administrative body should be supported by adequate resourcing, including:

- sufficient staff, including staff with expertise in enforcement review and consideration of special circumstances;
- IT systems that communicate with the various court systems and that allow for the use of all existing and proposed enforcement sanctions; and
- communication technology, including:
  - online resources that allow for online management and payment;
  - email communication with debtors; and
  - technology to allow the use of SMS reminders.

Recommendation 11: Administrative body should report on its functions

The administrative body should publish reports on the performance of its functions, including the management and enforcement of court fines and infringement penalties.

Reports should include data on:

- the payment of court fines and infringement penalties;
- the review of enforcement;
- the use of enforcement sanctions and their success; and
- the flow of people through the infringements system, including where infringement matters are resolved in the Magistrates’ Court.

Recommendation 12: Work and development permits

A work and development permit scheme should be introduced in Victoria based on the work and development order scheme in New South Wales.

A person should be able to apply for a work and development permit as a means of paying:

- an infringement penalty, both prior to and after that infringement penalty is registered with the administrative body; and
- a court fine, after the court fine is registered with the administrative body.

Recommendation 13: Work and development permit eligibility

The test for a work and development permit should be that, at the time of application for a permit, the applicant:

- has a mental or intellectual disability, disorder, disease, or illness; or
- has a serious addiction to drugs, alcohol, or a volatile substance within the meaning of section 57 of the Drugs, Poisons and Controlled Substances Act 1981 (Vic); or
- is homeless; or
- is experiencing severe financial hardship.
**Recommendation 14: Person issued with court fine to be provided with notice of fine in court**

At the time of sentencing a person to a fine, the court should be required to give the offender a written notice of the fine.

This notice should:

- state the amount of the fine;
- state the date on or before which payment of the fine is to be made (emphasising that, unless otherwise ordered by the court, a fine is immediately payable on the day of sentencing and can be paid using facilities at the court);
- state the times, places, and methods by or at which payment of the fine may be made;
- inform the defendant of the defendant’s rights of appeal;
- inform the defendant that he or she may apply to the administrative body for an extension of time to pay, whether by instalments or otherwise;
- inform the defendant that he or she may be eligible to apply to the administrative body for a work and development permit; and
- inform the defendant that if the fine is not paid within 28 days from the day on which the fine was imposed, and no order has been made by the court granting time or payment by instalment, the administrative body may commence enforcement action.

Adequate IT, staffing, and communications resources should be provided to the courts in order to provide the notice of fine at the time of sentencing and for immediate payment to be made.

**Chapter 5: Enforcement by the administrative body**

**Recommendation 15: Replace enforcement order revocation with enforcement review**

The *Infringements Act 2006* (Vic) should be amended to replace the process of applying for ‘revocation’ of an enforcement order with the process of applying for ‘enforcement review’.

**Recommendation 16: Grounds for enforcement review**

The *Infringements Act 2006* (Vic) should be amended to specify that the grounds available for enforcement review by the administrative body are the same as the grounds for internal review of an infringement notice by an enforcement agency, including the ground of special circumstances.

Enforcement review should also be available if a person is genuinely unaware of having been issued with an infringement notice.

**Recommendation 17: Enforcement review on the ground of special circumstances**

The administrative body should establish a specialist unit to conduct enforcement reviews on the ground of special circumstances.
Recommendation 18: Agency must opt in to prosecute infringement offence following successful enforcement review

The Infringements Act 2006 (Vic) should be amended to provide that, following a successful application for enforcement review:

- the administrative body should provide the enforcement agency with notice of the decision along with the reasons for the decision; and
- if the enforcement agency wishes to continue the prosecution, the enforcement agency must, within 28 days of being notified of the successful application, request the administrative body to refer the matter to the Magistrates’ Court for hearing and determination; and
- if the administrative body does not receive a request from the enforcement agency to refer the matter to the Magistrates’ Court within 28 days of the enforcement agency being notified of the successful application, the infringement notice is unenforceable by the administrative body.

Recommendation 19: Limit on number of applications for enforcement review

The Infringements Act 2006 (Vic) should be amended to provide the following:

- A person may only make one application to the administrative body for enforcement review if that application is based on a ground other than special circumstances.
- A person may make more than one application to the administrative body for enforcement review based on the ground of special circumstances if:
  - the person acquires legal or other representation (for example, representation by a financial counsellor) for the purpose of making a second or subsequent application; and/or
  - the person has new or additional information in support of a second or subsequent application.

Recommendation 20: No right to object to Magistrates’ Court following unsuccessful enforcement review

The procedure under section 68 of the Infringements Act 2006 (Vic) allowing a person to object in the Magistrates’ Court to a refusal by the Infringements Court to revoke an enforcement order should be abolished, and no equivalent right should be provided under the Fines Reform amendments.

Subject to the right to make a second or subsequent application for enforcement review on the ground of special circumstances, where an application for enforcement review is unsuccessful, enforcement of the infringement penalty by the administrative body should continue.

Recommendation 21: Harmonised enforcement sanctions

The same sanctions should be available for the enforcement of court fines and infringement penalties.

The enforcement sanctions should include:

- detention, immobilisation, and sale of motor vehicles;
- suspension or non-renewal of a driver licence or vehicle registration;
- seizure and sale of personal property;
- attachment of earnings;
- attachment of debts; and
- registration of a charge over, and sale of, real property.
Recommendation 22: Seizure of personal property before arrest for court fine default
The Sheriff should be empowered to seize personal property before a person can be arrested for court fine default and brought before the court.

Recommendation 23: Harmonised bail procedures
Further consideration should be given to whether it is desirable to harmonise the bail procedures on arrest for court fine default and infringement penalty default.

Recommendation 24: Personal liability of a director for court fine or infringement penalty default by corporation and amendment of directors’ defence
Section 91 of the Infringements Act 2006 (Vic) should be amended (modelled on Schedule 1, subdivision 269-B of the Taxation Administration Act 1953 (Cth)) to provide the following.

If an infringement warrant has been issued against a corporation and the personal property of the corporation is insufficient to discharge the court fine or infringement penalty and any costs of enforcement, a director should be declared joint and severally liable for payment of the infringement penalty or court fine issued against the corporation unless the director can establish that:

- the director did not take part in the management of the corporation when the infringement penalty or court fine became payable, and it would not have been reasonable to expect the director to take part in the management of the corporation at that time due to illness or another reason; or
- the director took reasonable steps to, or there were no such reasonable steps the director could take to:
  - cause the corporation to pay the infringement penalty or court fine;
  - have the corporation placed into administration under the Corporations Act 2001 (Cth); or
  - begin winding up the corporation under the Corporations Act 2001 (Cth).

The new provisions should be replicated in the Sentencing Act 1991 (Vic) in relation to the enforcement of court fines.

Recommendation 25: Recovery of court fines and infringement penalties from insolvent corporations
In principle, unpaid court fines and infringement penalties should be able to be recovered from insolvent corporations. The administrative body should have the power to issue a statutory demand for payment of unpaid court fines and infringement penalties registered with the administrative body, and apply for a corporation to be wound up under the Corporations Act 2001 (Cth) for non-compliance with a statutory demand. Further consideration should be given to whether this reform can be achieved through the amendment of state legislation.

Recommendation 26: Consult with the Commonwealth Government to establish information-sharing with Commonwealth agencies
The Victorian Government should make further representations to the Commonwealth Government to establish information-sharing arrangements between Commonwealth Government agencies (such as Centrelink or the Australian Taxation Office) and the Victorian Government, for the purpose of the enforcement of court fines and infringement penalties.
Recommendation 27: Consult with the Commonwealth Government to restrict international travel for people with outstanding default warrants
The Victorian Government should make further representations to the Commonwealth Government for the establishment of a national scheme that would allow for the interception of a person with an outstanding warrant in relation to unpaid court fines or infringement penalties, when that person attempts to leave from, or arrives at, an international port or airport.

Recommendation 28: Accreditation of applicants by Taxi Services Commission subject to outstanding default warrants
In consultation with relevant stakeholders, the government should consider amending section 169 of the Transport (Compliance and Miscellaneous) Act 1983 (Vic) to require the Taxi Services Commission to take into account any outstanding warrants for court fine or infringement penalty default in assessing whether a person should be accredited as a taxi driver, taxi licence owner, taxi licence operator, or network service provider.
This restriction on accreditation should only apply to persons or corporations with outstanding warrants and not to a person who is subject to an instalment order, time to pay order, or payment order.
The Taxi Services Commission should be able to exercise a discretion as to whether an outstanding warrant for court fine or infringement penalty default justifies the refusal of accreditation.
The administrative body should provide to a person upon his or her application, or to any state agency (with written authorisation from the person), information on whether the person has outstanding warrants relating to unpaid court fines or infringement penalties in Victoria.

Recommendation 29: Consult with the Commonwealth Government for the collection of unpaid court fines and infringement penalties by the Australian Taxation Office
The Victorian Government should consider making representations to the Commonwealth Government for the implementation of a scheme that would allow unpaid court fines and infringement penalties that are the subject of a default warrant to be collected by the Australian Taxation Office.

Chapter 6: Enforcement by the court

Recommendation 30: Harmonisation of court powers on default
Section 160 of the Infringements Act 2006 (Vic) should be amended to provide the court at an infringement warrant enforcement hearing with a single set of orders that it may impose at its discretion on any person, after considering all the circumstances of the case.
In addition to the power to adjourn for a period of up to 6 months, the court should be empowered to:

• make or vary an instalment order under the Sentencing Act 1991 (Vic);
• discharge the outstanding amount in full or in part;
• make a fine default unpaid community work order under the Sentencing Act 1991 (Vic);
• discharge the outstanding amount in part and order a term of imprisonment in respect of the balance; or
• order a term of imprisonment.
The provisions should continue to allow the court to order imprisonment in default of payment under an instalment order.
The Infringements Act 2006 (Vic) should be amended to make clear that the Sentencing Act 1991 (Vic) provisions governing breach of an instalment order or a fine default unpaid community work order should continue to apply to those orders when made under section 160 of the Infringements Act 2006 (Vic).

The powers of the court under section 83ASA(3) of the Sentencing Act 1991 (Vic) on breach of a community work order should mirror the Council’s recommended amendments to section 160 of the Infringements Act 2006 (Vic).

Recommendation 31: Imprisonment for infringement penalty default should be a sanction of last resort

The Infringements Act 2006 (Vic) should be amended to provide that a court must not make an order for imprisonment unless it is satisfied that no other order is appropriate in all the circumstances of the case, in a manner similar to section 62(12) of the Sentencing Act 1991 (Vic).

Recommendation 32: Imprisonment and the capacity to pay

The Infringements Act 2006 (Vic) should be amended, in a manner similar to section 62(11) of the Sentencing Act 1991 (Vic), to provide that a court must not make an order for imprisonment if the offender satisfies the court that he or she does not have the capacity to pay the infringement penalty or an instalment under an instalment order or has another reasonable excuse for non-payment.

Consideration should be given to amending the Infringements Act 2006 (Vic) in order to require the court to consider a person’s capacity to pay when making any order under section 160 of the Infringements Act 2006 (Vic).

Recommendation 33: Maximum term of imprisonment for infringement penalty default should be 24 months

The Infringements Act 2006 (Vic) should be amended to specify a maximum term of imprisonment of 24 months for infringement penalty default, consistent with section 63(1) of the Sentencing Act 1991 (Vic).

Recommendation 34: Person ordered to serve a term of imprisonment at an infringement warrant enforcement hearing should have a right of appeal to the County Court

Section 254 of the Criminal Procedure Act 2009 (Vic) should be amended to provide that a person ordered to serve a term of imprisonment for infringement penalty default under the Infringements Act 2006 (Vic) should have a right of appeal to the County Court.

Consistent with the approach to court fines, section 254 of the Criminal Procedure Act 2009 (Vic) should be amended to provide that, on an appeal against an order to imprison under the Infringements Act 2006 (Vic), the County Court:

• must set aside the order of the magistrate; and
• may impose any order that the County Court considers appropriate and that the Magistrates’ Court imposed or could have imposed; and
• may exercise any power that the Magistrates’ Court exercised or could have exercised.

Recommendation 35: One day of imprisonment should equate to 4 penalty units

The value of one day of imprisonment should be increased from 1 penalty unit to 4 penalty units for both court fine default and infringement penalty default.
Chapter 7: Conversion of court fines and infringement penalties into imprisonment

Recommendation 36: Court should have the discretion to order either cumulation or concurrency

The Infringements Act 2006 (Vic) should be amended to provide that the court should determine whether the term of imprisonment for infringement penalty default is to be served concurrently, cumulatively, or partly cumulatively with an existing term of imprisonment, consistent with the Sentencing Act 1991 (Vic).

Recommendation 37: Court should have the discretion to backdate conversion

A court should have the discretion to backdate the conversion of court fines and infringement penalties into a term of imprisonment to the date of the applicant’s entry into custody.

Chapter 8: Infringement penalties heard in open court, proportionality, and internal review

Recommendation 38: Review of infringement penalties

The Department of Justice should review infringement penalty amounts to ensure that amounts are proportionate, taking into account matters including:

- the purposes of the infringements system;
- the Attorney-General’s Guidelines to the Infringements Act 2006;
- the principles set out in this report;
- the maximum penalties for the offences;
- the nature and seriousness of the offences including the nature and seriousness of the form of the offences appropriate for the issuing of an infringement notice;
- the need to ensure that infringement penalty amounts are consistent for comparable infringement penalty offences;
- the need to ensure that infringement penalties are set at an amount lower than a person might expect to receive if the matter were to go to court;
- sentencing principles;
- community safety issues;
- marginal deterrence;
- issues in relation to children;
- issues in relation to corporations;
- the way payment of the infringement penalty is managed;
- ancillary sanctions (for example, overnight detention and driver licence sanctions); and
- the credibility of the infringements system.

Recommendation 39: Reduced penalties in cases of financial hardship

Infringement penalty recipients who are experiencing financial hardship should receive a reduced infringement penalty amount of 50%.
Recommendation 40: Eligibility for reduced penalties in cases of financial hardship
Eligibility for the reduced penalty should be the same as eligibility for automatic entitlement to a payment plan in the Attorney-General's Guidelines to the Infringements Act 2006.

Recommendation 41: Oversight and monitoring of internal review by Fines Director
The Fines Director should have an oversight function on the conduct of internal review by enforcement agencies, including through:

- monitoring outcomes of internal reviews, including collecting and reporting on data on applications for internal review, the grounds of application, and the outcomes;
- auditing enforcement agencies, including the extent to which policies and procedures are in place to assist the internal review process;
- assessing compliance by enforcement agencies with the provisions on internal review set out in the Infringements Act 2006 (Vic), including the intent of the legislation; and
- publishing frequent reports, including on internal review applications, grounds, outcomes, and measures taken by enforcement agencies to ensure consistency and compliance.

Recommendation 42: Model Review Policy for internal review and enforcement review
The Fines Director should issue a Model Review Policy containing principles and criteria for determining applications for internal review and enforcement review (including principles that apply to applications on the ground of special circumstances and on the ground of exceptional circumstances in circumstances of family violence).

Recommendation 43: No automatic referral of cases to court following an unsuccessful internal review based on special circumstances
Section 25(3) of the Infringements Act 2006 (Vic) should be repealed, to remove the requirement that enforcement agencies refer cases to court following an unsuccessful application for internal review based on special circumstances.

Recommendation 44: Broaden test for special circumstances
The test for special circumstances in section 3 of the Infringements Act 2006 (Vic) should be amended to replace the words ‘results in’ with the words ‘contributed to’.

Recommendation 45: Extend operation of Special Circumstances List
The government should consult with the Magistrates’ Court in relation to whether the list should be extended to other regions where there is currently no Special Circumstances List.

The Magistrates’ Court of Victoria should receive additional funding to administer the Special Circumstances List, including funding to extend the list beyond the Melbourne Magistrates’ Court and the Neighbourhood Justice Centre if necessary.

Recommendation 46: New order for Special Circumstances List
The government should consult with the Magistrates’ Court and other stakeholders in relation to the creation of an order for use in the Special Circumstances List to provide infringement offenders with the opportunity to avoid a criminal record by undertaking conditions (such as a work and development permit) if the infringement recipient acknowledges responsibility for the offence.
**Chapter 9: Tolling infringement offences**

**Recommendation 47: Establish working group to consider tolling infringement offences**

The Attorney-General and the Minister for Roads should establish a working group that includes representation from:

- VicRoads (including Commercial Roads);
- the courts;
- the Department of Justice;
- toll road operators;
- Victoria Police;
- the Taxi Services Commission; and
- the Infringements Working Group.

The working group should identify and implement potential solutions to the increasing burden of tolling infringement offences on the criminal justice system in Victoria.

**Chapter 10: Imposition and enforcement of court fines and infringement penalties against children**

**Recommendation 48: Review of low-end orders for children**

The Department of Justice, in cooperation with the Department of Human Services, should undertake a review of the use of low-end sentencing orders against children.

**Recommendation 49: Reduced infringement penalty amounts for children**

The infringement penalty amount for a child should be set at a maximum of 50% of the infringement penalty amount for an adult.

Where an existing infringement penalty amount for a child is less than 50% of an infringement penalty amount for an adult, the lower penalty amount should apply.
Executive summary

Terms of reference

In early 2013, the Council received a request from the Attorney-General to advise him on the imposition and enforcement of fines as a sentence by Victorian courts, including fines imposed by a court in matters that commence with the issuing of an infringement notice. In particular, the Council was asked to consider:

- issues arising from the number of infringement matters subsequently heard in open court;
- issues arising from the conversion of fines to an order for community work;
- 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; and
- the desirability of harmonising the enforcement mechanisms and procedures for court-imposed fines with those for infringement notices.

Credibility of court fines and infringement penalties

Court fines are overwhelmingly the most common sentence imposed in Victoria. In 2012–13, 40.1% of charges sentenced received a fine, amounting to 114,034 court fines imposed in that year.

The number of court fines each year is dwarfed by the volume of infringement notices, which allow relatively low level offending to be dealt with by an administrative penalty, without the need for a court hearing or a finding of guilt. In 2012–13, just under 6 million infringement notices were issued in Victoria.

For most Victorians, their only contact with the criminal justice system as offenders will be through the infringements system.

The terms of reference provide that the ‘purpose of the review is to ensure the effective, efficient and principled use of fines’. Effectiveness, efficiency, and fairness, in combination, provide a measure of the credibility of the court fine and infringement penalty systems. A recurring theme of this project has been striking the right balance between these sometimes competing objectives.

This balance requires a package of measures to ensure that the system contains both robust safeguards for vulnerable people and a range of sanctions for people who can, but do not, comply. In combination, these measures work to ensure that fines are fair, enforceable, and enforced.

While the majority of fine recipients ultimately pay or otherwise expiate their fines, a substantial minority of fines remain unpaid. Data on the outcome of infringement notices issued in 2010–11 show that approximately 3.1 million (or 68.65%) of infringement penalties were paid prior to enforcement proceedings. The proportion paid is slightly lower for court imposed fines.

In order that the community and the judiciary may have confidence in the use of court fines and infringement penalties, fines must be perceived to operate in a fair and just manner, and there must be effective mechanisms in place to compel enforcement. An offender who has not paid or otherwise discharged a court fine or infringement penalty has essentially avoided any sentence or sanction for the offending.

In the absence of mechanisms and sanctions for enforcement – or where they exist but are unused, haphazardly employed, or under-resourced – the credibility of court fines and infringement penalties will be diminished.
Typology of court fine and infringement penalty recipients

A typology of fine recipients has been developed to assist in navigating the line between fairness and firmness in answering the terms of reference.

Unlike the court system, the infringements system is largely automated and involves limited discretion. As a result, there is a tension in the infringements system between the desire to ensure that the system does not operate unfairly against vulnerable people and, at the same time, ensuring that recalcitrant offenders do not escape its effect.

The typology is a tool for resolving this tension and allowing consideration of how the systems of payment, management, and enforcement may affect different groups in different ways. The broad categories are those who:

(a) shouldn’t pay;
(b) can’t pay;
(c) will pay;
(d) might pay; and
(e) won’t pay.

This typology has informed the development and consideration of proposals for reform in this report.

Purpose and principles

Relevant to the fair, effective, and principled use of court fines and infringement penalties are whether they achieve one or more of the purposes of sentencing and the extent to which their use complies with the principles of the criminal justice system. Such principles include that the punishment for an offence be proportionate to the offence committed, and that the law should have equal effect, regardless of a person’s financial position. The latter principle informs the requirement in sentencing that a court must take a person’s financial circumstances into account when setting a fine amount.

These principles have informed the proposals for reform in this report.

Harmonising the enforcement of court fines and infringement penalties

The analysis in this report of the issues raised in the terms of reference has been conducted on the basis that, wherever possible, the fundamental principles underlying the imposition of court fines should also apply to the operation of the infringements system. The principled use of fines as a sentence by a court and the principled use of infringement penalties as a response to offending behaviour strengthen the credibility of fines and penalties, and the criminal justice system as a whole.

Similarly, the mechanisms and sanctions for the enforcement of court fines and infringement penalties (including the powers of the court on default) have been analysed on the basis that, wherever possible, the two systems should be harmonised.

At present, the systems in Victoria for the enforcement of court fines and infringement penalties are fragmented. Each court is responsible for the enforcement of court fines imposed within its jurisdiction. The Infringements Court is separate again, and is responsible for the enforcement of most infringement penalties to the point at which an infringement warrant is issued and the matter comes before the Magistrates’ Court.
The legislative provisions governing the enforcement of court fines under the Sentencing Act 1991 (Vic) (‘Sentencing Act’) and the enforcement of infringement penalties under the Infringements Act 2006 (Vic) (‘Infringements Act’) are separate, creating two systems of enforcement. However, these systems overlap in a number of ways; for example, if a person elects to have his or her infringement matter determined in open court, the matter will be treated the same as if it had commenced in court.

The fragmented nature of the two enforcement systems, as they currently apply, is highlighted where a person has both court fines and infringement penalties. In these circumstances, methods and locations for payment, availability of non-monetary options for discharge, obligations and powers of the Sheriff, court powers on default, court powers on breach of an order made on default, and rights of appeal, all differ between court fines and infringement penalties.

Where possible, practical, and preferable to do so, the recommendations in this report have sought to harmonise the two systems.

**Context of the reference**

This project has taken place during a dynamic period of reform, encompassing amendments to both the Sentencing Act and the Infringements Act. These amendments include a change to the definition of a ‘fine’ and the introduction of rights of variation and rehearing after an infringement warrant enforcement hearing.

Further amendments to the Sentencing Act, passed during the life of the project but not yet in operation, will replace Part 3B of that Act, which governs the imposition and enforcement of court fines.

Parallel to, but independent of, the reference, the Department of Justice has been developing a package of significant legislative reforms concerning the enforcement of court fines and infringement penalties (‘Fines Reform’).

The recommendations in this report have been developed after consideration of the elements of Fines Reform that are on the public record, and after consultation with the Department of Justice to identify the scope and extent of its intended reforms.

**Consultation**

A wide variety of criminal justice, government, and non-government stakeholders were consulted for this project. Two roundtables were held, convening stakeholders including representatives of enforcement agencies, organisations that assist fine recipients, medical practitioners, and financial counsellors. The first roundtable covered warnings, review, and open court and the second covered payment and enforcement. The Council also made a public call for submissions in response to a series of questions published online and received 12 written submissions.

**Data sources**

No single source of data is available for court fine or infringement penalty enforcement. Even within jurisdictions, such as the Magistrates’ Court, different data sources are used to record the imposition of fines and the payment of fines.

Many of the IT systems that record data for the courts and for the infringement penalty system are outdated and are often tailored for purely operational purposes, rather than the extraction of data for analysis.
This report presents aggregated data from as many sources as possible, including:

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

Summary of the report

The report is divided into 10 chapters:

1. Introduction
2. Use of court fines
3. Use of infringement penalties
4. Harmonising payment and management of court fines and infringement penalties
5. Enforcement by the administrative body
6. Enforcement by the court
7. Conversion of fines and penalties into imprisonment
8. Infringement matters heard in open court, proportionality, and internal review
9. Tolling infringement offences
10. Imposition and enforcement of court fines and infringement penalties against children.

A number of recommendations contained in this report are interdependent and should be implemented together. In combination, the recommendations attempt to strike the right balance between fairness and firmness.
Chapter 2: Use of court fines

Chapter 2 presents comprehensive data analysis of the use of court fines in Victorian courts, including data on the frequency of fines, the most common offences for which a fine is imposed, fine amounts, and the use of fines as an additional sentence.

Principles and purposes of an effective court fine system

The only purposes for which a fine may be imposed under Victorian law are to punish the offender, deter the offender and/or others, denounce the offender’s conduct, facilitate the offender’s rehabilitation, protect the community, or a combination of these purposes.

The principles that courts must apply in determining whether to impose a fine and, if so, the fine amount include:

• proportionality, which requires that the overall punishment must be proportionate to the seriousness of the offence; and
• equal effect, which requires that the system should strive to ensure that sentences do not have grossly unequal effects on offenders with different circumstances (for example, different financial circumstances).

To be an effective sentencing option, a court fine needs to:

• serve at least one sentencing purpose;
• reflect sentencing principles;
• be promptly paid, expiated, or otherwise enforced;
• be efficient in terms of court time, the time taken to pay, the method of payment, and the resources required for enforcement;
• be timely, in that, from the moment the fine is imposed, the focus should be on ensuring early compliance to maximise the deterrent effect and maintain the credibility of the system; and
• be clear and simple, in that the offender should leave court with a clear understanding of what is owed, when it is owed, and payment options.

These measures have informed the development of recommendations in this report. Chapter 2 examines the effectiveness of court fines having regard to some of these measures.

Effectiveness of court fines

Chapter 2 reviews and reports on the effectiveness of court fines, using three measures:

• payment of court fines;
• discharge of court fines through community work or imprisonment; and
• reoffending following court fines.

For approximately 61% of cases that received a court fine in the Magistrates’ Court in 2004–05, the fines were completely paid or discharged by 30 June 2013.

Unenforced warrants

Currently, the use of enforcement sanctions for court fine default requires the execution of a warrant against the person in default, in order to bring him or her before the court.
There is a large proportion of issued, but unenforced, warrants in relation to court fine default. The data strongly suggest that, in the absence of measures to increase the enforcement of court fine default warrants or reforms to the procedure for the enforcement of court fines, the rate of payment of court fines is unlikely to improve.

**Reoffending**

The analysis of reoffending following a fine has found that some offences show a large disparity between the reoffending rates for those who pay the fine and the reoffending rates for those who do not. For some of these offences, fine payment is related to increased reoffending.

While these results are not likely to be causal, the effectiveness of a fine is questionable in circumstances where the recipient has not paid the fine and has subsequently reoffended. In such circumstances, it is difficult to see which purpose or purposes of sentencing the fine has achieved. If the fine is unpaid, the offender has escaped punishment and others are less likely to be deterred. If the offender has reoffended, it is difficult to argue that the offender has been rehabilitated or deterred, or that the community has been protected. While the act of imposing the fine, including the fine amount, may manifest the court’s denunciation of the type of conduct, that denunciation is weakened if the fine is not enforced.

**Chapter 3: Use of infringement penalties**

Chapter 3 presents comprehensive data analysis of the use of infringement notices in Victoria, including data on the most common offences for which infringement notices are issued, the most common enforcement agencies that issue infringement notices, the payment of infringement notices, and the resolution of infringement notices through enforcement.

**Principles and purposes of an effective infringements system**

While the purposes of sentencing provided in the Sentencing Act are not directly incorporated into the Infringements Act, there is a degree of overlap between the purposes of sentencing and the purposes of the infringements system. As with the purposes of sentencing, the purposes of infringement penalties can compete with one another and require a balance to be struck.

The purposes of the infringements system include:

- punishing relatively minor law breaking (and deterring others) through an administrative sanction with minimum recourse to the machinery of the formal criminal justice system;
- balancing fairness, effectiveness, and efficiency;
- protecting vulnerable people and providing mechanisms for their early identification and exit from the system where appropriate; and
- ensuring consistency, transparency, and certainty in the operation of the system.

There is also overlap between sentencing principles and the principles that apply to the infringements system, including consistency, proportionality, and equal impact (including that, within the confines of a high volume, highly automated system, the infringements system should strive to ensure that infringement penalties do not have grossly unequal effects on offenders who are experiencing financial hardship).
One of the measures of an effective infringements system is that infringement notices are imposed, managed, reviewed, and enforced consistently with the purposes and principles of the infringements system and those of the criminal justice system more broadly. When functioning well, an infringements system has many benefits. Ideally, it should allow for the criminal justice system to respond in an efficient and relatively low cost way to often high volume, regulatory offending or offending of a low level of seriousness.

There are a number of problems that result in inefficiency and cost, however; including pressure points in the system that act as a disincentive to payment or early resolution, incentives for infringement recipients to take their infringement matter to court, and systemic, structural processes that move matters to open court instead of enforcement. While the majority of infringement recipients pay their infringement prior to the need for enforcement action to take place, those who do not pay place a considerable burden on the system and undermine its credibility. Of the infringement penalties issued in 2010–11, 63.98% were paid prior to the issuing of an enforcement order. By November 2013, however, 14.34% of infringement penalties issued in 2010–11 still had not been paid or resolved.

**Chapter 4: Harmonising payment and management of court fines and infringement penalties**

Chapter 4 presents recommendations in relation to harmonising the payment and management of court fines and infringement penalties.

**Creation of a centralised fine management administrative body**

A key recommendation of this report is that a centralised administrative body should be established to manage the payment and enforcement of court fines and infringement penalties registered with that body (Recommendation 1). Centralised management allows different strategies to be employed to achieve compliance across all the groups in the typology. It allows early identification and resolution of matters where the person ‘can’t pay’ and targeted measures and intervention where a person ‘won’t pay’.

**Payment methods**

The administrative body should have the ability to accept payment of court fines and infringement penalties through a wide variety of methods (Recommendation 2). In order to increase compliance, these methods should include the use of Centrelink deductions (Centrepay) and direct-debit payments where a person is placed on an instalment order or a payment order (Recommendation 3). Making payment simple is important to ensuring that people who are able and willing to pay their fines (‘will pay’) are not discouraged from doing so by system complexities, and that people in the category of ‘might pay’ are encouraged to do so.

**Consolidated statements of debt and online management**

To capitalise on the centralisation of court fine and infringement penalty management, the administrative body should issue a consolidated statement of debt to a person whenever a new court fine or infringement penalty is registered with the body (rather than sending separate pieces of correspondence for each debt) (Recommendation 4).

Further, building on existing online facilities, the administrative body should provide the facilities for a person to manage and pay fines and penalties online, including (wherever possible) making applications online (Recommendation 5).
Case management and compliance model

The administrative body should adopt the approach of case managing different offender and infringement recipient groups, in order to maximise the use of enforcement resources (Recommendation 6). This framework for enforcement should be based on a compliance model, to assist in directing appropriate sanctions towards particular groups of people that receive court fines or infringement penalties (Recommendation 7).

High volume tolling offenders

The very high number of tolling infringement offences issued to particular individuals and to particular corporations (in some cases, more than 700 infringement notices) demonstrates that, for some tolling offenders, the infringements system is not the appropriate way to address offending.

For these offenders, it is recommended that a ‘high volume tolling offender’ scheme be developed, which would allow the administrative body to notify the Victoria Police Tolling Unit when an individual or a corporation has accrued a large number of tolling infringement notices (with the triggering number to be agreed upon between the administrative body and the Victoria Police Tolling Unit). After receiving this notice, the enforcement agency could decide whether to exercise its discretion to issue a charge and summons to prosecute further offending, rather than issuing another infringement notice (Recommendation 8).

Work and development permits

For offenders who ‘can’t pay’, the system for enforcement of court fines and infringement penalties should provide alternative means of discharging debt. A work and development permit should be introduced, based on the work and development order scheme in New South Wales. This will allow people with a mental or intellectual impairment or drug or alcohol addiction or people experiencing homelessness or severe financial hardship to complete pro-social activities in order to discharge their fines or penalties (Recommendations 12 and 13).

Other functions of the administrative body

The report also makes recommendations regarding a trial for the use of automated SMS reminders to encourage compliance (Recommendation 9), that all of the functions of the administrative body should be supported by the necessary IT, communications, and staffing resources (Recommendation 10), and that the administrative body should report on its operations (Recommendation 11).

Notice of fine to be provided by court

In order to encourage compliance, the court should be required to issue a notice of a fine at the time a fine is imposed. This notice should include detailed information, including the date the fine is due and methods of payment, along with options for applying to discharge the fine (Recommendation 14).

Chapter 5: Enforcement by the administrative body

Chapter 5 examines the areas in which enforcement procedures should be harmonised across the court fine and infringement penalty systems, whether additional enforcement sanctions and strategies are required, and whether current enforcement sanctions can be improved. The overall aim is to balance the need for fairness with the need for a more streamlined and robust enforcement process that discourages payment evasion.
Enforcement review
A suite of recommendations on enforcement review procedures for infringement penalties has been developed (Recommendations 15 to 20). These recommendations recognise that, unlike court fines, infringement penalties are not imposed by a court after a finding of guilt, and should therefore continue to be subject to a process of review and oversight. The recommendations for enforcement review and oversight also address existing systemic issues in order to reduce procedural delay and diminish opportunities for payment evasion.

Harmonised enforcement sanctions
The centralised administrative body should have the same sanctions at its disposal for both court fine and infringement penalty enforcement (Recommendation 21). These sanctions should be harmonised by making sanctions currently available upon infringement penalty default also available upon court fine default. This reform is particularly necessary given that court fines are generally imposed for more serious offending than infringement penalties, and they should therefore be enforced in an equally robust manner.

Timing of the application of sanctions
The proposal under Fines Reform to apply sanctions earlier in the enforcement process, particularly driver licence and vehicle-related sanctions, should be tempered by the implementation of other recommendations made in this report, such as the introduction of work and development permits.

Harmonised powers for the Sheriff
In order to better harmonise enforcement procedures, and consistent with the approach to infringement penalties, the Sheriff should be empowered to seize personal property before arresting a person for court fine default (Recommendation 22). Further consideration should also be given to harmonising the bail procedures on arrest for court fine default and infringement penalty default (Recommendation 23).

Sanctions against corporations
Robust sanctions are required in response to default by corporate offenders, in order to address some of the ways in which corporations evade payment and thereby undermine the credibility and effectiveness of fines and penalties imposed on corporations. This is particularly so given that monetary penalties are the principal sanctions imposed on corporations and court fines are frequently imposed on corporations for very serious offences. Two recommendations to improve enforcement sanctions in respect of corporate offenders are presented in this section (Recommendations 24 and 25).

Additional enforcement sanctions
Several new sanctions and strategies for fine and penalty enforcement are recommended, including:

- information-sharing by Commonwealth government agencies (Recommendation 26);
- restrictions on international travel for persons with a significant number of outstanding fines or penalties (Recommendation 27);
- further inter-governmental consideration of fine and penalty collection by the Australian Taxation Office in appropriate cases (Recommendation 28); and
- making the accreditation of persons in the taxi industry subject to consideration of any outstanding warrants for fine or penalty default (Recommendation 29).
Chapter 6: Enforcement by the court

Chapter 6 examines the powers available to the court on a hearing for court fine default and infringement penalty default.

Harmonising court powers

The court should have similar powers in the case of infringement penalty default and court fine default. At present, the powers of the court on infringement penalty default are unduly complicated and restrictive – imprisonment is the primary order available, unless a person can establish that he or she has a mental or intellectual impairment or other special circumstances, or that imprisonment would be excessive, disproportionate, and unduly harsh. Consistent with the approach to court fine default, the court should instead have a full discretion to apply the order that it thinks fit at an infringement warrant enforcement hearing (Recommendation 30). There are no policy justifications for a more complicated and restrictive approach in the case of infringement penalty default.

Imprisonment as a sanction of last resort

There are currently more protections around the use of imprisonment for court fine default than for infringement penalty default, despite a gradual process of harmonisation over the last two decades. Chapter 6 recommends a suite of reforms aimed at extending the safeguards in the Sentencing Act to the Infringements Act. This includes expressly providing that imprisonment is a sanction of last resort (Recommendation 31), restricting the use of imprisonment to cases of wilful default (Recommendation 32), specifying a maximum term of imprisonment for infringement penalty default (Recommendation 33), and introducing a right of rehearing and appeal following the making of an imprisonment order under the Infringements Act (Recommendation 34).

For recalcitrant offenders who wilfully default on an infringement penalty, a sanction such as imprisonment is necessary as a last resort. However, the availability of imprisonment should be accompanied by the protections necessary to ensure that people who are unable to pay an infringement penalty are not caught in the same net.

Value of imprisonment on conversion

At present, one day of imprisonment discharges 1 penalty unit. Community work is valued at a higher rate, with five hours of community work discharging 1 penalty unit. It is recommended that the value of one day’s imprisonment be increased to four penalty units, in order to better capture the various personal costs associated with imprisonment, and the more onerous and continuous nature of this punishment in comparison with community work (Recommendation 35).

Chapter 7: Conversion of fines and penalties into imprisonment

Chapter 7 examines ‘conversion’ of court fines and infringement penalties into imprisonment. Conversion involves electing to serve a term of imprisonment to discharge an outstanding court fine or infringement penalty. It is only available where a person is already in custody, and where a warrant for fine or penalty default has been issued.

Conversion is a valuable enforcement and fines management tool, as it allows prisoners to discharge debts while still undergoing punishment and thereby maximise their chance of reintegration and rehabilitation on release from prison.
Discretion to order concurrency or cumulation

At present under the Infringements Act, a term of imprisonment upon conversion must be served cumulatively on (that is, in addition to) any other term of imprisonment for infringements penalty or court fine default, but concurrently with (that is, at the same time as) a term of imprisonment for any other offence. There may be, however, circumstances in which it is appropriate for the term of imprisonment imposed upon conversion to be served cumulatively with an existing sentence. The court should have the discretion to order either concurrent or cumulative terms of imprisonment under the Infringements Act, consistent with the provisions of the Sentencing Act (Recommendation 36). This will allow the court to make the decision according to the circumstances of a particular case.

The current presumption of cumulative sentences for multiple instances of fine or penalty default should remain.

Backdating conversion to entry into custody

The court should have the power to backdate a concurrent term of imprisonment on conversion to the date of entry into custody, given the uneven knowledge among the prisoner population about the right to apply for conversion, including a lack of knowledge on the part of disadvantaged groups, such as Koori prisoners (Recommendation 37).

Chapter 8: Infringement penalties heard in open court, proportionality, and internal review

Chapter 8 contains data on and analysis of the number of infringement charges heard in open court, and the various pathways that can take them there. While the proportion of infringement matters that end up in court is relatively small from the perspective of the infringements system, this proportion is considerable when examined from the court’s perspective.

The recommendations in Chapter 8 are aimed at improving the system up stream to resolve cases earlier and reduce the burden both on the Magistrates’ Court and on those tasked with prosecuting infringements or assisting infringement notice recipients.

Review of infringement penalty amounts

Infringement penalties are intended to be proportionate to the seriousness of the relevant offence and offer recipients a substantial discount to the sentence that they might have received had the matter been heard in court. However, an analysis of sentences for a number of common infringement offences reveals that in many cases the opposite is true. A perception that infringement penalties are disproportionately high may affect the willingness of recipients to comply and/or encourage recipients to have the matter heard in open court.

Although there are clear guidelines setting out the factors that must be considered in setting infringement penalty amounts, most amounts were set before the guidelines took effect. Infringement offences have been added on an \textit{ad hoc} basis over time, and there has never been a systemic review of infringement penalties. The Department of Justice should review infringement penalty amounts to ensure that they are proportionate. This review should take into account a range of matters, including the nature and seriousness of the offence, the purposes of the infringements system and the principles set out in this report, the maximum penalty for the offence, and the sentence that the person might expect to receive if the matter were to go to court (Recommendation 38).
Adjusted penalty amount for financial hardship

When a court imposes a fine, it must take into account a person’s financial circumstances in determining the fine amount. This reflects the principle that the law should have an equal effect: the effect of a $100 fine on someone with a low income is considerably greater than on someone with a high income.

While the infringements system contains some measures to alleviate financial hardship (such as payment plans and extensions of time to pay), it does not provide concessional or reduced infringement penalty amounts for people who are experiencing financial hardship. Including an adjusted penalty as part of a package of measures for infringement recipients on low incomes will make the system fairer and more principled, strengthen compliance, and improve the credibility of the system.

Infringement penalty recipients who are experiencing financial hardship should receive a reduced infringement penalty amount of 50% (Recommendation 39). Eligibility for the adjusted penalty should be the same as eligibility for automatic entitlement to a payment plan outlined in the Attorney-General’s Guidelines to the Infringements Act 2006 (Recommendation 40).

The adjusted penalty amount is intended to provide equality before the law by appropriately mitigating the penalty amount for eligible infringement recipients. This will afford the infringements system a broad measure to recognise the differential impact of an infringement penalty amount on people experiencing financial hardship compared with people who are not. The credibility and effectiveness of the infringements system will be improved by enhancing the equality of its impact, perceptions of fairness, and the prospects of compliance by low-income infringement recipients.

Internal review reforms

For many people internal review provides an effective mechanism for raising issues with an infringement notice. However, many stakeholders believed that for some infringement recipients it is not an effective safeguard, particularly in cases involving ‘special circumstances’. Special circumstances include people with a mental or an intellectual impairment, or drug or alcohol addiction, and people experiencing homelessness. The definition requires a link between either of those circumstances and the offence, in that the circumstance must result in the person being unable to understand that the conduct constitutes an offence, or being unable to control such conduct (depending on the circumstance).

It is currently mandatory for enforcement agencies to refer matters to court if there has been an unsuccessful application for internal review based on special circumstances. In practice, mandatory referral acts as a disincentive to applicants and is not supported by stakeholders. This report recommends removing this mandatory requirement (Recommendation 43).

There is a perceived lack of consistency among different enforcement agencies in their approach to internal reviews based on special circumstances. This is supported by the data. A number of recommendations address the issue of consistency of approach by enforcement agencies to internal reviews (Recommendations 41–42).

The report also includes a recommendation to amend the definition of ‘special circumstances’ in light of difficulties in relation to proving the current test (Recommendation 44).
Special Circumstances List

The Special Circumstances List of the Magistrates’ Court is part of the court’s Enforcement Review Program that operates at Melbourne Magistrates’ Court and the Neighbourhood Justice Centre in Collingwood.

The recommendations in this report in relation to both internal review and enforcement review may reduce the number of infringement recipients with special circumstances whose matters are heard in the Special Circumstances List. Nonetheless, it is likely that some cases will continue to be heard in that list.

The Special Circumstances List was generally viewed as an important safeguard of the infringements system, and a number of those consulted were in favour of it being extended beyond Melbourne and Collingwood. This report proposes that the Magistrates’ Court of Victoria receive additional funding to administer the Special Circumstances List, including funding to extend the list beyond the Melbourne Magistrates’ Court and the Neighbourhood Justice Centre, if its extension is viewed as necessary (Recommendation 45).

The government should also consult with the Magistrates’ Court and other stakeholders on the creation of an order for use in the Special Circumstances List, to provide infringement offenders with the opportunity to avoid a criminal record by undertaking conditions (such as a work and development permit) if the infringement recipient acknowledges responsibility for the offence (Recommendation 46).

Chapter 9: Tolling infringement offences

Chapter 9 examines infringement notices for offences relating to driving on a toll road without being registered to do so, including data on the increasing burden of tolling offences on the Magistrates’ Court.

As the issues regarding tolling infringement offences extend beyond the terms of reference (and the statutory functions of the Council) this report recommends the creation of a working group to identify and implement reforms aimed at reducing the burden of tolling offences on the Magistrates’ Court and the criminal justice system more broadly (for example, Victoria Police, the Sheriff, and organisations that assist infringement penalty recipients) (Recommendation 47).

Chapter 10: Imposition and enforcement of court fines and infringement penalties against children

Chapter 10 contains comprehensive data on and analysis of the imposition and enforcement of court fines and infringement penalties against children. The analysis is premised on the fact that the legislative framework and sentencing purposes and principles that apply to children are markedly different from those in adult jurisdictions.

Review of low-end orders against children

Fines are imposed in 22% of cases sentenced in the Children’s Court. Fines are the second most common sanction imposed; the good behaviour bond is the most common sanction. The proportion of unpaid fines is much higher for children than for adults. Data indicate that approximately 30% of fines (excluding transport ticketing offences) imposed on children in any year are completely paid.
The effectiveness of fines as a sanction against children is questionable in light of the low level of payment of court fines imposed by the Children’s Court and the low level of payment of infringement penalties registered with the Children’s Court under the CAYPINS system.

The issues raised by these payment data in the context of orders available to the Children’s Court are beyond the scope of the reference, and this report recommends a review of low-end orders for children (Recommendation 48).

Reduction of infringement penalty amount for children
This report notes the disparity between a number of infringement offences that provide a reduced infringement penalty for children and other infringement offences that do not. In recognition of the limited financial capacity of children compared with adults, it is recommended that, for all infringement offences, the infringement penalty amount for a child should be less than the infringement penalty amount for an adult. Infringement penalty amounts for children should be set at a maximum of 50% of the infringement penalty amount for adults (Recommendation 49).
Chapter 1: Introduction
1.1 Overview

The use of fines in Victoria

1.1.1 Fines are the most frequently imposed criminal sanction in Victorian courts. Fines are imposed for a wide range of offences, both summary and indictable. This report examines two types of fines:

- **Court fines**: sentences imposed by a court after finding the defendant guilty of an offence.
- **Infringement penalties**: an administrative penalty allowing the defendant to ‘expiate’ (make amends for) the alleged offence by paying the fixed infringement penalty specified on the infringement notice. There is no need for a court hearing or a finding of guilt.

1.1.2 The infringements system allows for a number of less serious offences to be dealt with by way of an infringement penalty. An infringement notice requires the recipient to pay an infringement penalty, sometimes described as an ‘on-the-spot fine’. Rather than constituting a sentence, the payment of an infringement penalty ‘expiates’ the offence, meaning that the person accedes to the penalty, and the matter is finalised without need of a judicial process and usually without the recording of a conviction.

1.1.3 If an offence can be dealt with under the infringements system, the prosecuting agency has the choice to take the matter to court by charging the person or to issue an infringement notice.

1.1.4 Although fines are the most common sentence imposed by courts, the volume and total value of infringement penalties levied by different agencies within Victoria vastly exceed the volume and total value of court-imposed fines. In 2012–13 in Victoria, 40.1% of charges sentenced received a fine, amounting to 114,034 court fines imposed in that year. In the same period, just under 6 million infringement notices were issued by over 120 different agencies. As a result, when some in the community speak about ‘fines’, they are probably referring to infringement penalties, rather than a court fine.

1.1.5 The use of infringement penalties has been growing steadily due to an ongoing expansion in the number of offences covered, the increased range of agencies that can issue infringements, and the increasingly sophisticated technology available to detect offences (such as speed cameras, or automatic number plate recognition to detect unlicensed driving). This makes the infringements system a very visible part of the criminal justice system that directly affects far more Victorians than court-imposed fines.

Table 1: Number of court fines imposed and infringement notices issued, 2009–10 to 2012–13

<table>
<thead>
<tr>
<th>Supreme Court</th>
<th>County Court</th>
<th>Magistrates’ Court</th>
<th>Children’s Court</th>
<th>Infringement notices</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 court fines (17 people and 0 corporations)</td>
<td>1,430 court fines (1,380 people and 50 corporations)</td>
<td>415,212 court fines (396,798 people and 18,414 corporations)</td>
<td>9,002 court fines 44,773 infringements registered with CAYPINS (53,775 people)</td>
<td>20,314,723 notices issued</td>
</tr>
</tbody>
</table>

1. Court fine data include the Children’s Court, the Magistrates’ Court, and the higher courts. In 2012–13 5,998,896 infringement notices were issued (data provided by Infringement Management and Enforcement Services (IMES) for the purposes of this project).

2. For example, the Victorian Government’s website containing information on, and facilities to pay, infringement penalties is described as ‘Fines Victoria: Fines Victoria, Fines (Fines Victoria, 2014) <http://online.fines.vic.gov.au/fines/Default.aspx> at 1 February 2014.
Payment

1.1.6 The majority of people issued with infringement notices pay the penalty. Data on the outcome of infringement notices issued in 2010–11 show that approximately 3.1 million (or 68.65%) of infringement penalties were paid or resolved prior to the issuing of an enforcement order. The remaining 31.35% of infringement notices resulted in 1,559,261 enforcement orders.

1.1.7 Although exact data are not available on the value of infringement penalties imposed in 2010–11 that are still outstanding, the value of warrants issued in that year was $421,359,750 and in the following year was $470,597,136.3

1.1.8 In 2010–11, the total value of fines imposed by the Magistrates’ Court was $31,051,052.00. Over half (53.5%) of those people who received a court fine in the Magistrates’ Court in 2010–11 had completed payment (including discharging the fine by way of community work or imprisonment) by 30 June 2013.

Enforcement and the effectiveness of fines and penalties

1.1.9 A number of issues and challenges are raised by the non-payment of court fines and infringement penalties.

1.1.10 First, the low rate of payment of court fines compared with the rate of payment of infringement penalties threatens both judicial and public confidence in the use of court fines as a sentence.

1.1.11 Second, there is a lack of consistency in the means by which court fines are enforced. Currently, each court has its own system for enforcement under the provisions of the Sentencing Act 1991 (Vic) (‘Sentencing Act’); this is different from the system for enforcing infringement penalties under the Infringements Act 2006 (Vic) (‘Infringements Act’).

1.1.12 Third, infringement recipients, who comprise the majority of offenders, have a wide variety of reasons for non-payment, ranging from the most compelling of mitigating circumstances to wilful disregard for the law. The differences between these groups create a tension in the enforcement system that needs to be resolved effectively and sensitively. Making enforcement too draconian has the potential to draw vulnerable people into the criminal justice system. Creating too much flexibility risks allowing wilfully recalcitrant offenders to escape consequences for their actions. Disregard for the system by those who can but won’t pay risks eroding the credibility and effectiveness of the criminal justice system. An understanding of the need to strengthen the fairness, justice, effectiveness, and credibility of the system for collecting court fines and infringement penalties, while being conscious of the need to be flexible in appropriate cases, has informed this report.

1.1.13 Finally, the lack of integration between courts, and between the court and infringements systems, complicates fine and penalty collection. The system as it currently operates makes it difficult, if not impossible, to consolidate all the money owed by one person into a single debt and to plan for payment accordingly. Instead, people with multiple court fines and infringement penalties can owe money to a number of courts and agencies, making payment and enforcement complicated, ineffective, and inefficient.

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3 These figures include all warrants issued by Victorian courts, not just warrants issued by the Infringements Court; however, the vast majority are infringement warrants: Victorian Ombudsman, Own Motion Investigation into Unenforced Warrants: Ombudsman Act 1973 (Victorian Government Printer, 2013) 15. Also, the warrants issued in one year are likely to concern infringement notices issued in previous years.
1.2 Terms of reference

1.2.1 In December 2012, the Attorney-General requested the Council to review and report on ‘the use of fines as sentences both by courts and in the infringements system’, with the following terms of reference:

The Sentencing Advisory Council is requested to review and report on the imposition and enforcement of fines as a sentence by Victorian courts, including fines that are imposed by a court in matters that commence with the issuing of an infringement notice.

The purpose of the review is to ensure the effective, efficient and principled use of fines as a sentence.

In particular, the Council should consider:

• Issues arising from the number of infringement matters subsequently heard in open court
• Issues arising from the conversion of fines to an order for community work
• 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, and
• The desirability of harmonising the enforcement mechanisms and procedures for court-imposed fines with those for infringement notices.

In conducting the review, the Council should have regard to the purposes and operation of mechanisms and processes for the imposition and enforcement of fines in other Australian and comparable overseas jurisdictions.

1.2.2 In his letter to the Council requesting it to undertake this review, the Attorney-General expressed particular concern that:

the complexity and disparity of current legislative and operational requirements for the imposition, management and enforcement of fines contribute to non-compliance, reducing public confidence in the system and reducing the effectiveness and efficiency of the use of fines as a sentencing option.

1.2.3 This reference is a small part of a broader review of fines and infringements being undertaken by the Department of Justice. The Attorney-General advised the Council that he is:

Considering a range of reforms with the overarching aim of establishing a single, integrated means of collecting fines in Victoria. The aim of the reforms is to simplify and streamline enforcement processes; increase payment rates and reduce debt arising out of unpaid fines; seek to bring fine defaulters into contact with authorities earlier; and seek to provide other options to satisfy debt for those who cannot pay upfront or on a payment plan.

1.2.4 The Attorney-General asked the Council to conduct this review with these objectives in mind.

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4. Letter from Attorney-General, Hon Robert Clark, MP, to Professor Arie Freiberg, Chairperson, Sentencing Advisory Council, 18 December 2012.
5. Ibid.
6. Ibid.
7. Ibid.
The Attorney-General’s request for advice identifies the lack of harmonisation between the options and the measures for paying and enforcing infringement penalties and court fines as a particular problem.

In his letter to the Council accompanying the terms of reference, the Attorney-General noted the following aims:

- the desirability of simplifying and streamlining the payment and enforcement of court fines and infringement notices with the overarching aim of establishing a single, integrated means of collecting fines;
- the need to tackle issues that contribute to non-compliance, reduced credibility of the system, and reduced effectiveness and efficiency of court fines and infringement notices;
- the need to increase payment rates and reduce debt arising out of unpaid fines;
- the desirability of bringing fine defaulters into contact with authorities earlier; and
- the desirability of providing other options to satisfy debt for those who cannot pay upfront or those who are on a payment plan.

This project has been running concurrently with the Department of Justice’s Fines Reform Project (‘Fines Reform’).

Appendix 2 contains an overview of the Fines Reform legislative amendment package.

In summary, the reform package:

combines legislative, organisational and operational reforms that will provide uniform debt payment and management methods for people with fines, common sanctions for enforcing infringement fines and court fines, and a central body as the contact point for the public to pay and manage fine debt.8

In addition to those proposed reforms, there have been a number of recent changes to the law relating to fines, including:

- changes to the definition of a ‘fine’ so that it no longer includes particular costs that previously fell within the definition;
- amendments replacing Part 3B of the Sentencing Act relating to fines (not yet in operation);
- amendments to the law relating to the nature of payments to the court fund as part of an undertaking imposed by sentencing courts to be of good behaviour;9
- the creation of a right to apply for variation of an instalment order made at an infringement warrant enforcement hearing; and
- the creation of a right of rehearing in certain circumstances against an order for imprisonment at an infringement warrant enforcement hearing (see Chapter 6).

The Council has worked closely with the Department of Justice’s Fines Reform Project and has confined its analysis and recommendations to the specific issues raised in the terms of reference, in order to minimise any overlap with the work of the Fines Reform Project.

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8. See Appendix 2: Department of Justice, Overview of the Fines Reform Legislative Amendment Package (2014).
9. In the case of Brittain v Mansour [2013] VSC 50 (19 February 2013), the Supreme Court determined that the Magistrates’ Court lacked the authority to order a person to donate money to charity as a condition of releasing the person on an adjourned undertaking. This was rectified by the Justice Legislation Amendment Act 2013 (Vic) ss 9(2), (3) amending the Sentencing Act 1991 (Vic) s 75(2)(c).
Chapter 2:  
The use of court fines
The imposition and enforcement of court fines and infringement penalties in Victoria

2.1 Introduction

2.1.1 The terms of reference ask the Council to review and report on the use of fines by the courts and in the infringements system.

2.1.2 This chapter examines the imposition of court fines in Victoria. It reviews and reports on the use of fines as a sentence by Victorian courts, including statistical and descriptive analysis of such matters as:

- the law and principles governing the use of court fines;
- the number of court fines imposed;
- the proportion of sentences that are court fines;
- the most common offences that result in a fine;
- court fine amounts; and
- the effectiveness of court fines as a sentencing option.

2.1.3 The use of court fines as a sentence against children is discussed in Chapter 10.

2.2 Law and principles

Historical use of court fines

2.2.1 The use of fines as a sentence in the criminal justice system has a very long history. In the Middle Ages, fines were imposed as a substitute for a sentence of imprisonment for a misdemeanour (at which time the death penalty was imposed for a felony). After the imposition of an imprisonment sentence, the offender was allowed to 'make fine':

that is to make an end (finem facere) of the matter by paying or finding security for a certain sum of money.

2.2.2 Over time, the imposition of a fine became a sentence in its own right, rather than a substitute for imprisonment.

2.2.3 The use of fines has not been consistent since their introduction, however, and their rate of imposition has varied (it has been argued) according to the pressures of economic circumstances (affecting defendants’ capacity to pay) and changing criminological theories. As O’Malley recounts:

Fines were used rarely across Europe in the 19th century, something that the German scholars … attributed to the poverty of the populace. In previous centuries, fines had been commonplace. In fact, the use of fines declined greatly after about 1780 with the increase of the correctional prison … However] from the 1870s onward, across Europe and the United Kingdom, criminologists began to argue that short periods of imprisonment were counterproductive … fines were less disruptive and possibly less criminogenic. Given the expense of prison versus the cheapness of administering fines, governments across Europe were quickly attracted to this sanction, and by the 1930s … fines had become the predominant sentence.

2.2.4 The use of fines as a criminal sanction has continually grown to the point that fines are presently the most common criminal sanction imposed by courts throughout Victoria and Australia as a whole.14

2.2.5 This widespread use of fines may be attributed to a number of perceived benefits. O’Malley has presented a comprehensive summary of the advantages and disadvantages of monetary penalties.15 These include fines being a quick, efficient, flexible, effective, and cheap form of punishment, and the perception that they represent an easily understood form of punishment that can be readily adjusted to reflect the seriousness of the offence and the circumstances of the offender.16

2.2.6 Most of the perceived benefits of court fines, however, are predicated on the assumption that the fine will be paid.

**Legislative framework**

2.2.7 A fine is a court order under Victorian law. The power for a court in Victoria to impose fines is granted by the Sentencing Act 1991 (Vic) (‘Sentencing Act’).17 An offender may be fined in addition to, or instead of, any other sentence available to the court;18 however, a fine cannot be imposed for any offence for which the maximum penalty is life imprisonment.19 The Sentencing Act also makes explicit that a fine can be imposed in addition to a community correction order (CCO).20

2.2.8 In the Victorian sentencing hierarchy, a fine is considered less severe than a community correction order, but more severe than a discharge, dismissal, or adjourned undertaking.21

2.2.9 A fine is defined as:

> the sum of money payable by an offender under an order of a court made on the offender being convicted or found guilty of an offence and includes costs but does not include money payable by way of restitution or compensation; or any costs of or incidental to an application for restitution or compensation payable by an offender under an order of a court; or costs incurred between the parties in civil proceedings; or costs incurred by third parties; or money payable by an offender under an order of a court to an organisation that provides a charitable or community service or to the court for payment to such an organisation.22

2.2.10 For the purposes of this report, fines imposed by a court under the Sentencing Act will be referred to as ‘court fines’.

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17. Sentencing Act 1991 (Vic) s 49(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 49 (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
18. Sentencing Act 1991 (Vic) s 49(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 49 (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation). Unless otherwise specified, where the offence is punishable by Level 2 imprisonment (25 years), a fine may be imposed in addition to, but not instead of, imprisonment: Sentencing Act 1991 (Vic) s 109(3A).
19. Sentencing Act 1991 (Vic) s 109(2). See [2.5.20]–[2.5.23].
2.2.11 In determining the amount of a fine, and the method by which a fine is to be paid, the court must take into account the offender’s financial circumstances and the ‘nature of the burden’ that paying the fine will impose. This includes considering the effect of any orders of forfeiture or orders to pay restitution or compensation. A court must give preference to orders for restitution and compensation if the court considers it appropriate to impose either (or both) of those orders along with a fine; however, it may still impose a fine.

2.2.12 A court may also consider any loss or damage to property caused by the offence, or any benefit gained by the offender, when considering the amount of a fine to be imposed.

2.2.13 A court may still impose a fine even if it is unable to make any of these inquiries.

Principles and purposes of an effective fines system

2.2.14 One of the purposes of the Council’s review is to ‘ensure the effective, efficient and principled’ use of fines. Relevant to this consideration is the extent to which court fines are meeting the purpose for which they are imposed and the extent to which court fines are consistent with the principles of sentencing.

Purposes of court fines

2.2.15 The only purposes for which a fine may be imposed under Victorian law are to punish, deter the offender and/or others, denounce the offender’s conduct, facilitate the offender’s rehabilitation, protect the community, or a combination of these purposes.

2.2.16 The extent to which a court fine achieves one or more of these purposes is relevant to its credibility as a sanction.

Just and proportionate punishment

2.2.17 The first sentencing purpose set out in section 5(1) of the Sentencing Act is ‘to punish the offender to an extent and in a manner which is just in all of the circumstances’.

2.2.18 A fine is a flexible sanction, and because it is expressed numerically, it can be ‘tailored to fit both the offence and the offender’ in circumstances where discretion as to the amount is available to the court. Fines are also reversible in the case of wrongful conviction.
2.2.19 The importance of tailoring the fine to an offender’s capacity to pay was discussed in *Sgroi v The Queen*, where Malcolm CJ stated:

The purpose of a fine is primarily to punish the offender. Consequently, the amount of the fine must be such as will constitute an appropriate punishment having regard to the offender’s capacity to pay. Thus, the amount and method of payment of the fine will need to take into account, as far as practicable, the financial resources and income of the offender and the nature of the burden that its payment will impose.33

2.2.20 Searle’s 2003 survey of New Zealand judges’ perceptions of court-imposed fines found that the judges considered that fines offer immediate punishment that is both acceptable to the public and is easily understood by offenders and victims.34 It is likely that perceptions of the purpose of fines are similar in Victoria.

2.2.21 Assessing the level of a fine that will achieve ‘just punishment’ is not a simple task. On the one hand, the fine should be of a sufficient amount to affect the financial capacity of the offender such that there is some punitive effect. On the other hand, if the fine is so large as to be beyond the offender’s capacity to pay, the consequence of the fine enforcement process may well be the same as if the offender had initially received a more severe sentence, such as a community correction order.

2.2.22 Further, if the fine is so great as to be unenforceable, its effectiveness in punishing the offender is weakened, as noted by Magistrate Jelena Popovic:

Imposing a fine that one knows an offender does not have the capacity to pay does not provide a consequence for the offending behaviour. It may also result in fruitless further expenditure in an attempt to enforce payment.35

2.2.23 The consequence of a fine as a reduction in a person’s financial capacity will not occur until the person has paid the fine. Determining the appropriate fine will necessarily require information about the economic circumstances of the offender. A $500 fine may not greatly affect the financial capacity of, for example, a person in full-time employment earning well above the average wage, with no dependants or outstanding debts. However, the same $500 fine imposed on, for example, an unemployed parent of two dependent children with pre-existing debts and no income other than welfare payments is likely to have a far greater effect on that offender’s financial capacity.

2.2.24 Some offenders who receive court-imposed fines have limited means to pay,36 and the dilemma for courts is that the sanction of a fine is ultimately ineffective if it goes unpaid.37 A tension therefore exists among an offender’s capacity to pay, the need for proportionality, the need for equality of punishment, and the potential for sentencing disparity between offenders to create unjust outcomes.

36. Searle found that 33% of judges thought that the main disadvantage of fines was an offender’s inability to pay: Searle (2003), above n 34, 12.
37. Searle found that 27% of judges thought that a fine is ineffective as a sanction if it goes unpaid: Searle (2003), above n 34, 12.
Deterrence

2.2.25 Another purpose of sentencing is ‘to deter the offender [specific deterrence] or other persons [general deterrence] from committing offences of the same or a similar character’.38 To the extent that a fine can deter the offender or others from committing the same or similar offences in the future, a fine’s ability to do so is dependent on the fine being enforceable and enforced, as noted by Kirby P in R v Smith:

The imposition of a fine which is totally beyond the means of the person fined and which the Court, the prisoner and the community realise has no prospect whatever of being paid, does nothing for the deterrence of others. Such a fine is seen by the community for what it is: a symbolic act of the law without intended substance which neither coerces the particular prisoner nor convinces the community.39

2.2.26 Fox and Freiberg identify a number of limitations to determining the effectiveness of a fine as a deterrent:

empirical evaluations of its deterrent efficiency are difficult to come by. The weight to be given to any such evidence is uncertain because of the inefficiencies of fine collection and the fact that, unlike other penalties, the fine need not be personally discharged by the offender.40

2.2.27 The specific deterrent effect of a fine is nullified if the fine is unpaid. In fact, the reverse may occur if a person escapes consequences for his or her offence by failing to pay the fine. Similarly, the non-payment of fines has implications for general deterrence. If a potential offender considers that a fine is the likely penalty for an offence, but that the penalty will not be enforced, he or she is unlikely to be deterred from offending.

Rehabilitation

2.2.28 A further sentencing purpose is ‘to establish conditions within which it is considered by the court that the rehabilitation of the offender may be facilitated’.41

2.2.29 Unlike a fine, some sentencing orders, such as a community correction order, can directly facilitate an offender’s rehabilitation, for example, by including conditions that seek to address underlying problems causing criminal behaviour.

2.2.30 A fine is unlikely to address underlying problems, and so the capacity of a fine to fulfil the purpose of rehabilitation is therefore limited.

2.2.31 As fines impact on an offender’s financial capacity rather than physical liberty, however, they can limit an offender’s contact with the criminal justice system, when compared with other sanctions, and cause minimal disruption to his or her life.42 Compared with other sentences, a fine may assist in the rehabilitation of the offender to the extent that the imposition of a fine allows an offender to maintain employment, for example.

39. R v Smith (1991) 25 NSWLR 1, 21. The prisoner in this case had been ordered to pay a fine of $60,000 although there was evidence that he had no means at all and was earning $12 per week in jail. The majority of the court upheld the fine.
42. Searle (2003), above n 34, 12.
Denunciation

2.2.32 Another purpose for which a fine may be imposed by the court is ‘to manifest the denunciation by the court of the type of conduct in which the offender engaged’.43 For a fine to be credible as an expression of the court’s denunciation, it must be enforceable and enforced.

Community protection

2.2.33 Where a sentencing court decides that the primary aim of sentencing is to protect the community, a fine is unlikely to be the court’s choice of sentence. While community protection in the long term may be achieved if the fine acts as a deterrent, the link between community protection and fines is more tenuous than that between fines and other sentencing purposes.

Purposes of fines against corporations

2.2.34 Fines are the primary, or only, way of addressing criminal offending by corporations. Corporations may not be imprisoned or subjected to a community correction order.

2.2.35 A fine against a corporation, rather than a person, may be more likely to achieve general or specific deterrence, since company directors routinely make calculated decisions about the relative costs and benefits of proceeding with a particular course of action. In contrast, the notion of a rational, calculating natural person, which underlies rational choice and deterrence theory, has been largely discredited.44 However, the deterrent value of a fine for a corporation, as for natural persons, is contingent on the certainty of punishment.45

2.2.36 A fine may act as a deterrent and achieve some degree of just punishment, if it is at least able to offset the additional company profits made as a result of the company’s offending.46 Further, a fine may have retributive effects in other ways, for example, by compromising the ongoing operation of the company and impairing the corporation’s ability to raise financing.

Principles

2.2.37 A number of principles are relevant to the decision about what sentence best achieves the desired sentencing purpose(s). These principles in combination form part of the requirement for fairness, which is fundamental to the operation of the criminal justice system as a whole. Thus, the extent to which a court fine is consistent with these principles is relevant to its fairness and credibility as a sanction.

Consistency

2.2.38 An overarching sentencing principle is that there should be ‘consistency of approach in the sentencing of offenders’, and one of the aims of the Sentencing Act is to promote such consistency.47 To an extent, this principle subsumes the other sentencing principles discussed below.

47. Sentencing Act 1991 (Vic) s 1(4).
Proportionality

2.2.39 The principle of proportionality is fundamental to sentencing in Victoria.\textsuperscript{48} It requires that, in sentencing, the overall punishment must be proportionate to the gravity of the offending behaviour; including the harm caused and the level of culpability:

Australian sentencing rests primarily on the foundation of proportionality which places considerable weight on the factors of harm and culpability. Aggravating factors will be those that increase the harm caused by the offence or the culpability of the offender. Mitigating factors will be those that decrease harm or culpability, and consequently decrease the proportionate punishment that needs to be imposed. … However, for the purposes of increasing or decreasing a sentence, no rigid distinctions can be drawn between circumstances relating to the offence and those relating to the offender.\textsuperscript{49}

2.2.40 The principle of proportionality is reflected in numerous provisions of the Sentencing Act such as:

- including just punishment as a purpose of sentencing;\textsuperscript{50}
- requiring sentencing courts to have regard to the ‘nature and gravity’ of the offence and the ‘offender’s culpability and degree of responsibility for the offence’;\textsuperscript{51}
- including a hierarchy of sentencing options and a requirement that ‘no sentence be more severe than is necessary to achieve its purpose’.\textsuperscript{52}

2.2.41 In the context of fines, the principle of proportionality requires that both the imposition of a fine (as opposed to a different sentence) and the fine amount are proportionate to the seriousness of the offence that has been committed. As a financial sanction, a fine is ‘readily adaptable to reflect differing degrees of wrong-doing’.\textsuperscript{53}

2.2.42 While many of the aggravating and mitigating factors relevant to sentencing relate to the harm of the offence or the culpability of the offender (and are thus relevant to proportionality), a number of factors to which the court must have regard do not fit into either of these categories. The presence of such factors may temper the principle of proportionality in certain circumstances. In the context of fines, an example of such a factor is the offender’s financial circumstances, which must be considered by the court in determining the fine amount.\textsuperscript{54} Where the offender is experiencing financial hardship, the consideration of his or her financial circumstances may justify a sentence lower than would otherwise be proportionate.

2.2.43 This reflects the operation of the principle of equality before the law.

Equality before the law

2.2.44 A sentencing principle that may mitigate the principle of proportionality in certain cases is that sentences should have ‘equal impact’. In addition, the principle of equality before the law requires ‘that the system should strive to avoid grossly unequal impacts on offenders with differing resources and sensitivities’.\textsuperscript{55}

\textsuperscript{48}. Fox and Freiberg (1999), above n 11, citing Chester v The Queen (1988) 165 CLR 611; Ryan v The Queen (2001) 206 CLR 267.


\textsuperscript{50}. Sentencing Act 1991 (Vic) s 5(1)(a).

\textsuperscript{51}. Sentencing Act 1991 (Vic) ss 5(2)(c), (d).

\textsuperscript{52}. Freiberg (2014), above n 40, [3.50]; Sentencing Act 1991 (Vic) ss 5(3)–(7).

\textsuperscript{53}. Freiberg (2014), above n 40, [7.05].

\textsuperscript{54}. Sentencing Act 1991 (Vic) s 50(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 52(1) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

2.2.45 This principle is the foundation of the requirement to consider an offender’s financial circumstances in setting a fine amount:

The statutory provision that requires an offender’s financial circumstances to be taken into account is based on the theory that sentences for like offences should be so calculated as to impose an equal impact on the offenders who receive them. The system should strive to avoid imposing sanctions that produce grossly unequal effects on offenders with differing resources. Accordingly, it has been a long-established principle of sentencing that a fine lower than might otherwise be appropriate to the offence can be imposed on an offender who is clearly unable to pay the larger amount.56

2.2.46 This principle:

only operates partially in relation to fines, in that the absence of means may be accepted as a reason for reducing the level of a fine; however, possession of wealth is an insufficient reason for raising a fine above normal.57

2.2.47 In relation to fines, the combination of the principles of proportionality and equality before the law require:

that the fine must reflect both the gravity of the offence and the personal circumstances of the offender … If, having formed a view of the appropriate level of the fine, the court is satisfied that the offender would be unable to pay that amount on account of lack of means, the sentencer is entitled to reduce the amount of the fine and/or consider giving the offender time to pay or the opportunity to pay by instalments. Thus a ‘modest fine towards the lower end of a permissible spectrum may well constitute a very salutary penalty and impose significant hardship on an impecunious person whereas, in the case of a person of means, a penalty higher along the relevant spectrum of reasonable tariffs may be more appropriate’.58

2.2.48 Thus, the amount of a fine must:

• be proportionate to the seriousness of the offence committed; and
• take into account the offender’s circumstances (including his or her financial circumstances).

Parity

2.2.49 Parity, which relates to proportionality and equality before the law, requires that there be consistency in sentencing for similar offences and that there should not be sentencing disparities between offenders without justification.

2.2.50 In respect of court fines, considerations of parity involve a greater level of complexity, as comparison between offenders may be made regarding:

• the seriousness and circumstances of their offending; and
• their personal circumstances, including individual capacity to pay.

2.2.51 A fine imposed on one offender that, on the face of it, displays a lack of parity when compared with another offender (who has committed the same offence in similar circumstances) may still accord with the principle of parity when the capacity of each offender to pay differs.

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Parsimony

2.2.52 A related principle to proportionality is the principle of parsimony, which requires that a court should sentence an offender to the lowest sentence on the hierarchy that achieves the sentencing purposes that the court seeks. For example, a court should not fine a person for an offence if the desired sentencing purposes could be achieved by releasing the person on an undertaking to be of good behaviour.

Totality

2.2.53 The principle of totality requires that, where an offender is at risk of serving more than one sentence, the overall effect of the sentences must be just, proportionate, and appropriate to the overall criminality of the total offending behaviour. As a result:

Individual sentences must not only fall within the perimeter of proportionality, but in the case of multiple offences the total sentence must be proportionate to the totality of the offending.

2.2.54 Therefore, when multiple fines (or an aggregate fine) are imposed for multiple offences, this principle requires that the overall effect of the combined or aggregate fine must be just, proportionate, and appropriate to the overall criminality of the total offending behaviour.

Measures of effectiveness – court fines

2.2.55 To be an effective sentencing option, a court fine needs to:

- serve one or more sentencing purposes;
- reflect sentencing principles;
- be promptly paid, expiated, or otherwise enforced;
- be efficient in terms of court time, the time taken to pay, the method of payment, and the resources required for enforcement;
- be timely – from the moment it is imposed, the focus should be on ensuring compliance as soon as possible to maximise the deterrent effect and maintain the credibility of the system;
- be clear and simple – the offender should leave court with a clear understanding of what is owed, when it is owed, and payment options.

2.2.56 At the end of this chapter, court fines are examined having regard to some of these measures.

Benefits of a functioning fines enforcement process for the criminal justice system

2.2.57 The primary economic benefit from the use of fines may be not as a result of revenue received, but rather in the money saved when a fine is used as an alternative to another sanction that would require further expenditure to impose (for example, a community correction order or imprisonment).
2.2.58 Another clear benefit of fines to the criminal justice system is that they are quickly dispensed. No time is required for the offender to be assessed by Community Corrections, and unless the offender fails to pay the fine, the matter is immediately finalised. In a simple case, imposing a fine can take no more than a few minutes from the start of the case to its completion. In contrast, imposing a community correction order is more time consuming. For example, the case may need to be adjourned for the offender to be assessed by Community Corrections, and once a community correction order is made, its terms may require the ongoing supervision of the offender.

2.2.59 Another potential benefit of fines for the government is that the money received from paid fines provides an economic benefit that, at minimum, may assist to offset costs associated with the criminal justice system. In contrast, most other sentencing options (such as a community correction order or imprisonment) ‘involve very substantial net costs’.63

2.2.60 That said, while the payment of fines may provide an economic benefit, ‘the full cost of fine imposition and enforcement are not known’.64 Although there are no additional costs to the criminal justice system when imposing a fine, the cost of fine enforcement may considerably outweigh a fine’s value. For example, enforcing a fine by requiring an offender to perform unpaid community work or serve a term of imprisonment for the fine default alone are expensive ways of discharging the fine debt.

2.2.61 While the credibility of the system depends on holding people accountable for their behaviour in some way, it is important to have a suite of options for doing so. Using imprisonment to enforce a fine for anything but the most serious fined offences or offenders could be viewed as ‘throwing good money after bad’ with serious and detrimental consequences for the costs of fines enforcement, for the person imprisoned, and for society as a whole.

2.3 Number of court fines imposed

2.3.1 Each year approximately 80,000 cases are sentenced in Victorian courts. The majority of those cases are sentenced in the Magistrates’ Court and receive a fine.

2.3.2 Fines are less common in the higher courts (the County Court and the Supreme Court). In those courts, fines are generally imposed when the court is sentencing a less serious offence alongside more serious offences (which may receive a more severe sentence, such as imprisonment).

2.3.3 Occasionally the higher courts impose fines for serious offending, such as where the offender is a corporation, in which case a fine is the most severe sentencing option available to the court.

From 2009–10 to 2012–13, a fine was imposed in:

- 64% of cases sentenced in the Magistrates’ Court (200,542 cases out of 314,394);
- 22% of cases sentenced in the Children’s Court (4,628 cases out of 20,982);
- 11% of cases sentenced in the County Court (811 cases out of 7,371); and
- 3% of cases sentenced in the Supreme Court (12 cases out of 404).

64. Fox and Freiberg (1999), above n 11, 364.
Magistrates’ Court

2.3.4 The Magistrates’ Court has jurisdiction to hear matters relating to summary offences and certain indictable offences that are specified as being triable summarily.\(^{65}\) Charges for those offences may be heard in the Magistrates’ Court if the court considers the matter appropriate to be dealt with summarily and the accused consents.\(^ {66}\)

2.3.5 Fines are the most common sentence imposed in the Magistrates’ Court for both persons and corporations. From 2009–10 to 2012–13, a fine was imposed in approximately 64% of cases sentenced in the Magistrates’ Court (200,542 cases out of 314,394). A total of 97% of all cases in which a fine was imposed in that period were heard in the Magistrates’ Court.

2.3.6 Figure 1 shows the proportion of cases sentenced to each sentence type in the Magistrates’ Court between 2009–10 and 2012–13. The two most common sentences after fines were adjourned undertakings (14.4%) and wholly suspended sentences of imprisonment (7.3%).

*Other* sentences are those sentences that made up less than 1% of the sentences imposed, including youth detention orders, combined custody and treatment orders, drug treatment orders, and sentences made under Commonwealth legislation. Percentages of all sentences may exceed 100% because some cases may receive more than one type of sentence.

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65. Those offences are any offence punishable by a maximum term of imprisonment of 10 years (Level 5 imprisonment) or less, or a fine of 1,200 penalty units (Level 5 fine) or less (Criminal Procedure Act 2009 (Vic) ss 28(1)(a)–(b)) and those offences specified in Schedule 2 of the Criminal Procedure Act 2009 (Vic).

66. Criminal Procedure Act 2009 (Vic) s 29(1).
County and Supreme Courts

2.3.7 Fines are imposed in a substantially lower number of cases sentenced in the County and Supreme Courts, in comparison with the Magistrates’ Court. In the period 2009–10 to 2012–13, a fine was imposed in 11% of cases sentenced in the County Court (811 cases out of 7,371) and in 3% of cases sentenced in the Supreme Court (12 cases out of 404).

2.3.8 This finding is likely to reflect the more serious nature of the offences brought before the higher courts, for which fines are unlikely to be an appropriate sentence, and it likely reflects those circumstances where a less serious offence is sentenced to a fine alongside a more serious offence.

Corporate offenders

2.3.9 Fines are the most common sentence imposed on corporate offenders in all courts. From 2009–10 to 2012–13, a fine was imposed on:

- 83% of corporations sentenced in the Magistrates’ Court (5,177 cases out of 6,245), compared with 63% of persons sentenced in that court;
- 97% of corporations sentenced in the County Court (33 cases out of 34), compared with 11% of persons sentenced in that court; and
- no corporations in the Supreme Court (there were no proven criminal cases against corporations in that period in the Supreme Court), compared with 3% of persons sentenced in the Supreme Court.

2.3.10 Although fines were the most common sentence imposed on corporations between 2009–10 and 2012–13, corporations comprised a small proportion of all cases receiving a fine in the Magistrates’ Court, ranging from 2.2% (1,129 cases) in 2009–10 to 3.0% (1,439 cases) in 2011–12.
2.4 Most common offences resulting in a court fine

Magistrates’ Court

2.4.1 Table 2 shows the 10 most common offences by natural persons in the Magistrates’ Court for which a fine was imposed between 2009–10 and 2012–13.

2.4.2 The eight most common offences for which fines were imposed in this period were driving related. Of the 10 most common offences, six offences may otherwise be dealt with by the issue of an infringement notice. A further two offences (exceed prescribed concentration of alcohol in breath within three hours of driving or being in charge of a motor vehicle, and unlicensed driving) may be dealt with by way of an infringement notice in certain circumstances. The remaining offences cannot be the subject of an infringement penalty and must instead be prosecuted by filing charges.

Table 2: The 10 most common offences by natural persons resulting in a fine, Magistrates’ Court, 2009–10 to 2012–13

<table>
<thead>
<tr>
<th>Rank</th>
<th>Offence type</th>
<th>Infringement offence?</th>
<th>Number of charges sentenced</th>
<th>Percentage of total fines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Drive while licence suspended/drive while disqualified (Road Safety Act 1986 (Vic) s 30(1))</td>
<td>No</td>
<td>33,981</td>
<td>8.6%</td>
</tr>
<tr>
<td>2</td>
<td>Exceed relevant speed limit (Road Safety Road Rules 2009 (Vic) r 20(1))</td>
<td>Yes</td>
<td>28,031</td>
<td>7.1%</td>
</tr>
<tr>
<td>3</td>
<td>Use unregistered motor vehicle or trailer on highway (Road Safety Act 1986 (Vic) s 7)</td>
<td>Yes</td>
<td>21,195</td>
<td>5.3%</td>
</tr>
<tr>
<td>4</td>
<td>Exceed prescribed concentration of alcohol in breath within three hours of driving/being in charge of a motor vehicle (Road Safety Act 1986 (Vic) s 49(1))</td>
<td>In some circumstances</td>
<td>20,057</td>
<td>5.1%</td>
</tr>
<tr>
<td>5</td>
<td>Drive unregistered in toll zone (CityLink) (Melbourne City Link Act 1995 (Vic) s 73(1))</td>
<td>Yes</td>
<td>12,562</td>
<td>3.2%</td>
</tr>
<tr>
<td>6</td>
<td>Careless driving (Road Safety Act 1986 (Vic) s 65(1))</td>
<td>Yes</td>
<td>12,491</td>
<td>3.1%</td>
</tr>
<tr>
<td>7</td>
<td>Park for longer than indicated/allowed (Road Safety Road Rules 2009 (Vic) r 205)</td>
<td>Yes</td>
<td>11,699</td>
<td>2.9%</td>
</tr>
<tr>
<td>8</td>
<td>Unlicensed driving (Road Safety Act 1986 (Vic) s 18)</td>
<td>In some circumstances</td>
<td>9,480</td>
<td>2.4%</td>
</tr>
<tr>
<td>9</td>
<td>Fail to answer bail (Bail Act 1977 (Vic) s 30(1))</td>
<td>No</td>
<td>8,842</td>
<td>2.2%</td>
</tr>
<tr>
<td>10</td>
<td>Disobey ‘no stopping’ sign (Road Safety Road Rules 2009 (Vic) r 167)</td>
<td>Yes</td>
<td>7,054</td>
<td>1.8%</td>
</tr>
</tbody>
</table>

a. Also contains data for offences charged under Road Safety (Road Rules) Regulations 1999 (Vic).
b. Ibid.
c. Ibid.

67. Infringement notices are only issued for first offences. Traffic infringement notices are not issued for subsequent drink driving offences, or for drink driving offences with a blood alcohol content (BAC) of 0.15 or above.
### County and Supreme Courts

2.4.3 Table 3 shows the 10 most common offences for which a fine was imposed on a natural person in the County and Supreme Courts between 2009–10 and 2012–13. These consist mainly of drug possession offences, weapons/ammunition possession offences, and driving offences. A majority of the 10 most common offences committed by persons and receiving a fine in the higher courts cannot be dealt with by way of infringement penalties.

<table>
<thead>
<tr>
<th>Rank</th>
<th>Offence type</th>
<th>Infringement offence?</th>
<th>Number of charges sentenced</th>
<th>Percentage of all charges with fines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Possess a drug of dependence (Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1))</td>
<td>No</td>
<td>351</td>
<td>25.1%</td>
</tr>
<tr>
<td>2</td>
<td>Possess/carry/use prohibited weapons (Control of Weapons Act (Vic) s 5(1)(e))</td>
<td>No</td>
<td>64</td>
<td>4.6%</td>
</tr>
<tr>
<td>3</td>
<td>Possess ammunition without licence (Firearms Act 1996 (Vic) s 124(1))</td>
<td>No</td>
<td>60</td>
<td>4.3%</td>
</tr>
<tr>
<td>4</td>
<td>Common law assault (common law)</td>
<td>No</td>
<td>56</td>
<td>4.0%</td>
</tr>
<tr>
<td>5</td>
<td>Criminal damage (intentionally damage/destroy property) (Crimes Act 1958 (Vic) s 197(1))</td>
<td>No</td>
<td>43</td>
<td>3.1%</td>
</tr>
<tr>
<td>6</td>
<td>Theft (includes shop theft) (Crimes Act 1958 (Vic) s 74)</td>
<td>In some circumstances</td>
<td>38</td>
<td>2.7%</td>
</tr>
<tr>
<td>7</td>
<td>Drive while licence suspended/disqualified (Road Safety Act 1986 (Vic) s 30(1))</td>
<td>No</td>
<td>36</td>
<td>2.6%</td>
</tr>
<tr>
<td>8</td>
<td>Use unregistered motor vehicle or trailer on highway (Road Safety Act 1986 (Vic) s 7(1))</td>
<td>Yes</td>
<td>27</td>
<td>1.9%</td>
</tr>
<tr>
<td>9</td>
<td>Unlicensed driving (Road Safety Act 1986 (Vic) s 18)</td>
<td>Yes</td>
<td>26</td>
<td>1.9%</td>
</tr>
<tr>
<td>10</td>
<td>Use a drug of dependence (cannabis) (Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 75(a))</td>
<td>No</td>
<td>23</td>
<td>1.6%</td>
</tr>
</tbody>
</table>

a. Control of Weapons Act 1990 (Vic) s 5(1)(e) has been repealed.
Corporate offenders

Table 4 shows the 10 most common offences for which a fine was imposed on a corporation in the Magistrates’ Court between 2009–10 and 2012–13. The main offences are driving unregistered in a toll zone (that is, not paying toll fees), failing to comply with Commonwealth taxation law, driving offences, parking offences, and local law offences such as offences related to environmental management.

Table 4: The 10 most common offences by corporations by number of charges sentenced, Magistrates’ Court, 2009–10 to 2012–13

<table>
<thead>
<tr>
<th>Rank</th>
<th>Offence type</th>
<th>Infringement offence?</th>
<th>Number of charges sentenced</th>
<th>Percentage of charges with fines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Drive unregistered in toll zone (CityLink and EastLink combined) (Melbourne City Link Act 1995 (Vic) s 73(1); EastLink Project Act 2004 (Vic) s 204)</td>
<td>Yes</td>
<td>5,024</td>
<td>27.3%</td>
</tr>
<tr>
<td>2</td>
<td>Fail to comply with requirements under tax law (Commonwealth) (Taxation Administration Act 1953 (Cth) s 8C(1))</td>
<td>No</td>
<td>3,449</td>
<td>18.7%</td>
</tr>
<tr>
<td>3</td>
<td>Local law offences (unspecified)</td>
<td>Depends on offence</td>
<td>1,436</td>
<td>7.8%</td>
</tr>
<tr>
<td>4</td>
<td>Fail to purchase/obey ticket in paid parking area (Road Safety Road Rules 2009 (Vic))</td>
<td>Yes</td>
<td>843</td>
<td>4.6%</td>
</tr>
<tr>
<td>5</td>
<td>Fail to comply with requirements of conducting a food business (Food Act 1984 (Vic))</td>
<td>No</td>
<td>734</td>
<td>4.0%</td>
</tr>
<tr>
<td>6</td>
<td>Park for longer than indicated (Road Safety Road Rules 2009 (Vic))a</td>
<td>Yes</td>
<td>699</td>
<td>3.8%</td>
</tr>
<tr>
<td>7</td>
<td>Exceed relevant speed limit (Road Safety Road Rules 2009 (Vic)b</td>
<td>Yes</td>
<td>507</td>
<td>2.8%</td>
</tr>
<tr>
<td>8</td>
<td>Disobey 'no stopping' sign (Road Safety Road Rules 2009 (Vic)c</td>
<td>Yes</td>
<td>442</td>
<td>2.4%</td>
</tr>
<tr>
<td>9</td>
<td>Vehicle operator – breach mass limit (minor risk) (Road Safety Act 1986 (Vic) s 174(1); Road Safety (General) Regulations 2009 (Vic))</td>
<td>Yes</td>
<td>347</td>
<td>1.9%</td>
</tr>
<tr>
<td>10</td>
<td>Fail to give information to identify driver (Road Safety Act 1986 (Vic) s 60)</td>
<td>Yes</td>
<td>295</td>
<td>1.6%</td>
</tr>
</tbody>
</table>

a. Also contains data for offences charged under Road Safety (Road Rules) Regulations 1999 (Vic).
b. Ibid.
c. Ibid.
2.4.5 Most of these offences, with the exception of Commonwealth taxation offences, can be dealt with by way of infringement penalties.

2.4.6 In the County and Supreme Courts, only two offences had more than one charge sentenced to a fine between 2009–10 and 2012–13. These offences were:

- failure to maintain a safe working environment – *Occupational Health and Safety Act 1985 (Vic)* and *Occupational Health and Safety Act 2004 (Vic)* (40 charges); and
- failure to ensure people (other than employees) are not exposed to health and safety risks – *Occupational Health and Safety Act 1985 (Vic)* and *Occupational Health and Safety Act 2004 (Vic)* (5 charges).

2.5 Fine amounts

2.5.1 In determining the amount of a fine, the court must have regard to:

- the financial circumstances of the offender; 68
- the maximum fine for the offence; 69
- the maximum fine available in each court; and
- whether an aggregate fine is warranted. 70

2.5.2 Each of these considerations is discussed in detail below.

Financial circumstances of the offender

Financial circumstances must be taken into account

2.5.3 In general, the court must take into account (as far as practicable) the financial circumstances of the offender and the ‘nature of the burden’ that payment of the fine would impose. 71 This applies to both persons and corporations. (See [2.5.27] regarding the court’s consideration of the financial circumstances of corporations.)

2.5.4 Searle’s 2003 survey of New Zealand judges found that, although almost all judges thought that information about an offender’s income was necessary ‘always’ or ‘in most cases’, only half said that the actual information received was ‘adequate in most cases’. 72

2.5.5 The court must enquire as to the financial circumstances of the offender, not just to determine the amount of a fine to impose, but also to determine the manner in which it is to be paid (for example, if an order for time to pay, or an instalment order, is made). 73

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68. *Sentencing Act 1991 (Vic)* ss 50(1)–(3); from 1 September 2014, if not before: *Sentencing Act 1991 (Vic)* ss 52(1)–(2) (amended by *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic)*, provisions not yet in operation).

69. *Sentencing Act 1991 (Vic)* s 49(2); from 1 September 2014, if not before: *Sentencing Act 1991 (Vic)* ss 50(1)–(3) (amended by *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic)*, provisions not yet in operation). However, section 50(2) states that the court is not prevented from imposing a fine only because it has been unable to find out the financial circumstances of the offender; from 1 September 2014, if not before: *Sentencing Act 1991 (Vic)* s 52(2) (amended by *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic)*, provisions not yet in operation).

70. *Sentencing Act 1991 (Vic)* s 51(1).

71. *Sentencing Act 1991 (Vic)* s 50(1); from 1 September 2014, if not before: *Sentencing Act 1991 (Vic)* s 52(1) (amended by *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic)*, provisions not yet in operation). However, section 50(2) states that the court is not prevented from imposing a fine only because it has been unable to find out the financial circumstances of the offender; from 1 September 2014, if not before: *Sentencing Act 1991 (Vic)* s 52(2) (amended by *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic)*, provisions not yet in operation).

72. Searle (2003), above n 34, xiv.

73. *Sentencing Act 1991 (Vic)* s 50(1); from 1 September 2014, if not before: *Sentencing Act 1991 (Vic)* s 52(1) (amended by *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic)*, provisions not yet in operation).
2.5.6 In some jurisdictions (primarily Finland, Sweden, and Denmark)\textsuperscript{74} the challenge of tailoring a fine to the financial circumstances of the offender has been addressed (at least in principle) through the use of ‘day fines’ or ‘unit fines’. These are fines calculated on the basis of the offender’s income.

2.5.7 For example, in Finland, the day fine is calculated as one half of the offender’s daily disposable income after taxes, social security payments, and a basic living allowance have been deducted.\textsuperscript{75} The penalties for various offences are then stated in numbers of day fines. As a result, the value of a day fine imposed on offenders will vary (sometimes considerably) according to their income.

2.5.8 O’Malley notes that, while a seemingly attractive solution to the issue of determining capacity to pay, this form of fines has not been widely adopted in Australia or other common law countries (such as the United Kingdom):

> They have been toyed with, never taken up, and abandoned for many reasons—including the fact that the same offense would attract a swinging fine for a moderately wealthy person but a piddling fine for a pauper; leading to problems with perceptions of proportionality. Another limitation is that they work accurately only where after-tax income is a matter of public record.\textsuperscript{76}

2.5.9 The countries in which day fines have been implemented successfully rely on a degree of sharing of personal information between the income tax agency and the enforcement agencies, and this may be considered unreasonable in other countries. In a federation like Australia, for example, there are both practical and policy issues (including privacy concerns) related to sharing financial information between a Commonwealth agency (such as the Australian Taxation Office) and state-based law enforcement agencies.

2.5.10 In Victoria, the requirement to consider an offender’s financial circumstances in imposing a fine means that it is a central consideration in a plea hearing. The court enquires as to the offender’s level of income and financial commitments, and the offender has an opportunity to make submissions on this issue. While it is possible that courts are not always provided with the most detailed analysis of an offender’s financial circumstances, it is questionable whether there will ever be a need in Victorian sentencing law for a complex day fine model.

Defendants who fail to attend court – ex parte hearings

2.5.11 If a criminal proceeding has been initiated by summons and the defendant fails to attend court or to send a legal representative to appear on his or her behalf, the court may hear the case in the defendant’s absence (ex parte) in some circumstances.\textsuperscript{77} In such cases, it is unlikely that the court would have access to information regarding the financial circumstances of the offender. If the defendant is convicted and sentenced in his or her absence, he or she may apply to the Magistrates’ Court for a rehearing.\textsuperscript{78}

2.5.12 Between 2009–10 and 2012–13, the number of cases in the Magistrates’ Court proven on an ex parte basis has declined substantially, from 5.3% of proven matters in 2009–10 to 2.7% of proven matters in 2012–13.

\textsuperscript{74} Jurisdictions that have (or had) forms of day fines also include Norway, Germany, Sweden, Uruguay, Colombia, Guatemala, Ecuador, Paraguay, Honduras, Nicaragua, Venezuela, and Argentina: Edwin W. Zedlewski, Alternatives to Custodial Supervision: The Day Fine, Discussion Paper IV(J) 230401 (National Institute of Justice, 2010).


\textsuperscript{76} O’Malley (2011), above n 13, 547.

\textsuperscript{77} Criminal Procedure Act 2009 (Vic) s 80.

\textsuperscript{78} Criminal Procedure Act 2009 (Vic) s 88.
2.5.13 Finances were the most common sentence imposed in ex parte cases (12,456 of 13,151 cases or 94.7% of all ex parte sentences from 2009–10 to 2012–13), while dismissals were imposed in 2.3% of cases over the same period.

2.5.14 Given that fines can be imposed in the absence of the offender (unlike orders such as an adjourned undertaking or a community correction order, which require the offender to agree to the order), it is unsurprising that fines would be the most common sentence imposed for ex parte matters.

2.5.15 The absence of a defendant means that courts are unlikely to have information about the defendant’s financial situation available when imposing a fine. Despite this, the median amount of fines was slightly lower for cases given fines during an ex parte hearing compared with non-ex parte hearings: the median amount for ex parte hearings was $400 while the median for non-ex parte cases was $500.

2.5.16 This most likely reflects the fact that courts are unlikely to hear more serious matters in the absence of the defendant. Even within an offence type (for example, careless driving), the court is unlikely to hear more serious examples of the offence ex parte, as doing so removes the opportunity to send a message to the defendant during sentencing and limits the sentencing orders that can be imposed.

Penalty units

2.5.17 While maximum fines and infringement penalties in Victoria are commonly expressed in penalty units, fines imposed by courts are expressed in dollar amounts. Prior to 2004, 1 penalty unit equaled $100. From 2004 onwards, penalty units have been indexed annually by amounts fixed by the Treasurer.\(^7^9\)

2.5.18 For the financial year commencing 1 July 2012, however, the value of a penalty unit increased from $122.14 to $140.84 as a result of the Monetary Units Amendment Act 2012 (Vic), assented to on 13 June 2012. This represented a 12.5% increase on top of an annual indexation of 2.5%. In the Second Reading Speech for the Monetary Units Amendment Bill 2012, the Treasurer, Mr Kim Wells MP, stated:

This government is very clear that persons who offend against the laws of Victoria should be punished and that these punishments should have unwelcome consequences for those who offend. It is the intention of the government to increase fines so that people are further deterred from unlawful behaviour.\(^8^0\)

2.5.19 Since 2012, the annual increase of the penalty unit value has been in accordance with the consumer price index (CPI). On 1 July 2013, the penalty unit value increased from $140.84 to $144.36 representing the annual indexation of 2.5%.\(^8^1\)

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The imposition and enforcement of court fines and infringement penalties in Victoria

Maximum fine for an offence

In general

2.5.20 The maximum fine that can be imposed for an offence is usually prescribed in the provision that sets out the particular offence (expressed in a number of penalty units). If a maximum fine is not prescribed, the maximum is determined by the offence level.82

2.5.21 If an offence is punishable by a term of imprisonment other than life imprisonment, it is also punishable by a fine, whether in addition to or instead of imprisonment (unless there is legislation to the contrary).83 In this case, the maximum fine is 10 times more penalty units than the maximum number of months of imprisonment that may be imposed. For example, if the maximum term of imprisonment is 2 years (or 24 months), the maximum fine is 240 penalty units.

2.5.22 An offence punishable by a maximum term of life imprisonment is not punishable by a fine. Further, an offence that is punishable by Level 2 imprisonment (25 years) is punishable by a Level 2 fine in addition to (but not instead of) imprisonment, if the offender is not a corporation and unless the contrary intention appears.84

2.5.23 Table 5 shows the maximum fines applicable to each offence level and equivalent maximum term of imprisonment.

2.5.24 The relationship between the maximum term of imprisonment and the maximum fine bears a different relationship from the conversion rate for imprisonment on default of payment of court fines and infringement penalties. For example, six months equates to 60 penalty units in terms of the offence level. For fine default, one day in prison is equivalent to 1 penalty unit. In other words, 60 penalty units of unpaid fines would equate to two months in prison.

Table 5: Maximum fine that may be imposed for each penalty level, Sentencing Act 1991 (Vic)

<table>
<thead>
<tr>
<th>Offence level</th>
<th>Maximum term of imprisonment</th>
<th>Maximum fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Life</td>
<td>–</td>
</tr>
<tr>
<td>2</td>
<td>25 years</td>
<td>3,000 penalty units</td>
</tr>
<tr>
<td>3</td>
<td>20 years</td>
<td>2,400 penalty units</td>
</tr>
<tr>
<td>4</td>
<td>15 years</td>
<td>1,800 penalty units</td>
</tr>
<tr>
<td>5</td>
<td>10 years</td>
<td>1,200 penalty units</td>
</tr>
<tr>
<td>6</td>
<td>5 years</td>
<td>600 penalty units</td>
</tr>
<tr>
<td>7</td>
<td>2 years</td>
<td>240 penalty units</td>
</tr>
<tr>
<td>8</td>
<td>1 year</td>
<td>120 penalty units</td>
</tr>
<tr>
<td>9</td>
<td>6 months</td>
<td>60 penalty units</td>
</tr>
<tr>
<td>10</td>
<td>–</td>
<td>10 penalty units</td>
</tr>
<tr>
<td>11</td>
<td>–</td>
<td>5 penalty units</td>
</tr>
<tr>
<td>12</td>
<td>–</td>
<td>1 penalty unit</td>
</tr>
</tbody>
</table>

82. Sentencing Act 1991 (Vic) s 109(2).
The maximum fine for corporate offenders

2.5.25 Unless otherwise specified in legislation, the maximum fine that may be imposed on a corporation will be the same as that for an individual.

2.5.26 If a corporation is found guilty of an offence under the Crimes Act 1958 (Vic) on indictment in the higher courts, however, the maximum fine that may be imposed is five times the maximum fine that may be imposed on a person. If a corporation is found guilty of an offence under the Crimes Act 1958 (Vic) in the Magistrates’ Court, the maximum fine that the court may impose on the corporation is 2,500 penalty units.

2.5.27 As it does with natural persons, the court must consider the financial circumstances of a corporate offender when determining the amount of a fine to impose. For corporations, the court should consider the pre-tax profit of the corporation rather than gross turnover.

2.5.28 Who the fine actually affects may be a consideration in determining the amount of a fine to impose. Chesterman notes that:

> when punishing a corporation, the real burden is likely to fall upon shareholders — many of whom may well be entirely free of any criminal liability themselves — and, if the fine is enough to cripple the company, it is ultimately the employees who may suffer. Any pecuniary penalty, therefore, must balance the need to appear ‘substantial’ against the concern that it cannot be so large as to do any real damage to the company.

2.5.29 Similarly, common law authority suggests that, in the case of a public corporation, the fine does not need to be so extreme as to affect share price or dividends, or to drive the corporation out of existence. It should, however, be appropriate to send a clear message to shareholders.

2.5.30 Other authority suggests that there may be cases where the fine should be so large as to effectively ‘incapacitate’ the offending corporation from conducting business, and so prevent it from reoffending. In very serious cases of corporate offending, it may be appropriate to impose a fine that is beyond the corporation’s ability to pay. In other words, ‘there may be cases where the offences are so serious that the defendant ought not to be in business’.

2.5.31 The reality is that many corporations that receive fines are likely to be small businesses rather than large corporations with multiple shareholders.
The imposition and enforcement of court fines and infringement penalties in Victoria

Maximum fine in each court

2.5.32 The maximum fine that the Magistrates’ Court can impose on a person convicted of an indictable offence heard and determined summarily is 500 penalty units.93 As at 1 March 2014, 500 penalty units amounted to $72,180.00.

2.5.33 The maximum fine that may be imposed in the County Court and the Supreme Court is determined by the maximum penalty for the offence concerned.

Individual and aggregate fines

Individual fines

2.5.34 Unless otherwise ordered, a separate fine will normally be imposed for each offence. The Sentencing Act does not contain provisions regarding concurrency between fines, unlike sentences of imprisonment, however. As a result, multiple fines imposed in one sentence will be accumulated.

2.5.35 If a large number of offences are sentenced to a fine, the cumulated fine may be disproportionate to the offending. To avoid this result, the court may moderate the individual fines or, where available, impose an aggregate fine, to reach a proportionate total sentence.94

Aggregate fines

2.5.36 A court may impose an aggregate fine, that is, a single fine, as punishment for more than one offence, provided that those offences ‘are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character’.95

2.5.37 When imposing an aggregate fine, the court does not have to specify the portion of the aggregate fine that was imposed for each single offence.

2.5.38 If more than one charge is sentenced, the combined maximum penalties for the offences for each charge will be the maximum amount that can be imposed for an aggregate fine. If an aggregate fine is imposed, however, the amount of that fine must reflect the principle of totality.96

Fine amounts imposed on natural persons

2.5.39 Figure 2 shows the median fine amounts imposed on natural persons in the Magistrates’ Court, County Court, and Supreme Court between 2009–10 and 2012–13.

2.5.40 For each year from 2009–10 to 2012–13, the median fine imposed on persons in the Magistrates’ Court was $500. The median fine imposed in the County Court was similar: $500 for each year other than 2011–12, when the median fine was $580. In the Supreme Court, where fines are exceedingly rare, the median fine ranged from $800 in 2009–10 to $3,000 in 2011–12.

93. Sentencing Act 1991 (Vic) s 112A.
95. Sentencing Act 1991 (Vic) ss 51(1)-(3).
2.5.41 Figure 3 shows the real (inflation-adjusted)\(^{98}\) median fine amounts imposed in the Magistrates’ Court between 2004–05 and 2012–13. It shows that fine amounts have steadily declined when inflation is taken into account, using December 2012 dollars. This decline has occurred despite annual increases in maximum fine amounts in line with penalty unit adjustments.\(^{99}\)

2.5.42 The maximum fine, however, is just one of many factors that the court must consider when imposing a fine. The court is also bound to consider the financial considerations of the offender. Nevertheless, these data tend to show that the penalty unit mechanism may not be achieving its desired objective of increasing fine levels in respect of court fines because court fines are imposed in dollars not units.

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\(^{97}\) The Supreme Court did not sentence any person to a fine during 2012–13.

\(^{98}\) Data for converting nominal fine amounts into real dollar fine amounts were obtained from Australian Bureau of Statistics, Consumer Price Index, Australia, cat. no. 6401.0 (2013) Tables 1 and 2, CPI: All Groups, Index Numbers and Percentage Changes (time series spreadsheets). For further information see Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ <www.sentencingcouncil.vic.gov.au>.

\(^{99}\) In contrast, because infringement penalties are prescribed in fixed penalty unit amounts, these amounts increase in accordance with inflation as the penalty unit value is increased annually to account for inflation. See [2.5.17]–[2.5.19] and [3.8.1]–[3.8.8].
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Figure 4: Real median fine amounts (in December 2012 dollars), for the offence of driving while disqualified, Magistrates’ Court, 2004–05 to 2012–13

Analysis has been conducted on a number of offences for which fines are frequently imposed in order to determine whether there have been significant declines in real fine amounts for particular offences. Figure 4 shows that between 2004–05 and 2012–13 there was a substantial decline in real fine amounts for driving while disqualified.

The decline in the real value of fines for driving while disqualified is particularly important in light of the changes to the maximum penalty for this offence and a consequential change in sentencing practices.

From 1 May 2011, the mandatory imprisonment sentence of 12 months for a second or subsequent offence of driving while disqualified was abolished. The Council’s Community Correction Orders: Monitoring Report showed that, between 2010 and 2012, the proportion of offenders sentenced under this offence who received a fine increased from 58.1% to 74.7%, while the number of people who received a suspended sentence decreased.

Given that driving while disqualified is the offence for which fines are most frequently imposed in the Magistrates’ Court (8.2% of all charges against both natural persons and corporations for which a fine was imposed between 2009–10 and 2012–13), it is likely that the decline in real fine amounts for this offence contributed substantially to the decline in real fine amounts overall in the Magistrates’ Court.

Real fine amounts remained broadly steady between 2004–05 and 2012–13 for other offences examined, including:

- exceeding the relevant speed limit;
- exceeding the prescribed concentration of alcohol in breath within three hours of driving; and
- parking for longer than indicated/allowed.

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100. Aggregate fines are excluded from this graph, as they relate to a group of charges in a case rather than an individual charge.
101. Road Safety Act 1986 (Vic) s 30(1).
103. Road Safety Road Rules 2009 (Vic) r 20(1).
104. Road Safety Act 1986 (Vic) s 49(1).
105. Road Safety Road Rules 2009 (Vic) r 205.
Fine amounts imposed on corporations

2.5.48 The median fine amounts imposed in the Magistrates’ Court between 2009–10 and 2012–13 against corporations were substantially less than the median amounts imposed on natural persons over the same period (see Figure 2).

2.5.49 Figure 5 shows that the median fine against corporations in the Magistrates’ Court ranged from a low of $170 in 2010–11 to $302.50 in 2012–13.

2.5.50 The median fine amount imposed in the County Court between 2009–10 and 2012–13 against corporations ranged from $80,000 in 2010–11 to $340,000 in 2012–13. In contrast to fines imposed against corporations in the Magistrates’ Court, these fines are much larger than those imposed on natural persons and are likely to have included offences under the Occupational Health and Safety Act 2004 (Vic).

2.5.51 There were no fines imposed against corporations in the Supreme Court between 2009–10 to 2012–13.

Figure 5: Median fine amounts in Magistrates’ Court cases for corporations, 2009–10 to 2012–13

![Median fine amounts in Magistrates’ Court cases for corporations, 2009–10 to 2012–13](image)
2.6 Recording a conviction

2.6.1 When imposing a fine, courts have the discretion as to whether or not to record a conviction.106

2.6.2 When exercising this discretion, the court must have regard to:

- the nature of the offence;
- the character and past history of the offender; and
- the impact of the recording of a conviction on the offender's economic or social wellbeing or on his or her employment prospects.107

2.6.3 Convictions were recorded in the majority of cases (63.6%) in which a fine was imposed in the Magistrates' Court from 2009–10 to 2012–13. This contrasts with the proportion of cases receiving an adjourned undertaking in which a conviction was recorded (20.3%). Those cases receiving a community-based order (83.6%) or a community correction order (100%) had a much higher percentage of cases with convictions recorded.

2.6.4 While a fine may be considered a 'low-end' order, the recording of a conviction in a majority of cases in which a fine was imposed suggests that courts consider a fine to be an appropriate sentence for offences serious enough to warrant a conviction.

2.7 Fines as an additional sentence

2.7.1 A fine may be imposed in addition to, or instead of, any other sentence.108

Fines and imprisonment

2.7.2 A number of common law principles apply to the discretion to use a fine as an additional sentence to a term of imprisonment. These include the following:

- an increase in the maximum fine by parliament, as an alternative to or cumulative upon a custodial sentence, may be taken as an indication that the offence can properly be dealt with by an appropriate fine;109
- the combination of imprisonment and a fine may allow for a reduction in the term of imprisonment that would otherwise have been appropriate to the offence;110
- a court cannot impose a fine in addition to a prison sentence that is itself the maximum sentence permissible for the offence;111 and
- a court should be wary of adding a fine to a sentence of imprisonment where default, and thus an additional sentence, is likely.112

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108. Sentencing Act 1991 (Vic) s 49(1); the power to order a fine in addition to another sentence is subject to some limitations.
Fines as an additional sentence according to court level

Magistrates’ Court

2.7.3 In the Magistrates’ Court, a fine was the only sentence ordered in the overwhelming majority of cases (89.7%) in which a fine was imposed from 2009–10 to 2012–13. This includes cases where an aggregate fine was imposed for more than one offence.

2.7.4 Over the same period, an additional sentence type was ordered in only 9.3% of cases where a fine was imposed. It was very rare for two or more additional sentence types to be ordered in cases where fines were imposed (this occurred in only 0.9% of cases).

2.7.5 Figure 6 shows the other sentence types ordered in cases where fines were imposed in the Magistrates’ Court from 2009–10 to 2012–13. Wholly suspended sentences of imprisonment were the most common sentence to accompany a fine (ordered in 4.2% of cases where a fine was imposed), followed by imprisonment (ordered in 2.2% of cases where a fine was imposed).

Figure 6: Types of additional sentences ordered in cases where a fine was imposed, Magistrates’ Court, 2009–10 to 2012–13

<table>
<thead>
<tr>
<th>Type of sentence</th>
<th>% cases with fines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholly suspended sentence</td>
<td>4.2</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>2.2</td>
</tr>
<tr>
<td>Adjourned undertaking</td>
<td>1.2</td>
</tr>
<tr>
<td>Community-based order</td>
<td>0.8</td>
</tr>
<tr>
<td>Intensive correction order</td>
<td>0.7</td>
</tr>
<tr>
<td>Convicted and discharged</td>
<td>0.6</td>
</tr>
<tr>
<td>Community correction order</td>
<td>0.5</td>
</tr>
<tr>
<td>Partially suspended sentence</td>
<td>0.5</td>
</tr>
<tr>
<td>Dismissed</td>
<td>0.4</td>
</tr>
<tr>
<td>Youth detention</td>
<td>0.1</td>
</tr>
<tr>
<td>Other*</td>
<td>0.0</td>
</tr>
</tbody>
</table>

*Other sentences are those sentences that made up less than 1% of the sentences imposed, including combined custody and treatment orders, drug treatment orders, and sentences imposed under Commonwealth legislation.

113. This figure only counts proven sentences. It excludes other results that are not sentences, such as charges that are struck out or diverted. The total proportion of cases with additional sentences exceeds 9.3% as some cases received more than one additional sentence.
County and Supreme Courts

2.7.6 In the majority of cases (81.4%) where an individual was sentenced to a fine in the County or Supreme Court from 2009–10 to 2012–13, the fine was accompanied by at least one other sentence. In comparison, in all cases where a corporation was sentenced to a fine over the same period, the fine was the only sentence imposed.

2.7.7 In cases where an individual was sentenced to a fine, one other type of sentence was imposed in 71% of cases. A larger proportion (10.4%) of cases in the County and Supreme Courts received two or more other types of sentences compared with cases in the Magistrates’ Court.

2.7.8 Figure 7 shows the other sentence types ordered in cases where fines were imposed on persons in the County and Supreme Courts from 2009–10 to 2012–13. Sentences of imprisonment were the most common sentence to accompany a fine (ordered in 40.0% of cases where a fine was imposed). Wholly suspended sentences of imprisonment were the next most common type of sentence to accompany a fine (ordered in 21.4% of cases where a fine was imposed).

2.7.9 Additional sentence types are far more commonly ordered alongside fines in the County and Supreme Courts than in the Magistrates’ Court. This is likely explained by the more serious offending dealt with in the higher courts.

Figure 7: Types of additional sentences ordered in cases where fines were imposed on persons, County and Supreme Courts, 2009–10 to 2012–13

- Imprisonment: 40.0%
- Wholly suspended sentence: 21.4%
- Community-based order: 8.9%
- Partially suspended sentence: 7.2%
- Community correction order: 4.8%
- Wholly suspended sentence with RRO (Cth): 2.9%
- Youth training centre: 2.7%
- Convicted and discharged: 1.6%
- Intensive correction order: 1.3%
- Adjourned undertaking: 0.8%
- Partially suspended sentence with RRO (Cth): 0.8%

This figure only counts proven sentences. It excludes other results that are not sentences, such as charges that are struck out or diverted. The total proportion of cases with additional sentences exceeds 81.4% as some cases received more than one additional sentence.
2.8 Effectiveness of court fines

2.8.1 Along with fairness, compliance goes to the heart of the credibility of the court fine as a sentence. This relationship was recognised by Victorian Magistrate Jelena Popovic, who described ‘meaningful’ sentencing as that which:

ensures that there is a realistic consequence for the offending behaviour which addresses the basic tenets of sentencing:

- that the penalty be proportionate to the offending,
- that the offending is ‘penalised’,
- that it reduces further offending.115

2.8.2 This section examines the effectiveness of court fines from three perspectives:

- **Compliance.** Are fine recipients (including corporations) paying their fines, or are they escaping punishment by failing to pay? To what extent are fines achieving their intended purposes?
- **Efficiency.** At what stage in the process do fine recipients pay?
- **Efficacy:**
  - What proportion of fine ‘payers’ actually pay their fine, and what proportion discharge their fine through other means, such as community work?
  - To what extent are fine recipients continuing to reoffend?
  - Is there any correlation between those who reoffend and those who don’t pay their fines?

Payment, compliance, and credibility

2.8.3 A court fine or infringement penalty could be considered a potential criminal sanction until it has been paid. Aside from the possible denunciatory effect resulting from the process of imposing the fine, the actual sanction is not complete – and a person’s financial capacity remains unaffected – until payment has been made.

2.8.4 Payment is therefore critical, not just to the completion of the sanction, but also to the credibility of the system that imposes the fine or penalty. As Hillsman and Mahoney note:

the efficacy of fines as criminal penalties rests on the ability of courts to collect them, to do so expeditiously, and to compel payment if the offender fails to meet his or her obligation to the court. Imposing a fine can be problematic because enforcing this sentence requires an administrative process, typically within the responsibility of the court, that takes place while the offender is at liberty. If judges cannot assume the fine will be collected, and if the offender can assume he need not pay it, the attractiveness of this flexible and relatively inexpensive sentencing device is seriously eroded, along with the credibility and authority of the court that imposes the fine and the administrative structure that attempts to enforce it.116

2.8.5 If a court fine remains unpaid and unenforced, the offender has, as a result of that sentence, in effect avoided any sanction for his or her offending. Further, the fine has not achieved its sentencing purposes.

Payment of court fines in the Magistrates’ Court

2.8.6 Limited data are available on the payment of court fines. Under the current system each court collects its own fines, and, as discussed at [4.3.150]–[4.3.153], the courts’ IT systems are not integrated. Data were available on the payment of Magistrates’ Court fines but were not available on the payment of court fines imposed in the County Court or the Supreme Court. As a result, this discussion is limited to the Magistrates’ Court.

2.8.7 Further, data were available at the case level only. In other words, payment made to the court is assigned to the relevant case containing a fine (or multiple fines), but not assigned to individual fines imposed on a charge (the data methodology for this report is available at <www.sentencingcouncil.vic.gov.au>).

2.8.8 Figure 8 shows the percentage of cases with fines by year of sentencing, according to whether payment of the fine had been completed as at 30 June 2013. For most years, just over half of the cases given fines had completed payment of the amount owed.

2.8.9 Approximately 61% of cases that received a court fine in the Magistrates’ Court in 2004–05 had completed payment by 30 June 2013. This payment includes satisfaction of the court fine through community work or imprisonment (discussed at [4.4.1]–[4.4.28] and in Chapters 6 and 7). The balance (39%) includes people who either have not made any payments or have only made part payment as at 30 June 2013.

2.8.10 Data for more recent years, and in particular the data for 2012–13, show an expected higher proportion of cases that have not completed payment than cases of fines imposed in previous years. This is because more recent cases may still involve an instalment order or a time to pay order (and default may not yet have occurred). Further, enforcement measures requiring discharge through community work or conversion to imprisonment on default are unlikely to have been imposed for more recent cases.

Figure 8: Percentage and number of cases with fines that have completed payment, Magistrates’ Court, 2004–05 to 2012–13

This graph is based on only the amount owed by a court-imposed fine. Amounts owed due to non-fine orders, such as compensation orders, court costs, and other fees are not included in calculating whether the payment is complete or incomplete.
2.8.11 Figure 9 displays the degree of payment of Magistrates’ Court fines by the type of offender for cases from 2004–05 to 2012–13. Corporate offenders were more likely to have completely repaid their fines (61.3%), compared with natural persons (52.8%). Natural persons were more likely than corporations to have not made any form of payment.

2.8.12 Figure 9 also shows that 40.2% of cases with fines against natural persons and 36.5% of cases with fines against corporations imposed by the Magistrates’ Court between 2004–05 and 2012–13 had no payment at all by 30 June 2013.

2.8.13 Corporate offenders were likely to have either completed payment or not made any payment at all, with only 2.1% of corporations having made part payment. Natural persons were more likely than corporations to have made some payment (7.1%).

Payment after a time to pay or instalment order

2.8.14 After a fine has been imposed, an offender may apply to the court for further time to pay or be subject to an instalment order, which, as the name suggests, requires payment of the fine by instalments.119

2.8.15 Figure 10 outlines the percentage of cases in the Magistrates’ Court by the degree of success in paying a fine, and whether cases were given a time to pay order or instalment order.
The imposition and enforcement of court fines and infringement penalties in Victoria

2.8.16 Just over half of cases that received only a time to pay order managed to complete payments (53.1%), compared with cases that received an instalment order only (46.0%). However, this could be because instalment orders may simply take longer to complete payment, as opposed to time to pay orders, which require upfront payments before the relevant date.

2.8.17 It is certainly true that while cases that only had an instalment order may have a lower percentage of completing payments than time to pay orders, such cases also have a significantly higher percentage of having made at least some progress in paying back the fines, compared with cases that were only granted a time to pay order (18.8% for cases given an instalment order compared with 1.5% for cases given a time to pay order).

2.8.18 The cases that received both a time to pay order and an instalment order during the course of paying back the fines actually had the highest percentages of cases either completing payments (55%) or making part payments (28.3%), compared with cases that received a time to pay order or an instalment order in isolation.

What happens to cases where no payments are made?

2.8.19 In order to enforce fine payments, the court may issue a warrant against an offender who is in default of payment of a fine for more than one month.\(^1\) Figure 11 provides a breakdown of the warrant status of cases involving natural persons and corporations given a fine between 2004–05 and 2012–13, according to whether payment has been made (as at 30 June 2013).

Figure 11: Cases given a fine from 2004–05 to 2012–13, by payment status and warrant status, as at 30 June 2013, Magistrates’ Court\(^2\)

\[^{1}\text{Sentencing Act 1991 (Vic) s 62(1); the period for default will be 28 days from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69(4) (Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic)).}\]

\[^{2}\text{There was a small percentage of cases against natural persons (0.2%) that were unknown or there was insufficient detail regarding the status of the warrants. This category has been excluded from the graph, as it made no noticeable difference to the results displayed.}\]
2.8.20 The majority of cases where payment had been completed did not require the court to issue a warrant (66.6% for natural persons and 77% for corporations).

2.8.21 Figure 11 also shows that in the majority of cases where only part payment or no payment has been made, the warrant has not been executed or served (‘unenforced’), or the court has not issued a warrant.

2.8.22 Of significance are the data for cases where either part payment or no payment has been made. For natural persons, 75.8% of cases with no payment have an unenforced warrant and 71.3% of cases with part payment have an unenforced warrant.

2.8.23 For corporations, 86.6% of cases with no payment have an unenforced warrant, while 64.2% of cases with part payment have an unenforced warrant.

Unpaid fine cases without warrants or with unenforced warrants

2.8.24 Figure 12 shows the current warrant status for cases where a fine was imposed but no payment was received as at 30 June 2013. In the majority of those cases, either no warrant was issued or a warrant for fine default was issued by the court but was not enforced.

2.8.25 The percentage of unenforced warrants for cases where no payment has been made ranges from 73.2% (or 11,300 cases from 2004–05) to 87.7% (or 19,607 cases from 2011–12).\(^{123}\)

2.8.26 For those cases where a fine was imposed in 2004–05 (representing the lowest percentage of unenforced warrants), the ratio of unenforced warrants to warrants that have been executed or served is almost 5:1.\(^ {124}\)

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\(^{123}\) The data for 2012–13 have been excluded from this analysis for the reasons stated at [2.8.10].

\(^{124}\) For every one executed warrant, there are five unexecuted warrants.

\(^{125}\) There was a small percentage of cases (0.1%) which was unknown or had insufficient detail regarding the status of its warrants. This category has been excluded from the graph, as it made no noticeable difference to the results displayed.
Reasons why court fine default warrants have not been issued or executed

2.8.27 A number of reasons may explain the significant proportion of cases where no payment has been received that have either no warrant or an unenforced warrant.

Ombudsman’s report on unenforced warrants

2.8.28 The Victorian Ombudsman’s Own Motion Investigation into Unenforced Warrants\(^{126}\) (‘Ombudsman’s report’) examined unenforced infringement penalty warrants, court fine default warrants, and interstate warrants and presented the Ombudsman’s views as to why so many warrants were unenforced. Concerns that are relevant to the enforcement of court fine default warrants include:

- limited resources – there were 172 Sheriff’s officers to enforce 3.5 million warrants;
- out-dated information technology – the Sheriff’s IT system is 15 years old and has a number of deficiencies;
- problems with data sharing and reliability, including the inability to access alternative address data; and
- poor enforcement strategies – Sheriff’s officers do not prioritise warrants but are influenced by location and convenience (their own location and the addresses of offenders).\(^{127}\)

2.8.29 The Victorian Ombudsman made a number of recommendations to address each of these concerns (discussed further in Chapters 4 and 5).

Person may have been resentenced under section 61(1)

2.8.30 A person can apply for variation of an instalment order or a time to pay order. One consequence of this application is that a court may resentence the applicant.\(^{128}\) The data available to the Council do not show if such an application has been made and the offender has been resentenced to an order other than a fine. In such cases, the data will continue to display the cases as ‘unpaid’. In light of the small number of applications under section 61(1), however, this reason for fine default warrants not being issued is unlikely to have significantly influenced the data.

Person may be deceased

2.8.31 The person in default may be deceased. This fact is not recorded in the data, and so the debt will remain listed as ‘unpaid’. This reason for fine default warrants not being issued, however, is unlikely to have significantly influenced the data.

Implications of data on unenforced court fine default warrants

2.8.32 Currently, the use of enforcement sanctions for court fine default requires the execution of a warrant against the person in default in order to bring him or her before the court. If a warrant has not been issued, or has been issued but remains unenforced, no sanctions under the Sentencing Act can be applied.

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\(^{126}\) Victorian Ombudsman (2013), above n 3.

\(^{127}\) Victorian Ombudsman (2013), above n 3, 6–7.

\(^{128}\) Sentencing Act 1991 (Vic) s 61(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 63(2) (Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
The data in Figures 11 and 12 strongly suggest that, in the absence of reforms to increase the enforcement of court fine default warrants, or reforms to the procedure for the enforcement of court fines, the rate of payment of court fines is unlikely to improve.

Any examination of the effectiveness of the different sanctions available to the court for the enforcement of fines must be undertaken in light of this data.

Recommendations for the harmonisation of the enforcement of court fines and infringement penalties, including centralising management and providing additional sanctions, are discussed in Chapters 4 and 5.

**Effectiveness of court fines and manner of discharge**

Establishing whether a court fine is effective as a sentence requires examination of not only how many people pay their fines but also the manner in which people pay them.

The ability to discharge a court fine by way of community work or imprisonment means that, in effect, the fine may act merely as a temporary sentence. In such circumstances, it may be questioned why the ultimate sentencing order, or an alternative order, was not imposed in the first place.

Given that a community correction order is a more serious sentence than a fine in the sentencing hierarchy, the principle of parsimony dictates that it should only be imposed where a less serious sentencing order would not achieve the purposes of the sentence.\(^{129}\)

If a fine is the appropriate penalty in terms of offence seriousness, as a matter of fairness the offender should not receive a more severe sentence merely because he or she does not have the means to pay. Further, if a fine was determined to be the most appropriate penalty on the basis that, for example, the offender was considered an unsuitable candidate for community work or the seriousness of the offence did not warrant imprisonment, then a court ordering conversion of the fine to either of those orders at a later date may also be faced with the same issues.

Another issue is the fact that it costs the state to allow an offender to complete community work, and so one of the perceived advantages of a fine (such as it being a relatively low-cost sanction for the state to administer) may not be sustained if the fine is not the ultimate sanction imposed for the initial criminal behaviour.

**Unpaid community work**

In Victoria, a court fine may be discharged through community work in two ways:

- where the offender applies to the court for a fine conversion order,\(^{130}\) or
- where an offender in default of payment of a court fine is ordered to complete a fine default unpaid community work order (and the offender consents).\(^{131}\)

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129. Sentencing Act 1991 (Vic) s 5(3).
2.8.42 Under each order, the value of unpaid community work is one hour for each 0.2 of a penalty unit or part of 0.2 of a penalty unit. A fine may be converted to community work up to the equivalent of 100 penalty units, with a minimum of 8 and a maximum of 500 hours. For 2013–14, this means that one hour of community work is equivalent to $28.88, and the maximum amount of a court fine that may be discharged through a community work order is $14,436.

2.8.43 The ability to apply to complete unpaid community work as payment for a fine is limited to court fines.

Imprisonment

2.8.44 A person in default of payment of a court fine may be ordered to serve a term of imprisonment of one day for each penalty unit (or part thereof) up to a maximum of 24 months.

Methods of payment or discharge

Completed payment

2.8.45 Between 2004–05 and 2012–13, for over 94% of those cases where payment was complete, the fine or fines were paid solely by monetary payment. For a smaller proportion (6%) of cases where payment was complete, the fine or fines were discharged through non-monetary methods (such as converting the fine to community work or a period of imprisonment) or a combination of monetary and non-monetary methods.

Incomplete payment

2.8.46 Over the same period, for the majority of cases where the fine or fines were not completely paid, there had been no payments at all (85.2%). Of the cases where some form of payment or discharge had been made, for a small percentage (14.3%) some monetary payment had been made and for a very small percentage (0.36%) a portion of the fine(s) had been discharged through non-monetary methods.

Proportion of court fine cases given a community work order

2.8.47 Figure 13 shows that 12.6% of cases given a fine in 2004–05 later received community work, either through a fine default unpaid community work order or through the offender applying for a fine conversion order. The percentage of cases repaying a fine through community work steadily decreases for more recent fines. This is most likely due to more recent cases not yet defaulting on payment, and so not yet having been ordered to perform community work.

2.8.48 In general, offenders were more likely to successfully pay their fines (56.1%) in cases without community work than in cases that received community work (17.0%). This may be due to people on community work having more difficulty repaying their fines through this method, or alternatively, people having difficulty repaying their fines through monetary methods and having to resort to community work to discharge the outstanding balance.

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133. Infringement notice recipients who have received an infringement warrant may be eligible for a community work permit from the Sheriff; however, this cannot be requested before enforcement commences.


135. Sentencing Act 1991 (Vic) s 63(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69N (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
The low rate of successful discharge through a community work order is likely to reflect the circumstances of the offender that led to the inability to pay the fine monetarily, rather than being a consequence of the order.

Proportion of court fine cases given community work, imprisonment, or both

The use of community work and imprisonment as means of discharging a fine is not widespread, as Figure 14 demonstrates. Of the court fines issued in 2004–05, less than 10% had been subject to an order for community work alone, and 8.1% to an order for imprisonment alone, by 30 June 2013.

This includes both fine conversion orders (community work applied for by the offender) and fine default unpaid community work orders (unpaid community work ordered by the court, when a person is in default).
Proportion of fine debt paid

2.8.51 On average, in cases that were not subject to a community work order, offenders had paid off 58.4% of their required fine amount, while in cases subject to a community work order, offenders had, on average, only discharged 23.6% of their required fine amount. Those offenders who were subject to an order for community work, on average, tended to have more difficulty discharging their fine amount.

2.8.52 Again, this is not likely to be a consequence of the order; but rather may reflect the circumstances of the offender that were associated with the inability of the offender to pay the fine monetarily in the first place.

Reoffending following court fines

2.8.53 Court fines are imposed in a principled manner, meaning that issues associated with proportionality, equality, parity, parsimony, and totality have been taken into consideration at the time of sentencing.

2.8.54 Given this, it is important to consider how the imposition of this sanction relates to the sentencing purposes, particularly with respect to:

- (a) the specific deterrent effect of this sanction;
- (b) the extent to which the fine acts as punishment; and
- (c) denunciation.

2.8.55 One way of assessing these purposes is to examine the effectiveness of court fines with respect to reoffending, and particularly with respect to reoffending as a function of fine payment. This section explores reoffending as a function of offender characteristics and payment, and also with respect to fines imposed for a range of offence types.

Assumptions underlying the reoffending database

2.8.56 This analysis utilises the Council’s reoffending database, which collects data from all of the higher courts, the Magistrates’ Court, and the Children’s Court.

2.8.57 Analysing reoffending involves two main assumptions:

- **Selecting an index period for the ‘initial’ instance of offending.** The 2009–10 financial year was selected as the index with the focus on fines imposed in the Magistrates’ Court. During the index period, 35,228 fines were imposed in the Magistrates’ Court, which represented 45.3% of all charges and 64.9% of all sentenced cases.

- **Selecting a post-offending time period within which subsequent offending (reoffending) will be searched.** The post-offending time period was fixed to the two years following the index offence (allowing the calculation of two-year reoffending rates). Subsequent sentences could have been imposed in the Magistrates’ Court or the higher courts.

2.8.58 The index year data were matched with subsequent sentencing records in the reoffending database using a technique based on full name and date of birth, but with scope to match data despite the presence of common mistakes and alternative spellings (such as phonetic spelling).
Reoffending following imposition of a fine

2.8.59 The overall two-year reoffending rate following a Magistrates’ Court fine was 21.9%, with separate rates presented as a function of the offender’s gender, broad age group, payment success (giving an indication of whether a fine was unpaid, partially paid, or completely paid), and prior sentence.

2.8.60 Figure 15 demonstrates that reoffending declines with age, is lower for females, and is lower for people who have no prior sentences (that is, those people who had no other sentence than the initial instance of offending during the index period). All of these findings are consistent with expectations based on prior research.

2.8.61 Reoffending is also lower for people who complete their fine repayments. This does not mean that fine payment ‘causes’ a reduction in reoffending. Instead, it is more likely that a person who is able to complete payment may have other circumstances, such as employment status, general life stability, and social engagement, that tend to reduce the likelihood of reoffending.

2.8.62 Logistic regression modelling was undertaken to examine the relationship between these factors and reoffending, and a significant model fit was produced, confirming that prior offending, age, gender, and payment were all statistically significant predictors of reoffending.

2.8.63 Any consideration of the effectiveness of fines as a sentence must have regard to the fact that, as these data demonstrate, roughly one in five offenders had received a subsequent sentence in the two years following the imposition of a fine in the Magistrates’ Court.

Figure 15: Reoffending rate to June 2013 for offenders who received a Magistrates’ Court fine between July 2009 and June 2011, by gender, age of offender, repayment success, and prior sentence.
Relationship between offence type, payment, and reoffending

Reoffending as a function of the type of initial offending was also examined across the 20 most common offences to receive a fine in the index period (Figure 16).

Figure 16: Two-year reoffending rate for the 20 most common offences to receive a fine, index period July 2009 to June 2010

<table>
<thead>
<tr>
<th>Principal offence</th>
<th>Reoffending rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shop theft (n = 753)</td>
<td>43.3</td>
</tr>
<tr>
<td>Possess cannabis (n = 391)</td>
<td>37.1</td>
</tr>
<tr>
<td>Criminal damage (intent damage/destroy) (n = 299)</td>
<td>31.8</td>
</tr>
<tr>
<td>Fail to answer bail (n = 404)</td>
<td>30.9</td>
</tr>
<tr>
<td>Theft (n = 388)</td>
<td>30.7</td>
</tr>
<tr>
<td>Unlicensed driving (n = 574)</td>
<td>29.1</td>
</tr>
<tr>
<td>Unlawful assault (n = 769)</td>
<td>27.2</td>
</tr>
<tr>
<td>Drive in a manner dangerous (n = 498)</td>
<td>26.9</td>
</tr>
<tr>
<td>Recklessly cause injury (n = 682)</td>
<td>25.7</td>
</tr>
<tr>
<td>Drive without L plates displayed (n = 927)</td>
<td>24.4</td>
</tr>
<tr>
<td>Drive while disqualified (n = 1,783)</td>
<td>23.2</td>
</tr>
<tr>
<td>Cultivate narcotic plant – cannabis (n = 308)</td>
<td>23.1</td>
</tr>
<tr>
<td>Drive while authorisation suspended (n = 4,553)</td>
<td>20.6</td>
</tr>
<tr>
<td>Careless driving (n = 1,709)</td>
<td>17.6</td>
</tr>
<tr>
<td>Careless driving of a motor vehicle (n = 540)</td>
<td>17.0</td>
</tr>
<tr>
<td>Exceed prescribed concentration 3 hours – breath – drive vehicle (n = 4,514)</td>
<td>16.3</td>
</tr>
<tr>
<td>Fail to produce valid ticket – passenger vehicle (n = 221)</td>
<td>14.5</td>
</tr>
<tr>
<td>Use unregistered motor vehicle – highway (n = 309)</td>
<td>13.9</td>
</tr>
<tr>
<td>Exceed signed speed limit – 100 kph (n = 659)</td>
<td>12.9</td>
</tr>
<tr>
<td>Exceed signed speed limit – 60 kph (n = 620)</td>
<td>12.7</td>
</tr>
</tbody>
</table>
2.8.65 A key finding from this analysis is the marked variation in reoffending rates across offence types. Regardless of payment, reoffending was greatest for ‘shop theft’ (43.3%) and lowest for ‘exceed signed speed limit – 60 kph’ (12.7%).

2.8.66 This is an important consideration with respect to sentencing principles and the overall purposes of fines as a sanction. Given the variation of reoffending between offences, it is worth considering the relationship between offence type and motivation for offending, with a view to understanding the suitability of a fine.

2.8.67 Figure 17 (page 48) shows the reoffending patterns across the same set of 20 offences, in the same ranked order as Figure 16, separated out to display the differential likelihood of reoffending with respect to payment of the fine.

2.8.68 The ‘non-payment’ and ‘some payment’ groups were combined as their rates of reoffending were very close (28.8% and 26.6% respectively, as displayed in Figure 15). The red bars represent incomplete payment and the light blue bars represent complete payment for each offence type. The purple bars show the direction of the difference in reoffending between those who paid and those who did not across these 20 offence types.

2.8.69 For example, Figure 17 shows that, for the offence of possess cannabis, 41.2% of people who had made incomplete payment had reoffended, while 32.2% of people who had completed payment had reoffended. Those who had not completed payment were 9 percentage points more likely to reoffend.

2.8.70 There are two key trend-related findings from Figure 17. First, some offences show a large disparity between the reoffending rates for those who do and do not pay the fine. The greatest difference was displayed for ‘drive in a manner dangerous’ (20.7% for those who paid versus 38.5% for those who did not – an absolute difference of 17.8 percentage points). The smallest difference was for ‘theft’ (30.8% for those who paid versus 30.6% for those who did not – a difference of 0.3 percentage points with rounding).

2.8.71 The second key finding relates to the unexpected pattern that, for some offences, fine payment is related to increased reoffending. This was the case for ‘fail to answer bail’ (6.9% greater for those who paid their fines), ‘theft from a shop’ (4.8% greater for those who paid), and ‘failure to provide a valid ticket – passenger vehicle’ (reoffending 2.4% greater for those who paid).

2.8.72 While these results are not likely to be causal, the effectiveness of a fine is questionable in circumstances where the recipient has not paid the fine and has subsequently reoffended. In such circumstances, it is difficult to see which purpose or purposes of sentencing the fine has achieved. If the fine is unpaid, the offender has escaped punishment and others are less likely to be deterred. If the offender has reoffended, it is difficult to argue that the offender has been rehabilitated or deterred, or that the community has been protected. While the act of imposing the fine, including the fine amount, may manifest the court’s denunciation of the type of conduct, that denunciation is weakened if the fine is not enforced.
Figure 17: Varying two-year reoffending rate by payment category for the 20 most common offences to receive a Magistrates' Court fine, index period July 2009 to June 2010.
2.8.73 Further, it is likely that certain types of acquisitive crimes (such as shop theft) may be indicative of an offender with addictions and/or mental health issues, which suggests that a fine may not be an effective or appropriate response to the behaviour underlying those offences.

2.8.74 For other types of offences, where there is a wide disparity between reoffending with respect to payment patterns, it may be that non-payment is indicative of an increased risk of subsequent offending, and this could be used to trigger additional case management of those individuals who have outstanding debts.

2.8.75 These findings have informed the analysis and recommendations in this report.
Chapter 3:
The use of infringement penalties
3.1 Introduction

3.1.1 This chapter presents a review of the use of infringement penalties, including statistical and descriptive analysis of such matters as:

- the law and principles governing the use of infringement notices;
- the number of infringement notices issued;
- the enforcement agencies that issue the most infringement notices;
- the most common offences for which an infringement notice is issued; and
- infringement penalty amounts.

3.2 Law and principles

3.2.1 An infringement penalty is an administrative measure imposed by an ‘enforcement agency’ (for example, Victoria Police, a local council, or a Victorian government department). The agency issues the alleged offender with an infringement notice, inviting him or her to pay a fixed amount (described as an infringement penalty) in order to expiate (make amends for) the matter. If the person pays the infringement penalty, the matter is finalised without the need to attend court.

Historical use of infringement penalties

3.2.2 Infringement penalties were first introduced in Victoria by the Road Traffic (Infringements) Act 1959 (Vic). Initially, this new means of imposing monetary penalties was limited to parking offences. However, as Fox describes, there was a rapid increase in their use:

in Victoria in 1965 the number of traffic offences subject to on-the-spot fines was eleven. The penalty was either £1 or £2. By 1985 the number had grown to 124. The 1992 Victoria Police listing of on-the-spot offences shows more than 200 traffic-related infringements out of a total of 387 offences with penalties ranging from $15 to $900.\textsuperscript{137}

3.2.3 Infringement notices can now be issued under more than 50 different Acts.\textsuperscript{138} As of January 2012, there were 3,261 lodgeable infringement offences.\textsuperscript{139} Victoria Police alone can issue infringement notices for over 1,300 different offences.\textsuperscript{140}

3.2.4 The rationale behind the infringements system was described in the following terms by Fox:

The infringement notice system provides for punishment without prosecution. Citizens are encouraged to accept this form of punishment as a matter of expediency. The expediency benefits the State as much as the citizen. The State, through its public agencies, gains a stream of low-cost penal revenue without overwhelming its courts with routine cases. The citizen trades the legal right to a hearing for a swifter form of disposal; a fixed but discounted flat rate monetary penalty; and the promise of a clean slate.\textsuperscript{141}

\textsuperscript{137} Richard G. Fox, Criminal Justice On The Spot: Infringement Penalties in Victoria (Australian Institute of Criminology, 1995) 1.
\textsuperscript{138} Infringements (General) Regulations 2006 (Vic) schs 3, 4.
\textsuperscript{139} Email from Infringement Management and Enforcement Services to Sentencing Advisory Council, 17 January 2014.
\textsuperscript{140} These include different forms of the same infringement notice offence issued to children aged between 14 and 18 and corporations: Victoria Police, ‘VP508A Infringement Notice Codes and Penalties Guide’ (2012).
\textsuperscript{141} Fox (1995), above n 137, 1.
Legislative framework

3.2.5 The flowchart (Figure A1) in Appendix 1 shows the complicated system of infringement penalty enforcement in Victoria. Appendix 1 describes each stage of the infringements system.

3.2.6 A brief summary of the system of enforcement of infringement penalties is as follows:

• State and local governmental agencies may issue infringement notices for prescribed offences.
• An infringement recipient may pay the infringement penalty and expiate the offence.
• An infringement recipient may elect to have the infringement matter heard in open court.
• An infringement recipient may request an internal review of the decision to issue the infringement notice on a number of grounds (with some exceptions).
• After internal review, the infringement notice may be confirmed or withdrawn (including withdrawn with an official warning) by the agency.
• If the infringement notice is confirmed following internal review, the recipient must pay the infringement penalty or elect to have the matter heard in open court.
• If the recipient takes no action, the infringement matter may be lodged with the Infringements Court by the enforcement agency. If no payment or action is taken, the Infringements Court will then issue an enforcement order.
• The recipient may apply to the Infringements Court to have the enforcement order ‘revoked’. If successful, the matter is referred back to the agency, which must withdraw the notice or the matter will proceed to open court.
• If the recipient is unsuccessful in having the matter revoked, he or she can object to the refusal of revocation in the Magistrates’ Court.
• If the objection is successful, the matter will be heard in the Magistrates’ Court; if unsuccessful the matter will be referred back to the Infringements Court to continue with enforcement.
• If no payment or action is taken, the Infringements Court will issue an infringement warrant authorising the Sheriff to conduct enforcement actions, such as seizing property and arrest.
• If a person is arrested he or she will be brought before the Magistrates’ Court for an enforcement hearing.

Infringements Act

3.2.7 The current Victorian infringements system was established in 2006 under the Infringements Act 2006 (Vic) (‘Infringements Act’).142 The Infringements Act provides a framework and common process for issuing and serving infringement notices and for the enforcement of infringement penalties by a wide variety of state and local government agencies, as well as bodies such as universities and hospitals.

3.2.8 The Act operates separately from the provisions relating to court fines in the Sentencing Act 1991 (Vic) (‘Sentencing Act’).143

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142. This system replaced the PERIN system governing infringement notices contained in Schedule 7 of the Magistrates’ Court Act 1989 (Vic).
143. Section 69 of the Sentencing Act 1991 (Vic) explicitly states that the provisions therein relating to fines do not apply to the enforcement of infringement penalties under the Infringements Act 2006 (Vic); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69ZG (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
Infringements Regulations

3.2.9 The Infringements Act is supplemented by two sets of regulations:

- Infringements (General) Regulations 2006 (Vic), which specify:
  - lodgeable infringement offences;
  - fees, costs, and charges payable;
  - details that must be included in a range of documents relating to the enforcement of infringement penalties;
  - procedural matters relating to oral examination, attachment of earnings orders, and attachment of debts orders; and
  - procedural and administrative matters relating to community work permits.

- Infringements (Reporting and Prescribed Details and Forms) Regulations 2006 (Vic), which specify:
  - the information that enforcement agencies need to provide to the Attorney-General;
  - the details that need to be included in a range of documents relating to the pre-enforcement stage of the infringements system; and
  - forms of infringement warrant.

Infringement offences

3.2.10 Infringement offences are set out in Schedules 3 and 4 of the Infringements (General) Regulations 2006 (Vic). These include offences under the following Acts (among others):

- Road Safety Act 1986 (Vic);
- Crimes Act 1958 (Vic);
- Summary Offences Act 1966 (Vic);
- Control of Weapons Act 1990 (Vic);
- Firearms Act 1996 (Vic);
- City of Melbourne Act 2001 (Vic);
- Food Act 1984 (Vic);
- Conservation, Forests and Lands Act 1987 (Vic);
- National Parks Act 1975 (Vic);
- Wildlife Act 1975 (Vic);
- Graffiti Prevention Act 2007 (Vic);
- Rail Safety Act 2006 (Vic); and
- Transport (Compliance and Miscellaneous) Act 1983 (Vic).

Attorney-General’s Guidelines

3.2.11 Alongside the Infringements Act and its accompanying regulations, the Attorney-General may issue guidelines specifying the offences that are deemed appropriate to be dealt with under the infringements system, the level of infringement penalty that is suitable for those offences, and any other matters relating to the administration of the Act.144

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144. Infringements Act 2006 (Vic) s 5.
3.2.12 The Attorney-General’s Guidelines to the Infringements Act 2006 (Vic) (‘Attorney-General’s Guidelines’) cover matters including the policy on infringement offences, eligibility criteria for payment plans, the principles to consider when conducting internal reviews, the principles underlying special circumstances, and assistance for agencies in interpreting the Infringements Act.

Corporations and infringement penalties
3.2.13 The Infringements Act contains no express limitations on the imposition of infringement penalties against corporations, other than the capacity of a corporation, or the officer of a corporation, to commit the relevant offence. The Act anticipates that corporations will be the subject of infringement notices and infringement warrants, and contains specific provisions regarding the enforcement of infringement penalties against corporations.

Principles and purposes of an effective infringements system

Purposes
3.2.14 While the purposes of sentencing provided in the Sentencing Act are not directly incorporated into the Infringements Act, there is a degree of overlap between those purposes of sentencing and the purposes of the infringements system. As with the purposes of sentencing, the purposes of infringement penalties can compete with one another and require a balance to be struck.

3.2.15 The purposes of the infringements system should include:

- just punishment, ‘to address the effect of minor law breaking with minimum recourse to the machinery of the formal criminal justice system’;\(^\text{145}\)
- deterrence, including effective ‘enforcement measures to improve deterrence in the system, and reduce “civil disobedience” and the undermining of the rule of law’;\(^\text{146}\)
- fairness, including:
  - ‘protection for all individuals, as well as for people in special circumstances (i.e. mental or intellectual disability, homelessness, serious addictions, those in genuine financial difficulty)’;
  - ‘a requirement that individual circumstances be taken into account’;
  - ‘a recognition of genuine special circumstances, both at the time of infringement notice issue, and during the enforcement process’;
  - ‘providing people with more information about infringements’;
  - ‘providing people with more avenues by which to expiate (make amends without conviction) the matter’;
  - ‘the provision for regular review of the infringements system’;
  - ‘stipulating the duty of external agencies to observe the policies and principles of the system in discharging their responsibilities’;\(^\text{147}\)
- certainty and efficiency, including ‘the provision of a rapid and certain response for lower level offences appropriate for infringements, with deterrence dependent on people being aware they are likely to be detected offending and dealt with through less severe penalties’.\(^\text{148}\)

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\(^{146}\) Department of Justice (2006), above n 145, 3.

\(^{147}\) Department of Justice (2006), above n 145, 1–3, 10.

\(^{148}\) Department of Justice (2006), above n 145, 2.
Principles

3.2.16 There is also overlap between sentencing principles and the principles that apply to the infringements system, which include the following:

- **Consistency:** ‘Consistency of approach is crucial to retaining public understanding of, confidence in, and compliance with, the penalty enforcement system’. Infringement recipients who perceive that there is not consistency within the system may be less likely to engage. For example, a perception that applications for internal review are not treated consistently may discourage infringement recipients from applying in the first place.

- **Fairness:** the perception of fairness is crucial to the credibility of the infringements system. People who perceive the punishment for an infringement offence to be disproportionate to the offence may be more reluctant to comply and decide not to pay their penalty. Alternatively, they may be more inclined to take their chances in court, adding to the workload that the infringements system was designed to reduce.

- **Proportionality:** ‘Maintenance of proportionality between the relatively minor, clear-cut nature of infringement offences and the penalty they attract reinforces a sense of fairness in the system’.

- **Equal impact:** this includes:
  - ‘a requirement that individual circumstances be taken into account’;
  - ‘a recognition of genuine special circumstances’; and
  - ‘protection for all individuals, as well as for people in special circumstances (i.e. mental or intellectual disability, homelessness, serious addictions, those in genuine financial difficulty)’.

- **Efficiency:** ‘the balancing of fairness (lower fine levels, convenience of payment, consistency of approach) with compliance and system efficiency (reduced administration costs, no need to appear in court, no conviction)’.

- **Credibility:** the infringements system should operate as a credible and legitimate part of the criminal justice system.

Measures of effectiveness – the infringements system

3.2.17 Challenges to operating an effective infringements system include the sheer volume of infringement notices issued and the limited avenues for taking into account a person’s individual circumstances.

3.2.18 Questions of compliance go to the heart of the infringement penalty system’s effectiveness. The importance of compliance to the credibility of the system is expressly recognised in the Attorney-General’s Guidelines, which state that, among the principles on which the Infringements Act is based are ‘the balancing of fairness … with compliance’.

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149. Department of Justice (2006), above n 145, 10.
150. Department of Justice (2006), above n 145, 10.
152. Department of Justice (2006), above n 145, 2.
Measures of effectiveness of the infringements system also include that:

- infringements notices are imposed, managed, reviewed, and enforced consistently with the purposes of the system set out in the Infringements Act and the Attorney-General’s Guidelines; 154
- the infringements system reflects the principles of the criminal justice system; 154
- there are measures to ensure that infringement notices are promptly paid, expiated, or otherwise enforced;
- there are sufficient mechanisms for identifying and resolving cases involving factors such as special circumstances and financial hardship as early in the system as possible;
- the system is efficient, in terms of the time taken to pay, the method of payment, and the resources required for enforcement;
- the system is timely – from the moment an infringement is imposed, the focus should be on ensuring compliance (or early identification and resolution of those with special circumstances or in financial hardship) as soon as possible to maximise the deterrent effect and maintain the credibility of the system;
- the system is clear and simple – the recipient should be able to easily access information about what is owed, when it is owed, and payment options;
- there are alternative avenues for expiating infringement penalties (for example, measures for vulnerable people that emphasise rehabilitation or support rather than, or in addition to, punishment);
- there is a mechanism or mechanisms for reviewing the decision to issue the infringement notice in the particular circumstances of the case (for example, internal review and the ability to have the matter heard in court);
- there is sufficient flexibility in the system for the infringement notice to be withdrawn outright or withdrawn with a warning issued in its place (for example, where the person has a valid defence to the infringement notice, where the person has no prior offences and the offence is trivial, or where the person has compelling mitigating circumstances such as ‘special circumstances’); 155 and
- there is provision for the penalty amount to be adjusted if circumstances warrant it (for example, if the person is experiencing serious financial hardship).

Benefits of a functioning infringements process for the criminal justice system

When functioning well, an infringements system has many benefits. Ideally, it should allow for the criminal justice system to respond in an efficient and relatively low-cost way to often high-volume, regulatory offending or offending of a low level of seriousness.

There are a number of problems, however, for the infringements system, which result in inefficiency and cost. Several problems merit consideration, including:

- pressure points in the system that act as a disincentive to payment or early resolution;
- incentives for infringement recipients to take their infringement matter to court; and
- systemic, structural processes that move matters to open court, instead of enforcement.

Alongside the economic benefits of an efficient and principled infringements system is the credibility of infringement penalties as a response to offending behaviour, which is tied to the functioning of the processes of management and enforcement.

154. See [2.2.37]–[2.2.54], [3.2.16].
155. For further discussion of ‘special circumstances’, see Chapter 8.
3.3 Infringement management

3.3.1 This section provides a brief overview of the authorities involved in the infringements system.\footnote{For a detailed description of the process for the enforcement of infringement penalties, see Appendix 1.}

**Enforcement outside of the Infringements Act system**

3.3.2 Some agencies do not use the system for the enforcement of infringement penalties prescribed by the Infringements Act.\footnote{Magistrates’ Court of Victoria, Infringements Court (Magistrates’ Court of Victoria, 2014) \(<\text{https://www.magistratescourt.vic.gov.au/jurisdictions/criminal-and-traffic/fines-and-penalties/infringements-court}>\) at 1 February 2014.}

3.3.3 A number of local governments, for example, issue infringement notices, but will use third-party debt collectors to seek payment of the infringement penalty amount. Failing collection through this method, the enforcement agency will prosecute the infringement matter in court through the use of a charge and summons.\footnote{Pursuant to contract 015-07-08, Infringement Management and Enforcement Services Agreement, that expired on 30 October 2012: Tenders Vic (Victorian Government Tenders System), Contract – 015-07-08 (Tenders Vic, 2014) \(<\text{https://www.tenders.vic.gov.au/tenders/contract/view.do?id=287&returnUrl=%252Fcontract%252Flist.do%253F%2524%257Brequest.queryString%257D}>\) at 1 February 2014.}

3.3.4 The discussion in this section concerns enforcement of infringement penalties under the scheme established by the Infringements Act.

**Infringements Court**

3.3.5 The Infringements Court is described as a ‘venue of the Magistrates’ Court’,\footnote{Infringement management services include the processing of infringement notices issued by a number of state government agencies, including Consumer Affairs Victoria, Roads Corporation (issued by VicRoads), Victoria Police, and the Taxi Services Commission (issued by the Department of Transport).} which deals with the processing and enforcement of infringement notices and penalties.\footnote{Infringement management services include the processing of infringement notices issued by a number of state government agencies, including Consumer Affairs Victoria, Roads Corporation (issued by VicRoads), Victoria Police, and the Taxi Services Commission (issued by the Department of Transport).}

3.3.6 The role of the Infringements Court is to resolve large numbers of unpaid infringement notices lodged by enforcement agencies. This is designed to reduce the judicial and administrative workload of the Magistrates’ Court without removing the right of any individual to appear before a magistrate.\footnote{Civic Compliance Victoria operates under contract, providing administrative enforcement services that include the processing of all enforcement orders and infringement warrants issued by the Infringements Court irrespective of the agency issuing the infringement.}

3.3.7 The administrative interface with the public for the Infringements Court is Civic Compliance Victoria.

**Civic Compliance Victoria**

3.3.8 Civic Compliance Victoria is a registered trademark owned by the State of Victoria. The trademark is used under licence from the State of Victoria by Tenix Solutions IMES Pty Ltd, a private company contracted by the State of Victoria for the provision of ‘infringement management and enforcement services’.\footnote{Infringement management services include the processing of infringement notices issued by a number of state government agencies, including Consumer Affairs Victoria, Roads Corporation (issued by VicRoads), Victoria Police, and the Taxi Services Commission (issued by the Department of Transport).}

3.3.9 Infringement management services include the processing of infringement notices issued by a number of state government agencies, including Consumer Affairs Victoria, Roads Corporation (issued by VicRoads), Victoria Police, and the Taxi Services Commission (issued by the Department of Transport).\footnote{Civic Compliance Victoria, About Civic Compliance Victoria (Fines Victoria, 2014) \(<\text{http://online.fines.vic.gov.au/fines/Content.aspx?page=87}>\) at 1 February 2014.}
Infringement Management and Enforcement Services

3.3.11 Infringement Management and Enforcement Services (IMES) is a business unit of the Department of Justice, and is primarily responsible for managing the infringements system in Victoria.

3.3.12 The functions of IMES include:

• delivering and monitoring the road safety camera program;
• enforcing unpaid infringement penalties through the Infringements Court;
• enforcement services relating to the confiscation scheme through Asset Confiscation Operations;
• contract management (including management of the contract for Civic Compliance Victoria); and
• developing and implementing policy.

The Sheriff’s Office

3.3.13 The Sheriff’s Office is a unit of IMES, and enforces warrants received from Victorian and interstate courts, including warrants for court fine default and infringement warrants.

3.3.14 The Sheriff and Sheriff’s officers are court officials for the purpose of the Supreme Court Act 1986 (Vic).

Infringements System Oversight Unit

3.3.15 The Department of Justice established the Infringements System Oversight Unit (ISOU) in mid 2006 to assist the Attorney-General perform his functions under the Infringements Act by:

• monitoring the success of the government’s infringements system initiatives and, in consultation with stakeholders and advocacy groups, examine potential improvements;
• assessing how the infringements system is working from a whole-of-system perspective and whether individual agencies are applying and interpreting the Infringements Act in accordance with its guiding principles and the guidelines;
• advising agencies on the guidelines and the administration of the Infringements Act;
• building and maintaining relationships with stakeholders including supporting the operation of the Infringements Standing Advisory Committee;
• assisting the Attorney-General to provide reports on the operation of the system; and
• providing authoritative advice to ministers, the Victorian Government, and agencies on request.

3.3.16 The ISOU also maintains and proposes amendments to the Infringements Act and regulations, and consults across government on proposed infringement offences.

Infringements Standing Advisory Committee

3.3.17 The Infringements Standing Advisory Committee, which is convened by the Department of Justice, provides an opportunity to canvass views from a number of stakeholders. The Committee comprises representatives from Victoria Police, state government agencies, local government, community sector organisations, the Infringements Court, and the Magistrates’ Court. The Committee meets on a quarterly basis to consider developments in infringements policy and practice.
3.4 Warnings and infringement notices

3.4.1 The issue of an infringement notice is not the only response available for infringement offending. An issuing officer may give an informal warning or instruction or may issue an official warning, rather than issuing an infringement notice. However, in practice a large proportion of infringement notices are issued automatically.

Informal warnings and instructions

3.4.2 An issuing officer has the inherent discretion to issue an informal warning; however, such warnings are not legislated under the Infringements Act. Given the nature of this kind of response, the use of informal warnings is rarely recorded. Consequently, it was not possible to obtain data on the issue of informal warnings.

3.4.3 During consultation, Victoria Police noted that an officer will often respond to behaviour at the first instance by giving an informal warning where it is appropriate to do so. Informal warnings (such as asking the person to move on, or to go home) are offered most commonly to young people aged under 18 where Victoria Police’s primary concern is the welfare of that person. Where a person is over the age of 18, informal warnings are more commonly offered for comparatively less serious offending, such as where a person has an open container of alcohol in a public place but is not visibly intoxicated or disorderly.160

3.4.4 Some stakeholders commented that the use of informal warnings does not seem to be common practice among other enforcement agencies.161 While not identifying the agencies concerned, a survey by Youthlaw found that almost 60% of respondents stated that they had not received a warning or caution before being issued with an infringement notice.162

Transport infringement notices and informal warnings

3.4.5 Authorised officers do not issue on-the-spot infringement penalties on public transport in Victoria. Instead, whenever there is alleged transport ticket-related offending, an authorised officer will complete a report of non-compliance (RONC), which is then later reviewed by an enforcement officer. Depending on the enforcement officer’s review, the RONC may result in the issue of an infringement notice to the person.163

Official warnings

3.4.6 The Infringements Act provides that an issuing officer may serve an official warning (distinct from an informal warning), rather than issue an infringement notice. The Act provides that an officer may do this if the officer:

- believes on reasonable grounds that a person has committed an infringement offence; and
- is of the opinion that, in all the circumstances, it is appropriate to serve an official warning.164

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160. Meeting with Alcohol Diversion Project, Victoria Police (15 August 2013).
162. Submission 3 (Youthlaw).
164. Infringements Act 2006 (Vic) ss 8(1)(a)–(b). In addition to the power to issue an official warning instead of an infringement notice, an enforcement agency reviewing the decision to issue an infringement notice may withdraw the notice and serve an official warning in its place (see [8.5.36]).
3.4.7 An official warning is required to be in writing\textsuperscript{165} and must contain prescribed details, including:

- that it is an official warning;
- the date and approximate time and place of the infringement offence; and
- the Act that creates the infringement offence and a brief description of the alleged offence.

**Use of official warnings**

3.4.8 While no data were available on the number of official warnings issued instead of serving an infringement notice, their use is mainly confined to cases where an issuing officer detects an infringement offence and issues a warning or takes details on the spot (as opposed to cases where an infringement notice is issued automatically, e.g. an offence detected by a traffic camera).

3.4.9 A number of stakeholders who assist infringement recipients submitted that the power to issue an official warning could be better utilised, particularly in cases where an infringement offender is a child, obviously presents with special circumstances, or raises special or exceptional circumstances with the issuing officer. For example, the Infringements Working Group submitted that:

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.\textsuperscript{166}

3.4.10 Stakeholders such as the Infringements Working Group advocated the development of guidelines on the use of official warnings.

**Guidelines on the use of official warnings**

3.4.11 The Infringements Act provides that, if an enforcement agency is not a ‘prescribed’ enforcement agency for the purposes of the Act, the agency may develop and publish its own guidelines on, and policies in relation to, the use of official warnings for infringement offences.\textsuperscript{167} However, the vast majority of enforcement agencies are prescribed enforcement agencies.\textsuperscript{168}

3.4.12 The Act also specifies that the Attorney-General may make guidelines with respect to the administration of the Act, including on a model code of conduct for issuing officers and enforcement agencies, and on internal review and any other matter relating to the administration of the act.\textsuperscript{169} Currently, the Attorney-General’s Guidelines do not include directions for enforcement agencies on the use of official warnings.

3.4.13 A number of stakeholders submitted that there should be guidelines on the issuing of warnings, particularly in relation to people with special circumstances.\textsuperscript{170}

3.4.14 While the Council acknowledges these concerns, examination of the issues regarding the issuing of warnings in place of infringement notices is beyond the scope of the terms of reference.

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\textsuperscript{165} Infringements Act 2006 (Vic) ss 8(2).
\textsuperscript{166} Submission 7 (Infringements Working Group).
\textsuperscript{167} Infringements Act 2006 (Vic) s 9.
\textsuperscript{168} Infringements (General) Regulations 2006 (Vic) sch 1.
\textsuperscript{169} Infringements Act 2006 (Vic) s 5(1)(c).
\textsuperscript{170} Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Submission 3 (Youthlaw); Submission 4 (Victoria Legal Aid); Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 6 (North Melbourne Legal Service Inc., endorsing Submission 7; Submission 7 (Infringements Working Group); Submission 10 (PILCH Homeless Persons’ Legal Clinic).
3.5 **Number of infringement notices issued**

3.5.1 Although fines are the most common sentence imposed in Victorian courts, the use of infringement notices is far greater, in terms of both the number issued and their total value.

3.5.2 In the 2012–13 financial year, there were just under 6 million infringement notices issued in Victoria; over the same period, 114,034 charges received a court fine in Victorian courts.\(^{171}\)

3.5.3 The infringements system is expanding due to the following factors:

- the increasing number of offences for which an infringement penalty may be issued;\(^{172}\)
- the increasing number of agencies empowered to issue infringement penalties;\(^{173}\) and
- technological advancements (such as road safety camera systems) that allow more offenders to be detected than previously was possible.

3.5.4 The expansion of the infringements system adds to pressure at a number of points, including the determination of infringement matters in open court (see Chapter 8) and the enforcement of unpaid infringement penalties by IMES, the Sheriff, and the courts (see Chapters 5 and 6).

3.5.5 Figure 18 shows that there was a 42.3% increase in infringement penalties between 2009–10 and 2012–13. The majority of this increase (34.5%) occurred over the last 18 months of this period, between January 2012 and June 2013.

3.5.6 Over this four-year period, parking-related infringement penalties (33.5% of the total) and traffic-related infringement penalties (57.5% of the total) accounted for 91% of all infringement penalties issued.\(^{174}\)

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**Figure 18:** Number of infringement penalties issued over six-month intervals, 2009–10 to 2012–13

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\(^{171}\) The infringement count comes from data provided to the Council by IMES and relates to 5,998,896 infringements. The court fines data include the Children’s Court, the Magistrates’ Court, and the higher courts.

\(^{172}\) See Infringements (General) Regulations 2006 (Vic) sch 3 (‘Lodgeable Infringement Offences’) as amended.

\(^{173}\) See Infringements (General) Regulations 2006 (Vic) sch 1 (‘Enforcement Agencies’) as amended.

\(^{174}\) This is calculated on the basis of 12 broad offence groups from data provided to the Council by IMES for the purposes of this reference. See [3.7.10]–[3.7.27] for discussion of the categories of offences.
3.5.7 Between January 2012 and June 2013 there was a 33.2% increase in traffic-related infringement penalties and a 21.7% increase in excessive speed, drink driving, and drug driving infringements. The increase in traffic-related infringement penalties may be partly due to the implementation of improved detection technology (such as an increase in the number of speeding and red light cameras, as well as the use of automatic number-plate recognition cameras).\footnote{The Hon Peter Ryan MP, Deputy Premier; Minister for Police and Emergency Services, Minister for Bushfire Response, and Minister for Regional and Rural Development, Media Release, ‘Road Safety Cameras To Be Switched on at 32 Locations’, Media Release (3 October 2011) <http://www.premier.vic.gov.au/media-centre/media-releases/2137-road-safety-cameras-to-be-switched-on-at-32-locations.html> at 26 February 2014.}

3.5.8 The 34.5% increase in infringement penalties between January 2012 and June 2013 was also driven by a very substantial increase (10,906%) in electoral infringements\footnote{Electoral Act 2002 (Vic) s 166(1).} (increasing from 3,033 in June 2012 to 333,801 in June 2013). The increase in electoral infringement notices is explained by the number of residents failing to vote in local government elections during that period.\footnote{Local government elections in Victoria were held on 27 October 2012; 333,143 infringement notices for failure to vote were issued in March 2013: Victorian Electoral Commission, Report on Conduct of the 2012 Local Government Elections (Victorian Electoral Commission, 2013) 54 <https://www.vec.vic.gov.au/files/LG-2012-Election-Report.pdf> at 1 February 2014.}

3.6 Enforcement agencies

3.6.1 While court fines are imposed by a court after a matter is prosecuted by an agency (usually Victoria Police) and the person is found guilty of the offence, for infringement notices, the prosecution and punishment are combined, and are in the hands of the relevant enforcement agency, unless the person elects to take the matter to court.

3.6.2 Alongside the expansion in the number and types of offences that can be dealt with as infringement offences, there has also been an increase in the number of agencies that may issue infringements.

3.6.3 Infringement notices are issued by ‘issuing officers’\footnote{Infringements Act 2006 (Vic) s 3: the definition of issuing officer also includes ‘a prescribed person or person who is a member of a prescribed class of person’.} who are appointed by enforcement agencies to issue or serve an infringement notice.\footnote{Infringements Act 2006 (Vic) s 3.} The list of enforcement agencies (a person or body authorised to take proceedings for the infringement offence) is set out in Schedule 1 of the Infringements (General) Regulations 2006 (Vic).

3.6.4 Over 120 government agencies and other bodies (such as universities and hospitals) have the authority to issue infringement notices.\footnote{Department of Justice, Attorney-General’s Annual Report on the Infringements System 2011–12 (2012) 8.} Among these are:

- Victoria Police, including protective services officers and the following groups within the police force:
  - protective services officers;
  - Firearms Licensing Service;
  - Toll Enforcement Office; and
  - Traffic Camera Office;
- local councils;
- Director, Transport Safety (Department of Transport);
- protective services officers;
- Firearms Licensing Service;
- Toll Enforcement Office; and
- Traffic Camera Office;
3.6.5 Despite the large number of agencies that can issue infringement notices, in practice, two agency types issued over 90% of infringement notices between 2009–10 and 2012–13. Almost 60% (12.1 million) of all infringement notices were issued by Victoria Police\textsuperscript{181} and 33% (6.7 million) of all infringement notices were issued by local governments (with data provided by 79 local governments).

3.6.6 After Victoria Police (including the Traffic Camera Office and the Victoria Police Toll Enforcement Office) and local governments, the most common issuing agencies are the Department of Transport (3.4% of all infringement notices, or 700,650) and the Victorian Electoral Commission (2.3% of all infringement notices, or 475,825). Combined, all of the remaining enforcement agencies (including those not shown in Figure 19) were responsible for less than 2% of the infringement notices issued between 2009–10 and 2012–13.

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\textsuperscript{181} Infringement notices issued by Victoria Police include infringements issued by police (10.4%), the Traffic Camera Office (27.3%), and the Toll Enforcement Office (21.8%).

\textsuperscript{182} Unpublished data provided by IMES to the Council for the purposes of this report. This figure excludes agencies that issued less than 0.1% of infringement notices between 2009–10 and 2012–13.
Chapter 3: The use of infringement penalties

Victoria Police

3.6.7 As noted at [3.6.5], Victoria Police issued the greatest proportion (60%) of infringement notices between 2009–10 and 2012–13. This includes infringement notices issued by the Toll Enforcement Office, the Traffic Camera Office, and protective services officers.

3.6.8 The Attorney-General’s Annual Report on the Infringements System 2011–12 states that the percentage of infringement notices issued by Victoria Police ‘reflects the fact that Victoria Police can issue notices under the widest range of legislation’.183 A significant proportion of Victoria Police infringement notices were issued for driving unregistered in a toll zone and road safety camera offences.184

Toll Enforcement Office

3.6.9 The Victoria Police Toll Enforcement Office issues infringement notices under the Melbourne City Link Act 1995 (Vic) and the EastLink Project Act 2004 (Vic) for driving an unregistered vehicle (that is, a vehicle not covered by a pass or account) on a toll road.

3.6.10 The Toll Enforcement Office issued 21.8% of all infringement notices between 2009–10 and 2012–13.

3.6.11 As noted in the Attorney-General’s Annual Report on the Infringements System 2011–12, the number of infringement notices issued by most state government agencies in 2011–12 was ‘broadly consistent’ with previous years. The Victoria Police Toll Enforcement Office, however, recorded a decline in the number of infringement notices issued in 2011–12.185

3.6.12 The Attorney-General’s Annual Report stated that there was:

a reduction in the overall number of infringement notices issued for tolling offences on the CityLink and EastLink toll roads. In 2010–11, there were just over one million infringement notices issued for tolling offences. During 2011–12, there were around 898,000 tolling infringement notices. One factor that influenced the overall tolling infringement figures was EastLink taking a more proactive approach to its customer service and its collection process. By resolving more matters earlier, fewer motorists were issued with infringement notices for tolling offences.186

3.6.13 This trend is reversed for the 2012–13 financial year, with the total number of toll road infringements increasing to over 1.7 million.187

Traffic Camera Office

3.6.14 The Traffic Camera Office issues infringement notices under the Victoria Police Road Safety Camera Program. Infringements are issued for offences such as exceeding the relevant speed limit, disobeying a red light, and driving while a licence or registration is suspended. The Traffic Camera Office issued 27.3% of all infringement notices in Victoria between 2009–10 and 2012–13.

183. Department of Justice (2012), above n 180, 11.
184. See [3.7.10]–[3.7.14] for a breakdown of infringements by offence type.
185. Department of Justice (2012), above n 180, 11.
186. Department of Justice (2012), above n 180, 11.
187. Unpublished data provided by PMES to the Council for the purposes of this report.
Protective services officers

3.6.15 Protective services officers (PSOs) were introduced under the Police Regulation (Protective Services) Act 1987 (Vic). That Act amended the Police Regulation Act 1958 (Vic) to create a new type of officer with more limited powers than Victoria Police members.

3.6.16 Initially, the role and responsibility of PSOs were limited to providing security to government buildings, law courts, and other ‘designated areas’ as provided for in legislation. The Justice Legislation Amendment (Protective Services Officers) Act 2011 (Vic) expanded the role and powers of PSOs in order to allow PSOs to combat crime and anti-social behaviour in public places.\(^{188}\)

3.6.17 PSOs on duty at a designated public place are authorised to issue infringement notices under a number of Acts, including:

- **Control of Weapons Act 1990** (Vic) for the offence of possessing, carrying, or using a controlled weapon without lawful excuse;
- **Environmental Protection Act 1970** (Vic) for littering offences;
- **Graffiti Prevention Act 2007** (Vic) for the offence of possessing a prescribed graffiti implement without lawful excuse;
- **Liquor Control Reform Act 1998** (Vic) for the offence of possessing or consuming liquor by a person under 18 years;
- **Road Safety Act 1986** (Vic) for parking infringements that occur at or in the vicinity of a designated place;
- **Summary Offences Act 1966** (Vic), for the following offences:
  - contravention of a direction to move on;
  - drunk in a public place;
  - drunk and disorderly in a public place;
  - disorderly behaviour in a public place;
  - indecent or obscene language in a public place;
  - behaving in a riotous, indecent, offensive, or insulting manner in a public place; and
- **Transport (Compliance and Miscellaneous) Act 1983** (Vic) and **Transport (Conduct) Regulations 2005** (Vic) for various public transport offences.

3.6.18 PSOs were first deployed at a number of metropolitan railway stations in February 2012,\(^ {189}\) and since that time there has been an ongoing deployment of PSO officers to different stations across the railway network.\(^ {190}\) PSOs currently patrol the Melbourne metropolitan and regional rail networks from 6.00 a.m. until the last train, seven days a week.

3.6.19 From February 2012 to December 2012 (the first ten months in which PSOs were deployed in Victoria), PSOs patrolling train stations spoke to 29,595 commuters, issued 8,389 infringement notices, and made 1,397 arrests for a range of offences.\(^ {191}\)

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\(^{188}\) Justice Legislation Amendment (Protective Services Officers) Act 2011 (Vic) s 1.


Local councils

3.6.20 Local councils issued the second highest proportion (33%) of infringement penalties between 2009–10 and 2012–13.

3.6.21 Local councils are empowered to issue infringement notices under a broad range of legislation for a wide range of offences. However, in 2012–13, 96.5% of the 1.7 million infringement notices issued by local councils were for parking offences (with animal-related infringements (2.0%) and local law infringements (1.1%) accounting for the majority of the remaining infringements issued).

Department of Transport

3.6.22 The Department of Transport issued the third highest proportion (3.4%) of infringement penalties between 2009–10 and 2012–13.

3.6.23 The number of infringement penalties issued by the Department of Transport in 2011–12 increased by almost 60,000 from 2010–11. The Attorney-General’s Annual Report on the Infringements System 2011–12 states that:

the increase can be attributed in part to the increased enforcement against fare evaders following the progressive introduction of the myki system on public transport in Victoria. Infringement offences on public transport include fare evasion, smoking in a carriage or on a train platform, having feet on seats and disorderly behaviour.\(^{192}\)

3.7 Most common offences for which infringement penalties are issued

3.7.1 The infringements system applies to those offences that are viewed as relatively less serious and are, for the most part, ‘strict liability’ offences or ‘absolute liability’ offences, that is, offences that do not require proof of a ‘guilty mind’. For example, driving an unregistered vehicle\(^{193}\) is an absolute liability offence. It does not matter if the person believed that his or her car was registered – if it is not registered, the person is guilty.

3.7.2 Strict liability offences are similar but provide a limited defence of ‘honest and reasonable mistake of fact’. Neither strict nor absolute liability offences require proof that the defendant intentionally, recklessly, or negligently did the actions – the actions are sufficient to establish the offence.

3.7.3 Some infringement offences, however, are not strict or absolute liability offences, and instead require proof of intention. For example, the offence of shop theft may now be dealt with by way of an infringement notice.\(^{194}\)

3.7.4 Table 6 (page 68) shows the five most common offence categories for which infringement penalties were imposed in 2012–13.\(^{195}\)

3.7.5 Traffic offences and parking offences comprise the overwhelming majority of offences dealt with by way of an infringement penalty.

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192. Department of Justice (2012), above n 180, 12.
194. Crimes Act 1958 (Vic) s 74A. The expansion of the infringements system to include mens rea offences was controversial (see: Bernadette Saunders et al., An Examination of the Impact of Unpaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System – Towards a Best Practice Model (Monash University, 2013) 20) although the decision was confirmed at the end of a three-year trial: [3.7.20]–[3.7.27].
195. Unpublished data provided by IMES to the Council for the purposes of this report.
The imposition and enforcement of court fines and infringement penalties in Victoria

<table>
<thead>
<tr>
<th>Rank</th>
<th>Offence category</th>
<th>Percentage of total infringements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Traffic offences</td>
<td>59.2%</td>
</tr>
<tr>
<td>2</td>
<td>Parking offences</td>
<td>29.0%</td>
</tr>
<tr>
<td>3</td>
<td>Electoral offences</td>
<td>5.7%</td>
</tr>
<tr>
<td>4</td>
<td>Public transport offences</td>
<td>3.6%</td>
</tr>
<tr>
<td>5</td>
<td>Excessive speeding, drink driving, and drug driving offences</td>
<td>0.7%</td>
</tr>
</tbody>
</table>

Table 6: Five most common infringement offence categories, 2012–13

Data analysis

3.7.6 The level of data on the offences for which infringement notices are imposed differs according to the type of agency that imposed the infringement notice. A detailed discussion of the Council’s data methodology is available at <www.sentencingcouncil.vic.gov.au>.

3.7.7 In brief, ‘Type 1’ agencies refer to agencies (for example, Victoria Police) that register infringement notices with IMES from the time of issue. In 2012–13, Type 1 agencies issued 3.52 million infringement notices, or approximately 60% of all infringement notices. Data on specific offences are available for the infringement notices registered by Type 1 agencies.

3.7.8 ‘Type 2’ agencies refer to agencies (for example, local councils) that lodge infringement notices to be enforced by the Infringements Court at the default stage. In 2012–13, Type 2 agencies issued 2.48 million infringement notices, or approximately 40% of all infringement notices. Data on the category of offence (rather than the specific offence) are available for the infringement notices registered by Type 2 agencies.

3.7.9 The five most common offence categories (excluding electoral offences), as well as public order offences, have been further analysed.

Traffic offences

3.7.10 Victoria Police issues all infringement notices for traffic offences.

3.7.11 Traffic infringements comprised 59.2% of the total infringements issued in 2012–13. For that period, the Type 1 traffic infringement offences (and the percentage of Type 1 infringement notices) included:

- driving unregistered in a toll zone (44.5%); 198
- not obeying a red light (5.5%); 199
- driving an unregistered vehicle or trailer (2.1%); 200 and
- using a mobile phone while driving (1.7%); 201

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196. Unpublished data provided by IMES to the Council for the purposes of this report.
197. Unpublished data provided by IMES to the Council for the purposes of this report.
198. Melbourne City Link Act 1995 (Vic) s 73(1); EastLink Project Act 2004 (Vic) s 204.
199. Road Safety Road Rules 2009 (Vic) r 39(1).
200. Road Safety Act 1986 (Vic) s 7(1).
201. Road Safety Road Rules 2009 (Vic) r 300 (1).
3.7.12 Traffic offences do not include the following offences (these are discussed at [3.7.17]–[3.7.18]):
- excessive speeding (exceeding the speed limit by 25 kilometres per hour or more or exceeding the speed limit by more than 20 kilometres per hour in a 110 kilometres per hour zone);\(^{202}\)
- drink driving;\(^{203}\) and
- drug driving.\(^{204}\)

3.7.13 Toll zone offences accounted for the largest proportion of ‘traffic offences’. However, the number of infringements issued for driving unregistered in a toll zone fluctuated between 2010–11 and 2012–13.

3.7.14 While the number of toll zone offences decreased in 2011–12, as discussed above, this number almost doubled the following year, with the total number of toll road infringements (including CityLink and EastLink offences) increasing to over 1.7 million.\(^{205}\)

**Parking offences**

3.7.15 Across all years from 2009–10 to 2012–13 and across broad agency categories (combining Type 1 and Type 2 agency infringement notices), 95.0% of parking offence infringement notices were issued by local governments, 2.4% were issued by educational institutions, and 1.3% were issued by Victoria Police.

**Public transport offences**

3.7.16 In 2012–13, 214,090 public transport offences infringement notices (or 3.6%) were issued across all Type 1 and 2 agencies. In the same period, the Department of Transport, Planning and Local Infrastructure issued 189,234 transport infringement notices. Of those, 88% (or 166,526) were issued to adults and 12% (or 22,708) were issued to children.

**Excessive speeding, drink driving, and drug driving**

3.7.17 Excessive speeding, drink driving, and drug driving infringement notices comprised 0.7% of the total infringements issued in 2012–13. For that period, the Type 1 excessive speeding, drink driving, and drug driving infringement offences (and the percentage of Type 1 infringement notices) included:
- excessive speeding (0.73%);\(^ {206}\)
- drink driving (0.22%);\(^ {207}\) and
- drug driving (0.04%).\(^ {208}\)

3.7.18 These offences are regarded as more serious than those in the traffic offences category. Where these offences are dealt with by way of an infringement notice, a conviction is recorded, and there is no right of internal review by Victoria Police.\(^ {209}\)

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204. *Road Safety Act 1986* (Vic) s 49; *Road Safety (General) Regulations 2009* (Vic) sch 7, item 100.
205. Unpublished data provided by IMES to the Council for the purposes of this report.
206. *Road Safety Act 1986* (Vic) s 28(1)(a); *Road Safety Road Rules 2009* (Vic) r 20(1).
207. *Road Safety Act 1986* (Vic) s 49; *Road Safety (General) Regulations 2009* (Vic) sch 7, item 97.
208. *Road Safety Act 1986* (Vic) s 49; *Road Safety (General) Regulations 2009* (Vic) sch 7, item 100.
209. See [8.5.11].
Public order offences

3.7.19 In Victoria and a number of other jurisdictions, several ‘public order’ offences may now be dealt with by way of an infringement notice.

Infringement notices trial and summary offences

3.7.20 In mid 2008, the Infringements and Other Acts Amendment Act 2008 (Vic) trialled the use of infringement notices for a number of public order offences with the aim of assessing the suitability of the offences for enforcement by infringement.

3.7.21 The trial offences were:

- two public order offences – indecent or offensive behaviour and indecent or obscene language;
- liquor-related offences (consume, supply, or possess liquor on unlicensed premises; permit the consumption, supply, or possession of liquor on unlicensed premises; failure by a drunk, quarrelsome, or violent person to leave licensed premises when requested);
- permitting or allowing the unauthorised consumption of liquor on a party bus;
- wilful damage of up to $5,000 and
- shop theft of goods valued at up to $600.

3.7.22 The power to issue infringements for the trial offences listed above was legislated to cease on 30 June 2011. In 2011, however, it was extended by the Justice Legislation Amendment (Infringement Offences) Act 2011 (Vic). That Act provided that the use of infringement notices for those offences, except for wilful damage and shop theft, could continue indefinitely.

3.7.23 The power to issue an infringement notice for wilful damage and shop theft was extended for a further 24 months to 1 July 2014 by the Courts and Sentencing Legislation Amendment Act 2012 (Vic).

3.7.24 Separately (and not part of the trial), the Summary Offences and Control of Weapons Acts Amendment Act 2009 (Vic) provided that the offences of being drunk in a public place and being drunk and disorderly in a public place could be prosecuted (indefinitely) by way of issuing an infringement notice. Also separate to the trial, the Road Safety (General) Regulations 2009 (Vic) now provide that the offence of careless driving of a motor vehicle is an infringement offence.

3.7.25 The only data available for the imposition of these specific offences were provided by Type 1 agencies.

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210. For example, Scotland under the Anti-Social Behaviour etc. (Scotland) Act 2004 (Scotland).
211. Summary Offences Act 1966 (Vic) s 17(1)(d).
212. Summary Offences Act 1966 (Vic) s 17(1)(c).
213. Liquor Control Reform Act 1999 (Vic) ss 113(1), 113(1A).
214. Liquor Control Reform Act 1999 (Vic) ss 113(1B), 113(1C).
215. Liquor Control Reform Act 1999 (Vic) s 114(2).
216. Liquor Control Reform Act 1999 (Vic) s 113A.
218. Crimes Act 1958 (Vic) s 74A.
219. Road Safety Act 1986 (Vic) s 65(1); Road Safety (General) Regulations 2009 (Vic) sch 7, item 67.
3.7.26 The public order infringement notices issued by Type 1 agencies in 2012–13 (and the percentage of Type 1 infringement notices) included:

- being drunk in a public place (0.34%);\(^{220}\)
- being drunk and disorderly in a public place (0.05%);\(^{221}\)
- indecent or offensive behaviour (0.11%)\(^{222}\) and
- indecent or obscene language (0.06%).\(^{223}\)

3.7.27 This particular category of offences has been analysed because of issues raised by stakeholders concerned with the use of infringement notices for offences that traditionally required prosecution by a charge and summons. Further, a number of these public order offences feature more prominently when an infringement matter proceeds to open court.

3.8 Infringement penalty amounts

Fixed penalty

3.8.1 Commonly, a court fine is expressed in legislation as a maximum penalty, and that amount is adjusted by the court to reflect the seriousness of the offence and any mitigating or aggravating circumstances.

3.8.2 In contrast, an infringement penalty amount is fixed. Issuing agencies cannot take into account the particular circumstances of the offender and adjust the amount of the penalty accordingly. Fox notes that:

> Although the individualising of treatment in sentencing for conventional crime has been much promoted over the last few decades, tailoring punishment to the condition of the particular wrongdoer has no place in the high volume processing of offenders through ‘on-the-spot’ tickets and infringement notices. Not only are the offender’s personal circumstances not taken into account in setting the sanction, the system finds it almost impossible to adjust the totality of punishment where there is multiple offending by the same person in the course of the same event or a series of events.\(^{224}\)

3.8.3 In Victoria, infringement penalties are typically expressed as a number of penalty units. The value of a penalty unit increases each year to account for inflation. Sometimes the penalty unit increase exceeds the rate of inflation. The value of a penalty unit for 2012–13 was increased by a further 12.5% in addition to CPI, for the purpose of strengthening community safety,\(^{225}\) suggesting that an increased penalty amount is intended to act as an increased deterrent (see [2.5.18]).

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\(^{220}\) Summary Offences Act 1966 (Vic) s 13.

\(^{221}\) Summary Offences Act 1966 (Vic) s 14.

\(^{222}\) Summary Offences Act 1966 (Vic) s 17(1)(d).

\(^{223}\) Summary Offences Act 1966 (Vic) s 17(1)(c).

\(^{224}\) Fox (1995), above n 137, 2.

\(^{225}\) Materials produced by the Department of Treasury and Finance state that the reason for the additional 12.5% increase was ‘as part of efforts to strengthen community safety’: Department of Treasury and Finance, Automatic Indexation of Fees and Fines (Department of Treasury and Finance, 2012) <http://www.treasury.vic.gov.au/CA25713E0002E7F43/WebObj/FeesandFinesFactSheet2012-13/$File/FeesandFinesFactSheet2012-13.PDF> at 11 November 2012.
Contrast with court fines

3.8.4 The maximum penalty for an offence that results in a court-imposed fine is most commonly expressed in legislation as a number of penalty units. Therefore, the maximum penalty for a court fine also increases with each adjustment to the value of a penalty unit.

3.8.5 As this is expressed as a maximum penalty, however, and not a fixed amount, it is less likely that this increase is consistently accounted for in subsequent court-imposed fines. For example, if a magistrate imposes a $500 fine on an offender in 2010–11, it is unlikely that an offender convicted of the same offence (in the same circumstances) will receive a fine of $511.25 in 2011–12, to account for the 2.25% increase in the maximum penalty, as expressed by the change in the value of a penalty unit between those two periods.226

3.8.6 The ‘cost’ of a court-imposed fine (as opposed to the cost of an infringement) is therefore likely to decline in real terms between years, at least until an adjustment (most likely to the nearest 50 or 100 dollars) is made by the court in a subsequent year to account for an obvious change in the real cost of the fine (see [2.5.41]–[2.5.46]).

Limitations of fixed penalties

3.8.7 A limitation of fixed penalties is that they preclude the consideration of aggravating or mitigating circumstances including matters such as the infringement recipient’s financial hardship.

3.8.8 The issues of the proportionality and equal effect of infringement penalty amounts is examined in Chapter 8 in the context of examining pressures that result in infringement matters being heard in open court.

3.9 Recording a conviction

3.9.1 Generally, the payment of an infringement penalty finalises a matter with no finding of guilt and no conviction being recorded against the person. However, for three offences under the Road Safety Act 1986 (Vic), an infringement takes effect as a conviction 28 days after the infringement notice is issued (unless the person elects to have the matter heard in court). The three offences are:
- excessive speeding;227
- drink driving;228 and
- drug driving.229

3.9.2 After conviction, the offender’s driver licence or permit is suspended and the offender is prevented from applying for another licence or permit for the period of the suspension. The length of the suspension is determined by the extent to which the offender was speeding, or the specified level of blood alcohol.

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227. Road Safety Act 1986 (Vic) s 28(1)(a); Road Safety Road Rules 2009 (Vic) r 20 (1).

228. Road Safety Act 1986 (Vic) s 49; Road Safety (General) Regulations 2009 (Vic) sch 7, items 90–99.

229. Road Safety Act 1986 (Vic) s 49; Road Safety (General) Regulations 2009 (Vic) sch 7, item 100.
3.10 Payment

3.10.1 Data from IMES were analysed in order to track the outcomes of infringement notices imposed in the reference year of 2010–11.

3.10.2 Figure 20 shows the resolution of infringement notices issued in 2010–11. Of the 4,974,281 infringement penalties issued in that year:

- 3,182,689 (63.98%) were paid prior to the issuing of an enforcement order;
- 232,331 (4.67%) were resolved prior to the issuing of an enforcement order, comprising:
  - 190,790 (3.84%) withdrawn after internal review;
  - 37,994 (0.76%) referred to court after an election by the infringement recipient;
  - 3,547 (0.07%) referred to court after unsuccessful internal reviews, including 3,119 referred after an unsuccessful internal review on the ground of special circumstances, and 428 after an unsuccessful internal review on other grounds;
- 1,559,261 (31.35%) enforcement orders were issued;
- 1,030,455 (20.72%) infringement warrants were issued; and
- 713,076 (14.34%) remained unresolved after the issue of a warrant.

3.10.3 One person may have multiple infringements; however, the Council was unable to obtain data on the number of people that the 1,559,261 enforcement orders represent.\(^{231}\)

3.10.4 A number of issues and challenges are raised by the fact that 31.35% of infringement penalties are neither paid nor resolved prior to the enforcement stage. These unpaid infringements represent a group of ‘non-payers’ that includes very different sub-groups with reasons for non-payment ranging from the most compelling of mitigating circumstances to wilful disregard for the law. These findings have informed the analysis and recommendations in this report.

\(^{230}\) The 4.67% of matters resolved prior to the issue of an enforcement order included 37,994 matters referred directly to court after an election by the recipient, 190,790 matters withdrawn by enforcement agencies after an internal review, and 3,547 matters referred to court by enforcement agencies (or the infringement recipient) after an unsuccessful internal review.

\(^{231}\) The Victorian Infringement Management System (VIMS) used by IMES is primarily an infringement-centric, rather than debtor-centric, database: Meeting with IMES data officers (14 September 2012).
Chapter 4: Harmonising payment and management of court fines and infringement penalties
4.1 Introduction

4.1.1 The Council has been requested to provide advice on the ‘desirability of harmonising the enforcement mechanisms and procedures’ for court fines and infringement penalties.²³²

4.1.2 As this reference is part of a broader review of the infringement penalty enforcement system being conducted by the Department of Justice, this report is confined to the issues raised in the terms of reference. The terms of reference do not request the Council to review other aspects of the infringements system, such as the offences that should be available for prosecution by way of an infringement notice, who may issue infringement notices, or the amount at which infringement penalties are set for each infringement offence, although Chapter 8 identifies some issues that are contributing to the number of infringement cases in open court.

4.1.3 The Council has, however, taken a holistic, system-wide view in examining the procedures for the enforcement of court fines and infringement penalties, including paying particular attention to instances where the two systems diverge and the policy justifications for maintaining or removing such divergences.

4.1.4 This chapter examines the current systems of court fine and infringement penalty management. The use of enforcement mechanisms and sanctions is discussed in Chapter 5. This chapter presents:

- a typology for classifying fine and penalty recipients, relevant to the management and payment of fines, the use of enforcement sanctions (see Chapter 5), and the reasons infringement matters are being taken to court (see Chapter 8);
- recommendations for the adoption of a harmonised framework for the payment and management of court fines and infringement penalties (including recommendations for the functions of a centralised administrative body);
- recommendations regarding alternative means of discharge of infringement penalties, including discharge through a work and development permit; and
- recommendations for additional measures designed to improve the payment of court fines and infringement penalties.

4.2 A typology for classifying fine and penalty recipients

4.2.1 The typology presented below refers to both court fines and infringement penalties. Unlike the court system, the infringements system is largely automated and involves limited discretion. As a result, there is a tension in the infringements system between the desire to ensure that it does not oppress, or operate unfairly against, vulnerable people and, at the same time, ensuring that recalcitrant offenders do not escape its effect.

4.2.2 The typology is a tool for resolving this tension and allowing consideration of how the systems of payment, management, and enforcement may affect different groups in different ways. The broad categories are those who:

(a) shouldn’t pay;
(b) can’t pay;
(c) will pay;
(d) might pay; and
(e) won’t pay.

²³² Letter from Attorney-General, Hon Robert Clark, MP, to Professor Arie Freiberg, Chairperson, Sentencing Advisory Council, 18 December 2012.
4.2.3 This category applies to infringement penalties only. Offenders who receive a court fine have been found guilty of an offence and sentenced by a court, most often with regard to information on the offender’s financial circumstances (see [2.5.3]–[2.5.10]).

4.2.4 Those who ‘shouldn’t pay’ are infringement penalty recipients who may have a defence to the allegation or special circumstances that explain their behaviour. In such cases, the aim should be early identification and filtering out of the system thus resolving matters as early as possible and reducing the likelihood that those infringement penalty recipients will be inappropriately subject to the enforcement system.

4.2.5 The category of ‘can’t pay’ has the potential to relate to both individuals who receive infringement penalties and individuals who receive court fines.

4.2.6 This report presents options for individuals who ‘can’t pay’ (for example, people experiencing financial hardship), such as a work and development permit that will allow this group to discharge their debts in a constructive way. For those whose financial hardship or special circumstances only come to light during the enforcement process, the Council has tried to retain sufficient flexibility to ensure that they can be appropriately and swiftly dealt with in a just way.

4.2.7 The end result for this group is that, although no money will be received as a consequence of the court fine or infringement penalty being issued, there will be mechanisms to resolve matters through other means.

4.2.8 The ‘will pay’ category refers to people who, having received a court fine or infringement penalty, will accept their punishment and have the means to pay on time (whether in full or on a payment plan). The policy aim for this group is to ensure that changes to the system do not provide incentives for them to move into another category. If anything, the system should provide some measure of acknowledgment to this group for their compliance.

4.2.9 The ‘might pay’ category represents individuals who do not pay initially. This group includes people who have the capacity to pay and are likely to pay if they are encouraged to do so and/or obstacles to payment are removed. While there may be some overlap between the categories of ‘won’t pay’ and ‘might pay’, the former is primarily concerned with those who are opposed to complying or exhibiting wilful disobedience, whereas the latter refers more to those who may just need to be ‘nudged’ to move them back into the category of ‘can’ (and will) pay.

4.2.10 An understanding of this group builds on the propositions explored by Thaler and Sunstein in their 2008 book, *Nudge: Improving Decisions about Health, Wealth, and Happiness.* Thaler and Sunstein propose that the key to effectively ‘nudging’ people to do things that are actually positive for them (and society) in the longer term involves manipulating the ‘choice architecture’ that is operating to drive decision-making.

4.2.11 Choice architecture refers to the format within which a choice is presented to a decision-maker. One element of this approach requires the creation of better default options, which facilitate the desired outcome as a response. A second element to enhancing choice architecture involves effectively structuring available choices to facilitate good decision-making.

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4.2.12 Thaler and Sunstein provide a series of policy recommendations through manipulations to the context of choice architecture within which behaviour is occurring.\(^{234}\) In this context, the key to nudging ‘might pay’ individuals is to simultaneously:

(a) explore ways throughout the enforcement system to create optimal default options for payment;
(b) structure available payment choices in the simplest, clearest manner possible; and
(c) include effective payment reminders in the system.

\[\text{Won’t pay}\]

4.2.13 For the significant minority of court fine or infringement penalty recipients who have the means to pay but refuse to, the focus is on strengthening the system by increasing the range of sanctions and harmonising the enforcement processes and sanctions for court fines and infringement penalties.

4.2.14 Some of the organisations with which the Council consulted during this project advocated removing imprisonment altogether as an option for infringement penalty defaulters. The Council is of the view, however, that imprisonment has a legitimate place in the enforcement system, provided it is used as a sanction of last resort for recalcitrant non-payers who have no valid reason for their non-compliance (see Chapter 6).

\[\text{Flexibility of this approach}\]

4.2.15 The flexibility of this typology ensures it can capture most of the varying ‘groups’ of offenders that the court fines and infringement penalties system might encounter. This more nuanced approach to those who do not pay allows tailored strategies to be employed to address the issues presented by each group, within the framework of ensuring that the system is credible, is fair, and achieves compliance.

\[\text{Figure 21: Typology for classifying fine and penalty recipients}\]

\[\text{234. Thaler and Sunstein (2008), above n 233, 312.}\]
4.2.16 This typology is not universal, however, and two groups in particular — corporations and children — present their own particular challenges to the management and enforcement of court fines and infringement penalties.

4.2.17 There may be, for example, a corporation that ‘can’t pay’, that is, a corporation directed by a person who ‘won’t pay’, or there may be particular circumstances in which a child ‘will pay’ but the particular enforcement responses are not appropriate. This report has separately identified particular problems in relation to corporations and children that may fall outside this typology.235

4.3 Harmonising court fine and infringement penalty management

Problems with the current systems of fine and penalty management

4.3.1 Appendix 1 details the current systems for the management of court fines and infringement penalties, including payment and enforcement.

4.3.2 Currently, the two systems for payment and enforcement of court fines and infringement penalties are separate.

4.3.3 Each court manages the payment of court fines independently, and each court enforces its fines separately under the provisions of the *Sentencing Act 1991* (Vic) (‘*Sentencing Act*’).

4.3.4 The payment and enforcement of infringement penalties are managed under the provisions of the *Infringements Act 2006* (Vic) (‘*Infringements Act*’). Initial payment and internal review are managed by the enforcement agency, while the Infringements Court and ultimately the Magistrates’ Court manage enforcement and any subsequent payment. Some agencies still manage their own debt collection and prosecution and do not lodge matters with the Infringements Court.

4.3.5 The availability of different methods of payment varies between each court (see Appendix 1) and the Infringements Court. Further, different enforcement mechanisms and sanctions are available for court fines and infringement penalties, with a greater number and breadth of sanctions available for enforcing infringement penalties (see Chapter 5) including:

- orders for the attachment of earnings and debts;236
- driver licence sanctions;237 and
- vehicle immobilisation sanctions.238

Separate fine management

4.3.6 In his evidence to the Public Accounts and Estimates Committee, the Attorney-General stated that ‘the current system for collection of fines and infringements has been built up over many years’, and that ‘the regime for collecting infringement amounts, court fines, orders for victims compensation, civil judgement debt and the like has long been in need of reform’.239

235. The enforcement of court fines and infringement penalties against children is discussed in Chapter 10.
4.3.7 Responsibility for the management of court fines and infringement penalties is divided between the courts (for court fines) and various administrative bodies, including Civic Compliance Victoria and the Infringements Court (for infringement penalties).

4.3.8 The current approach to management of court fines and infringement penalties is ‘fine-focused’, rather than ‘debtor-focused’. As a result, a person will often receive an individual piece of correspondence regarding each fine or penalty, and there is little ability for his or her total debt to be consolidated.

4.3.9 Where a person has multiple fines and penalties, the current system of management requires interaction with, or applications to, multiple authorities in different locations, often involving different requirements, processes, and forms. As a result, the systems present a number of problems, both for people seeking to pay and for those bodies (and the courts) tasked with accepting payment and imposing enforcement sanctions.

4.3.10 Problems with the current system include the following:

- a person cannot apply to a court for consolidation of court fines owing to different court jurisdictions (for example, consolidation of a Magistrates’ Court fine and a County Court fine) on a single payment plan;
- a person cannot apply to either a court or the Infringements Court for consolidation of court fines and infringement penalties on a single payment plan;
- different courts accept different methods of payment of court fines;
- the methods available for payment of infringement penalties are different from those available for payment of court fines in different courts;
- a person cannot contact a single body to determine their total outstanding court fines and infringement penalties debt, or to manage that debt;
- prior to enforcement action by the Sheriff, no single administrative body can accept payment for both court fines (including court fines from different jurisdictions) and infringement penalties;
- a person can accumulate very large numbers of court fines and infringement penalties without being identified in the system;
- a person can end up on multiple payment plans independently approved by different courts, different agencies, and the Infringements Court;
- different sanctions are available to the courts for the enforcement of court fines and the infringements system for the enforcement of infringement penalties;
- the powers of the court on a default hearing differ according to whether the default relates to a court fine or an infringement penalty; and
- the measures for enforcing court fines are less extensive than those for infringement penalties, even though court fines generally relate to more serious offending than infringement penalties.
Multiple bodies

4.3.11 A number of stakeholders noted that the management of court fines and infringement penalties is complicated by the fact that the two systems are independent and do not relate to each other. Stakeholders highlighted that often people, particularly those who are vulnerable, have multiple infringement penalties at different stages of enforcement in addition to court fines. The lack of harmonisation can result in a person being overwhelmed with correspondence.

4.3.12 Multiple bodies interacting with a person in respect of fines or penalties (and therefore duplicating processes) not only creates administrative inefficiencies but also creates obstacles to resolution, both for the relevant authorities and for the person concerned. A particular issue raised by stakeholders is that a person can be the subject of multiple payment plans or instalment orders, which have been granted by authorities independently of each other, and in the absence of knowledge of existing plans or orders.

4.3.13 In combination, these plans can amount to an unreasonable financial commitment, as pointed out by PILCH Homeless Persons’ Legal Clinic:

> for someone who is trying to 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.

4.3.14 A participant at the Council’s roundtable on payment and enforcement commented that the lack of a single point of contact for fines and penalties generated confusion, given that:

> clients already assume that agencies are speaking to one another, and there is only one government … And they’re surprised when they have to go to different courts to pay different fines.

4.3.15 Multiple bodies can act as a barrier to the early identification and resolution of matters for those who ‘can’t pay’, and to the shifting of those who ‘might pay’ into the category of those who ‘will pay’.

Inconsistency in the use of discretion

4.3.16 Alongside the inconsistencies between the court fines and the infringement penalties enforcement systems, another issue identified by stakeholders is that each court location has its own enforcement practices.

4.3.17 Stakeholders submitted that the granting of an instalment order for court fine payment and the payment amounts required under an instalment order vary between court locations, and that this results in uncertainty as to the minimum instalment amount regarded as appropriate. Similarly, court practices allegedly vary as to whether a certain portion of outstanding court fines is required to be paid upfront to demonstrate ‘good faith’ in order for an instalment order to be allowed.

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240. Roundtable 2 – Payment and Enforcement (26 August 2013).
243. Submission 10 (PILCH Homeless Persons’ Legal Clinic).
244. Roundtable 2 – Payment and Enforcement (26 August 2013).
245. Roundtable 2 – Payment and Enforcement (26 August 2013); Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
246. Roundtable 2 – Payment and Enforcement (26 August 2013).
A centralised fine management body

4.3.18 One means of dealing with the problems caused by multiple fine enforcement bodies interacting with an offender is to create a centralised fine management body. Each state in Australia, other than Victoria, has developed a centralised fines management body. Some of these jurisdictions have in recent years enacted further reforms to harmonise the management and enforcement of court fines and infringement penalties.247 There has been a similar trend in jurisdictions overseas, for example, in New Zealand and the United Kingdom. 248

Approach in other jurisdictions

New South Wales

4.3.19 In New South Wales, the State Debt Recovery Office (SDRO) 249 is responsible for the receipt and processing of fines issued by various government agencies and authorities, and administering the fine enforcement system for the collection of all unpaid fines, including court fines.

4.3.20 Infringement penalties may be registered for enforcement with the SDRO once issued (if they concern a fine payable to the SDRO) or after default of payment.250 Court fines may be registered for enforcement with the SDRO after the date for payment ordered by the court has passed (or 28 days if no date is specified) and no payment has been made.251

4.3.21 The same enforcement actions may be used by the SDRO to enforce the payment of a debt, irrespective of whether the debt is the result of a penalty notice or a court-imposed fine.252

Queensland

4.3.22 In Queensland, the State Penalties Enforcement Registry (SPER) 253 is responsible for the collection and enforcement of unpaid infringement notice fines, court-ordered monetary penalties, offender debt recovery orders, and offender levies.254

4.3.23 Infringement notice fines may be registered for enforcement with the SPER after default of payment.255 Court fines may be registered for enforcement with the SPER at any time after the order is made, if all or part of the fine or other amount is unpaid.256

4.3.24 The same enforcement actions may be used by the SPER to enforce the payment of a debt, irrespective of whether the debt is the result of an infringement notice or a court-imposed fine.257

247. Western Australia, for example, has recently extended the availability of particular enforcement sanctions, such as vehicle immobilisation, to both the enforcement of court fines and the enforcement of infringement penalties: Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 (WA).

248. See [4.3.33]–[4.3.35].

249. The State Debt Recovery Office is established under the Fines Act 1996 (NSW).

250. Fines Act 1996 (NSW) s 42.

251. Fines Act 1996 (NSW) s 14(1A).

252. Fines Act 1996 (NSW) s 57(1).

253. The State Penalties Enforcement Registry is established under the State Penalties Enforcement Act 1999 (Qld).

254. Offender debt recovery orders include financial assistance or compensation to a victim of crime. The offender levy is a new fee imposed on all convicted offenders, separate from any criminal penalty that may be imposed.

255. State Penalties Enforcement Act 1999 (Qld) s 33(1).

256. State Penalties Enforcement Act 1999 (Qld) ss 34(1), 34(2A).

257. State Penalties Enforcement Act 1999 (Qld) pts 5, 6.
**South Australia**

4.3.25 In South Australia, recent legislation has created the Fines Enforcement and Recovery Office, which (as of 3 February 2014) is responsible for the collection and enforcement of unpaid court fines, expiation fines (which are the same as infringement penalties), criminal injury compensation amounts, and victims of crime compensation amounts.

4.3.26 Expiation fines may be aggregated with court fines, or separately registered with the Fines Enforcement and Recovery Office after default of payment. Court fines are payable to the Fines Enforcement and Recovery Office within 28 days from (and including) the date on which the fine was made.

4.3.27 The sanctions available for the enforcement of expiation fines and court fines (‘pecuniary sums’) in South Australia are different, but they are centrally managed by the Fines Enforcement and Recovery Office.

**Tasmania**

4.3.28 In Tasmania, the Monetary Penalties Enforcement Service is responsible for the collection and enforcement of unpaid court fines and infringement penalties.

4.3.29 Infringement penalties may be referred to the Monetary Penalties Enforcement Service for enforcement once issued (if they concern a penalty from a ‘non-fee paying public sector body’) or after default of payment (for penalties from other bodies). Court fines are referred to the Monetary Penalties Enforcement Service after imposition.

4.3.30 The same administrative and civil enforcement sanctions are available to the Monetary Penalties Enforcement Service for the enforcement of court fines and infringement penalties.

**Western Australia**

4.3.31 In Western Australia, the Fines Enforcement Registry is responsible for the enforcement of unpaid court fines and infringement notices. Court fines may be registered with the Fines Enforcement Registry after imposition. Infringement notices may be registered with the Fines Enforcement Registry after a default for longer than 28 days.

4.3.32 The Fines Enforcement Registry can apply the same enforcement sanctions for infringement notices as for court fines (other than an order to undertake community service or imprisonment).

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258. The Fines Enforcement and Recovery Office is established under the Statutes Amendment (Fines Enforcement and Recovery) Act 2013 (SA).
263. The Monetary Penalties Enforcement Service is established under the Monetary Penalties Enforcement Act 2005 (Tas).
264. Monetary Penalties Enforcement Act 2005 (Tas) ss 16(1), 18(1).
265. Monetary Penalties Enforcement Act 2005 (Tas) ss 41(a)–(b).
266. Monetary Penalties Enforcement Act 2005 (Tas) pts 6, 7, 8.
267. The Fines Enforcement Registry is established under the Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA).
269. Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA) ss 15, 16(2)(d).
New Zealand

4.3.33 In New Zealand, the Collections Unit of the Ministry of Justice is responsible for the collection and enforcement of all fines, including court-imposed fines, lodged infringements, and reparation. New Zealand has a centralised system of enforcement, whereby infringements are registered with the District Court (and deemed to be a court fine). The same powers of enforcement are available to the District Court, regardless of the initial source of the debt.

England, Wales, and Scotland

4.3.34 England, Wales, and Scotland have created largely centralised administrative systems for the management of fines under the Courts Act 2003 (UK) (for England and Wales) and the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Scotland). In these jurisdictions, the court makes a collection order when a fine is imposed by a court or an infringement penalty is registered with the court. This order allows enforcement to be conducted by an administrative body, which assigns a fines enforcement officer (FEO) to manage each case.

4.3.35 The fines enforcement officer can exercise various administrative powers, such as allowing for further time for payment or making deductions from social security payments. The officer can also use a number of sanctions, such as an attachment of earnings order, an attachment of debts order to recover money from a bank account, vehicle clamping, and seizure. If these actions are not successful, the matter can be referred back to court and the court may order further sanctions, such as sale of vehicles, increasing the amount of the fine, ordering driver disqualification, imposing a supervised activity order or, as a last resort, imposing a term of imprisonment.

Success of centralised enforcement

4.3.36 Data are not readily available from different jurisdictions on the effect of a centralised body on the successful collection of fines. In Tasmania, however, the introduction of a centralised fines management body resulted in a marked improvement in the overall collection rate of all penalties: ‘from 63% in the 2007–08 financial year to 84% in 2008–09; a net overall increase of 21%’. Part of the success in fines collection was due to:

- the introduction of the [Monetary Penalties Enforcement Act 2005 (Tas)] and more specifically enforcement strategies, priorities and campaigns delivered by MPES.

4.3.37 In Queensland, prior to the introduction of the State Penalties Enforcement Registry, the annual collection of fines and fees was approximately $24.3 million, while five years later (in 2005–06), the amount collected had increased to $89.8 million. This does not, however, account for possible increases in the number of fines imposed.

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272. Courts Act 2003 (UK) sch 5 pt 4; in Scotland, the court makes an ‘enforcement order’: Criminal Procedure (Scotland) Act 1995 (Scotland) s 226B.
275. Department of Justice (Tas) (2009), above n 274, 21.
Stakeholders’ views

4.3.38 There was broad support among stakeholders for the proposal that the management and enforcement of court fines and infringement penalties should be both harmonised and centralised.277 No stakeholders consulted by the Council objected to this proposal.

4.3.39 In their submission, PILCH Homeless Persons’ Legal Clinic outlined the benefits of a unified system of court fines and infringement penalties management, stating:

A streamlined centralised system would be more accessible for clients and far more effective from a service’s perspective (because a client would 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 process.278

4.3.40 The Victorian Association for the Care and Resettlement of Offenders (VACRO) noted that there should be a location where ‘consolidated information on a person’s outstanding court fines and infringement fines should be available’,279 while the Infringements Working Group also agreed that the management of court fines and infringement penalties should be harmonised and unified.280

4.3.41 In response to the question of how the management of court fines and infringement penalties should be harmonised, Saunders et al. stated that ‘a central agency could be established to manage both’.281 Victoria Legal Aid highlighted some of the benefits that a central agency could bring:

By collating fines and linking them to an individual, it would make it much simpler for a person to handle the administrative processes for the payment or review of fines. It may also facilitate better processes for intervention … Importantly, the central coordination of fines will also assist to reduce the legal resources currently required to assist people with fines.282

Fines Reform

4.3.42 Parallel to (but independent of) the Council’s review is the Victorian Department of Justice’s Fines Reform Project (see [1.3.1]–[1.3.5]). The key objective of that project is to:

establish an administrative model for collecting and enforcing legal debts in Victoria. The new model combines legislative, organisational and operational reforms that will provide uniform debt payment and management methods for people with fines, common sanctions for enforcing infringement fines and court fines, and a central body as the contact point for the public to pay and manage fine debt.283

277. Roundtable 2 – Payment and Enforcement (26 August 2013); Submission 1 (Victorian Association for the Care and Resettlement of Offenders (VACRO)); Submission 3 (Youthlaw); Submission 4 (Victoria Legal Aid); Submission 5 (Saunders, Lansdell, Eriksos, and Brown); Submission 6 (North Melbourne Legal Service Inc.), endorsing Submission 7; Submission 7 (Infringements Working Group); Submission 8 (Brimbank Melton Community Legal Centre), endorsing Submission 7; Submission 10 (PILCH Homeless Persons’ Legal Clinic).

278. Submission 10 (PILCH Homeless Persons’ Legal Clinic).

279. Submission 1 (Victorian Association for the Care and Resettlement of Offenders (VACRO)).

280. Submission 7 (Infringements Working Group).

281. Submission 5 (Saunders, Lansdell, Eriksos, and Brown).

282. Submission 4 (Victoria Legal Aid).

283. See Appendix 2: Department of Justice, Overview of the Fines Reform Legislative Amendment Package (2014).
The imposition and enforcement of court fines and infringement penalties in Victoria

4.3.43 The proposed role of a centralised body (in respect of infringement penalties) was also discussed by the Sheriff and Director of the Infringement Management and Enforcement Services (IMES) in his response to the Victorian Ombudsman’s investigation into unexecuted warrants. In the Ombudsman’s report, the Sheriff and Director of IMES is quoted as saying that the fines reform package ‘focuses on … establishing an administrative body as a central understandable point of contact’.284

The Council’s view

Support for harmonisation of court fine and infringement penalty management

4.3.44 To the extent that is possible, court fine and infringement penalty management should be harmonised. Some exceptions are necessary in light of particular differences between court fines and infringement penalties. However, unless there are sound policy reasons for drawing a distinction, the particular source of a financial penalty should not determine the process for management, the process for payment, or the available means of enforcement.

4.3.45 This approach has been recommended based on:

- the purposes and principles of court fines and infringement penalties;285
- an understanding of the current approaches to enforcing court fines and infringement penalties, and the strengths and weaknesses of these approaches;
- an analysis of the proposed amendments to the system under the Fines Reform Project;
- analysis of the recommendations in the Victorian Ombudsman’s report286 and in Saunders et al.;287
- data that show how cases track through the system and how current sanctions are used (or not used);
- stakeholder views about strengths or problems in the current system and how a harmonised system should operate; and
- the operation of similar approaches in other jurisdictions.

Creation of a centralised administrative body

4.3.46 The Council supports the key objective of the Fines Reform Project to provide a uniform centralised body for the management and enforcement of court fines and infringement penalties.

4.3.47 The centralisation of court fine and infringement penalty management will make the system fairer by creating greater consistency in fines management and parity between court fine and infringement penalty debtors.

4.3.48 To effect harmonisation of payment, management, and enforcement, the Council supports the creation of a centralised administrative body that should accept the registration of all court fines and infringement penalties.

4.3.49 Although some enforcement agencies may continue to enforce infringement penalties outside the centralised enforcement system, the administrative body should encourage all enforcement agencies to register infringement penalties with the body for enforcement.

285. See [2.2.14]–[2.2.54] and [3.2.14]–[3.2.16].
287. Saunders et al. (2013), above n 194.
Chapter 4: Harmonising payment and management of court fines and infringement penalties

4.3.50 In addition to the creation of a centralised administrative body, the particular functions necessary for the administrative body to effectively manage the payment and enforcement of court fines and infringement penalties have been considered.

4.3.51 A number of key functions have been identified, including:

- accepting payment of court fines and infringement penalties through a wide variety of methods, including Centrepay;
- issuing a consolidated statement of debt to a person whenever a new court fine or infringement penalty is registered with the body (rather than sending separate pieces of correspondence for each debt);
- using simple, comprehensible terminology and correspondence that identifies the options available to people to manage their fines and penalties;
- providing the facility for people to manage and pay their fines and penalties online;
- case managing different offender and infringement recipient groups;
- employing a compliance model to direct case management and the use of sanctions; and
- reporting to the Victoria Police Toll Enforcement Office on high volume tolling offenders who accumulate a large number of infringement penalties.

Recommendation 1: Centralise court fine and infringement penalty management and enforcement

A centralised administrative body should be created to manage the payment and enforcement of all court fines and infringement penalties registered with the body, as outlined by Fines Reform.

Functions of the administrative body

Current payment methods

4.3.52 The payment methods currently available for court fines and infringement penalties vary among courts and the infringement penalty system. These are described in detail in Appendix 1.

4.3.53 Prior to the enforcement stage, different enforcement agencies provide for different methods of payment.

4.3.54 Table 7 (page 88) presents the methods available for the payment of court fines, according to each court jurisdiction, and for the payment of infringement penalties, according to the type of infringement notice issued, to Civic Compliance Victoria or to the Infringements Court.

4.3.55 While there is some variation according to the type of infringement notice issued, there are generally more methods available for the payment of infringement penalties than there are for the payment of court fines.
<table>
<thead>
<tr>
<th>Payment method</th>
<th>Court fines</th>
<th>Infringement penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Magistrates’ Court</td>
<td>County Court</td>
</tr>
<tr>
<td>Cash (in person)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Cheque</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Money order</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Credit card</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>EFTPOS</td>
<td>Yes&lt;sup&gt;a&lt;/sup&gt;</td>
<td>Yes&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>CentrePay</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>BPay</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Credit card by phone</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Credit card online</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Australia Post</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Direct debit</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

<sup>a</sup> The Magistrates’ Court has EFTPOS facilities at all venues, save and except for small courts that are visited infrequently.

<sup>b</sup> The Magistrates’ Court has EFTPOS facilities at all venues, save and except for small courts that are visited infrequently.

<sup>c</sup> Handwritten fines include those issued on the spot or attached to vehicles by Victoria Police or other state government agencies, such as VicRoads, but excludes parking fines.
4.3.56 The different methods available for payment of court fines vary between different court jurisdictions and between Magistrates’ Court locations. Currently, no court jurisdiction offers facilities to pay court fines through online banking (other than BPay) or online credit card payments, and none offers the ability to set up a direct debit facility for payment of instalments.\textsuperscript{288}

4.3.57 In the Magistrates’ Court, the ability to pay via BPay and at Australia Post venues is dependent on having the relevant payment codes, both of which are printed on a statement of fines and penalties (known as a ‘blue statement’).

4.3.58 If a person requests a printout of the penalty while at court, or enters into an instalment order through the registry after his or her sentencing hearing, the blue statement cannot be generated by the current court IT system. In such circumstances, the relevant payment codes for BPay and Australia Post cannot be provided. In all other court-commenced cases, the blue statement is generated and posted to the person after the imposition of a fine.\textsuperscript{289}

\textbf{Centrepay}

4.3.59 Centrepay is a service whereby Centrelink payment recipients can submit an application for a portion of their payment to be paid to a third party.

4.3.60 At present, instalments under a court fine instalment order cannot be deducted from Centrelink payments through Centrepay. This facility is, however, available for the payment of infringement penalties by instalments under a payment order.

4.3.61 Reforms in New South Wales, which allow the use of Centrepay for fine payment, have been very successful. The New South Wales Department of the Attorney General has noted that:

Allowing people on Centrelink benefits to access Centrepay as soon as they are issued with a court fine has led to the recovery of $1,033,563 as at 4 April 2011, and a further $3,357,169 in court fine debt is under management through Centrepay arrangements.\textsuperscript{290}

4.3.62 A participant at the Council’s roundtable on payment and enforcement noted that the unavailability of Centrepay for court fines is a significant obstacle to payment, and may even result in further infringement offending (such as transport ticketing offences), stating:

People that are put on a payment plan at the Magistrates’ Court aren’t given the option of paying through Centrepay electronically. And so they often default, because they have to actually go to [pay] … and often actually incur more fines on the way to Court.\textsuperscript{291}

4.3.63 Saunders et al. agreed, noting that the ‘necessity to pay in person also places [an infringement recipient] at risk of acquiring further fines for travelling on public transport without a ticket or driving while unregistered’.\textsuperscript{292}

\textsuperscript{288.} Email from Magistrates’ Court of Victoria to Sentencing Advisory Council, 28 August 2013; County Court of Victoria, Fines and Costs (County Court of Victoria, n.d.) <http://www.countycourt.vic.gov.au/files/Fines%20and%20Costs.pdf> at 1 February 2014; Email from Supreme Court of Victoria to Sentencing Advisory Council, 3 December 2013; Meeting with Children’s Court of Victoria (16 September 2013).

\textsuperscript{289.} Email from Magistrates’ Court of Victoria to Sentencing Advisory Council, 28 August 2013.


\textsuperscript{291.} Roundtable 2 – Payment and Enforcement (26 August 2013).

\textsuperscript{292.} Saunders et al. (2013), above n 194, 85.
Linking payment orders to direct debit or Centrepay

4.3.64 The facility to pay instalments on a payment order through regular direct debits or deductions from Centrelink benefits could encourage compliance and thereby avoid prolonging a person’s contact with the enforcement system.

4.3.65 Some have argued that allowing automatic deduction of fines from welfare payments, as part of an instalment plan, could potentially make the fine or penalty ‘invisible’ as it requires no physical effort on the part of the offender to make a payment, and so may diminish the effectiveness of the fine or penalty as a sanction.293

4.3.66 A court fine or infringement penalty punishes through the diminution of a person’s financial capacity. This occurs whether the fine or penalty amount is paid at once, in full, or gradually upon deduction of each instalment under a payment plan.

4.3.67 The assumption that a person will not notice the effect of the deduction of an instalment is likely to be false. This is because a person is not granted a payment plan or an instalment order as of right but must be approved (by either a court or the Infringements Court) based on that person’s financial circumstances.294

4.3.68 During consultation, one stakeholder highlighted that a benefit of automatic payment through Centrepay is that ‘people don’t actually have to think about making payments’. It was emphasised, however, that this meant the person was less likely to forget to make a payment (and potentially default), not that the person was less likely to feel the effect of the payment.295 Centrelink payment amounts have little capacity to absorb infringement penalties (particularly once essential costs such as food and housing are taken care of);296 therefore, payment via Centrepay will almost certainly be felt by infringement recipients.

The Council’s view

4.3.69 The more methods there are available for the payment of fines and penalties, the more likely it is that people who ‘will pay’ and ‘might pay’ will actually pay. Some methods of payment may be more cost effective for the administrative body than others (for example, credit card facilities involve merchant fees to credit card providers) and correspondence from the administrative body may wish to highlight certain methods in preference to others.

4.3.70 It is critical for the effectiveness of fines that they are paid. Ultimately, the administrative body is best served in its function to recover fines and penalties by ensuring that as many methods as possible are available for payment.

4.3.71 Further, the availability of Centrepay – particularly as it concerns people who often ‘can’t pay’ immediately but ‘will pay’ on an instalment order or payment plan – may increase compliance, and may also decrease the likelihood of further infringement offending where a person is currently required to physically attend a location to pay.

4.3.72 To enable better compliance and decrease the possibility of default, the administrative body should encourage people seeking a payment plan to utilise direct debit or Centrepay facilities.

293. Roundtable 2 – Payment and Enforcement (26 August 2013).
296. As at March 2014, the fortnightly Newstart payment for a single person with dependent children was $542, while a penalty unit is $144.36.
4.3.73 The current system of infringement penalty management is focused on individual infringement notices and individual penalties, rather than on an individual person.

4.3.74 As a consequence, multiple pieces of correspondence in relation to each separate infringement penalty are currently sent to an infringement recipient if the penalty remains outstanding. The Victorian Ombudsman’s report noted an extreme example of the consequence of the current infringement-centric system, where an offender with 547 outstanding warrants had received ‘approximately 3,500 letters required by legislation to be sent to him’.297

4.3.75 For court fines, separate reminder notices of the outstanding fines from each jurisdiction are sent to the offender. These reminder notices do not consolidate debts between different Victorian courts or with infringement penalties.

4.3.76 There was broad support from stakeholders for the proposal that the administrative body should provide a consolidated statement of a person’s outstanding court fine and infringement penalty debt, whenever a new matter is registered with the body.298

4.3.77 During consultation, one roundtable participant noted that the centralised body should make it as simple as possible for a person to consolidate his or her debts:

   if you’ve got a person who has a payment plan … and then they come to open court, they should … be able to then funnel that fine straight into whatever plan they’ve got … without the confusion of another notice and potentially … another thing someone has to do to try and have their fines consolidated.299

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298. Submission 1 (Victorian Association for the Care and Resettlement of Offenders (VACRO)); Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
299. Roundtable 2 – Payment and Enforcement (26 August 2013).
The Council’s view

4.3.78 The centralised administration of court fines and infringement penalties affords the opportunity to provide a person with consolidated information on his or her outstanding debt. Whenever a new fine or penalty is registered with the administrative body, the correspondence should, in effect, provide a statement of outstanding matters, alongside any existing arrangements and the options the person has for payment and other arrangements. The statement should consolidate court fines from different Victorian courts, along with outstanding infringement penalties.

4.3.79 The Council considered whether, on default, new infringement penalties or court fines should be automatically added to an existing payment plan after registration of the unpaid penalty with the administrative body (allowing time for the person to object). Such a step, however, is likely to be impractical for people paying instalments through Centrepay; further, the payment arrangements prior to the most recent fine or penalty may no longer be appropriate.

4.3.80 Instead, while the information provided to the person should clearly show consolidated fine and penalty debt, positive action should be required on the part of the fine or penalty recipient to engage with the administrative body and make appropriate payment arrangements. Requiring engagement from the person to add the new fine or penalty to an existing payment arrangement may decrease the likelihood of default if the current arrangement is no longer appropriate.

Recommendation 4: Information that should be included in notice from administrative body

When the administrative body notifies a person that a court fine or an infringement penalty has been registered with the body for enforcement, the notice should include:

- a consolidated statement of the recipient’s outstanding court fine and/or infringement penalty debt;
- a breakdown of each component (for example, the amount outstanding in relation to each fine);
- any existing arrangements that the person has in place, for example, an existing payment order;
- all options available to the person and information about how to exercise these options, including paying the fine or penalty through a work and development permit, applying for a payment order, and applying to consolidate the new fine or penalty with an existing payment order;
- information about applying for an adjusted penalty amount on the ground of financial hardship (for infringement penalties); and
- contact details for the administrative body, including information on how to pay and manage fines or penalties online, and a telephone helpline that the person can use to seek further information or assistance.
Online management and payment

4.3.81 Currently, IMES (through Civic Compliance Victoria) provides an online portal for the payment of infringement penalties at <www.fines.vic.gov.au>. This website provides extensive information on, and facilities for, the payment of different kinds of infringement penalties. The website also clearly emphasises the importance of payment to avoid further enforcement costs, and warns of the possible sanctions that may be imposed upon default.  

4.3.82 Under a harmonised system of fine and penalty management, the administrative body should provide similar online facilities for the payment and management of fines and penalties in order to encourage payment, compliance, and engagement with the administrative body (and also to reduce the volume of correspondence currently generated).

4.3.83 Wherever possible, a person should be able to use online facilities to:

- view the total amount of consolidated court fines and infringement penalties owed;
- pay court fines and infringement penalties;
- make applications for time to pay or make or vary a payment order; and
- make applications for enforcement review.

4.3.84 In conjunction with email reminders containing a link to the relevant webpage (see [4.3.140]), a person could be directed by the administrative body to provide information or make an application, and thereby increase the potential for engagement.

4.3.85 The greater use of a website for engagement in the management of fines and penalties would also allow opportunities for the provision of materials in languages other than English. The Infringements Working Group suggested that ‘each infringement should have one corresponding number assigned to it and information on infringements should be presented in plain English and other languages’.

4.3.86 Further, materials and resources that assist service providers (such as legal representatives or financial counsellors) that support people with outstanding fines and penalties should be readily accessible online.

Recommendation 5: Online management of consolidated debt

The administrative body should provide the facility for a person to access online information about his or her consolidated outstanding debt registered with the administrative body in order to pay and manage fines, including making online applications (for example, for a payment plan).

The administrative body should also make available online resources for organisations (such as financial counsellors) that provide support services to people with court fines or infringement penalties.

Case management

**Benefits of case management**

4.3.87 In his recent report, the Victorian Ombudsman stated that:

Apart from the allocation of civil warrants to Sheriff’s Officers by supervisors, IMES has no documented and systematic methodology for targeting, selecting and enforcing criminal warrants … Sheriff’s Officers generally do not prioritise warrants but are driven by location and convenience, based on their own location and the addresses of offenders. There is neither guidance from supervisors nor any IMES policy.

4.3.88 The Sheriff’s Operations, South Eastern Metropolitan Region, noted that a common enforcement strategy by the Sheriff involves conducting roadblocks in a ‘blitz’ where the use of automatic numberplate recognition technology (ANPR) allows for a high volume of vehicles to be checked against a database of outstanding warrants.

4.3.89 A critical function of the centralised administrative body should be that of case management, and the ability to identify and prioritise high volume fine or penalty recipients and manage them throughout the enforcement process.

4.3.90 The Ombudsman’s report highlighted that, in relation to infringement penalties, the top 10 offenders had a total combined debt of over $1.7 million. Analysis of court fine payment data in Chapter 2 also highlights the high proportion of cases, where no payment has been made, that had issued, but unenforced, warrants (See [2.8.24]–[2.8.26]).

4.3.91 A number of stakeholders expressed the view that case management was an important part of the effective enforcement of court fines and infringement penalties.

**Unique identifier for each fine recipient**

4.3.92 Some stakeholders emphasised that a person-based approach could allow for the better identification of vulnerable people. As part of the process of managing persons, rather than fines, Victoria Legal Aid stated:

Fines are recorded under separate obligation numbers and are not linked under an individual person … By collating fines and linking them to an individual, it would make it much simpler for a person to handle the administrative processes for payment or review of fines. It may also facilitate better processes for early intervention.

4.3.93 Other stakeholders noted that the case management approach would allow the greater use of sanctions to target high volume or recalcitrant offenders, but this would require greater information-sharing and an IT system that could provide case management functionality.

4.3.94 Saunders et al. noted that the current system employs multiple identifiers, resulting in:

confusion for clients and others. Indeed, one financial counsellor described the situation as ‘a nightmare’ … Fine recipients often have an infringement number, an infringement court case number, an obligation number, and a debtor ID number.

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303. Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
305. Roundtable 2 – Payment and Enforcement (26 August 2013).
306. Submission 4 (Victoria Legal Aid).
308. Saunders et al. (2013), above n 194, 85.
Other jurisdictions

4.3.95 In Scotland, England, and Wales, an assigned fines enforcement officer (FEO) manages fine enforcement on a case-by-case basis. After a court imposes a fine, a collection order authorises enforcement by an FEO. If a person defaults on payment of the fine, the FEO may impose a number of sanctions, including making an attachment of earnings order or a deduction from benefits order; or making a vehicle clamping order.309

4.3.96 The FEO acts as a case manager and applies a range of sanctions depending on an assessment of the particular needs of the case or the sanctions already attempted.310

Fines Reform

4.3.97 As stated in the Ombudsman’s report, the Fines Reform amendments focus on, among other things:

proactive management of high value debtors … offenders will have no excuse for allowing their infringement debts to mount up without taking action. For those who are unable to take the initiative to resolve their matters, the package includes proposals for the Department to make contact with these offenders, advise them of options, and take a case-management approach to sanctions.311

The Council’s view

4.3.98 In addition to targeting high volume offenders, a case management framework for the enforcement of court fines and infringement penalties is likely to assist with identifying vulnerable people, especially those with special circumstances.

4.3.99 Further, a case management approach, which assigns a unique identifier to each debtor and tracks the registration of fines and penalties to that person, is likely, over time, to assist the administrative body in determining the appropriate enforcement response, based on each person’s history of compliance.

4.3.100 While a case management approach will allow high volume offenders to be more readily identified, there is also value in randomly allocating more intensive enforcement sanctions to lower level offenders who ‘might pay’ in order to engender a culture of compliance, and to emphasise that non-compliance, even by low level offenders, is not without risk.

Recommendation 6: Administrative body should case manage particular offenders

The administrative body should provide a unique identifier for each court fine and infringement penalty recipient.

The administrative body should have the ability to prioritise high volume and high debt fine or penalty recipients and case manage them throughout the enforcement process, and adequate resources should be targeted to this group.

Alongside the intensive management of high volume and high debt fine or penalty recipients, the administrative body should randomly target lower volume and lower debt fine or penalty recipients, to encourage compliance.

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Compliance model

4.3.101 Currently, the number of outstanding court fine default and infringement warrants is overwhelming. The Ombudsman’s report identified a pool of 3.5 million unexecuted warrants valued at $1.2 billion as at August 2013.312

4.3.102 Outstanding infringement warrants relate to a range of people, from defaulters with one or two outstanding infringement penalties who ‘might pay’, to those with many unpaid penalties and large amounts of debt who ‘can’t pay’ or ‘won’t pay’.

4.3.103 As recommended above, the administrative body should be set up in such a way to allow for case management, so that high volume debtors can be identified and their matters resolved. Developing a compliance model to guide the administrative body’s enforcement practices will assist the body to maximise the effective use of its enforcement resources.

4.3.104 The Monetary Penalties and Enforcement Service (MPES) in Tasmania is a centralised administrative body that (through its Director) is responsible for the collection and enforcement of court fines and infringement penalties.313

4.3.105 The MPES has developed a range of enforcement and communication strategies, including the use of ‘specific information systems and intelligence sources to assist in the development of profiles and targeting items for enforcement’.314 Guiding the development of profiles and the use of targeted enforcement activity is a ‘compliance model’ as shown in Figure 22.

4.3.106 MPES describes that the core principle of the compliance model:

is to make compliance as easy as possible for those who want to comply. Whereas, the application of enforcement sanctions against enforcement debtors who wilfully seek to avoid or refuse payment will increase the awareness that the payment of monetary penalties is not voluntary.315

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312. These figures relate to the number and value of all warrants issued by Victorian courts, not just warrants issued by the Infringements Court; however, the vast majority are infringement warrants: Victorian Ombudsman (2013), above n 3, 9.

313. Monetary Penalties Enforcement Act 2005 (Tas) pt 2.

314. Department of Justice (Tas) (2009), above n 274, 2.

315. Ibid.
4.3.107 The MPES compliance model is based on a range of compliance behaviours. These behaviours are made up of four main ‘attitudes and behaviours’ towards compliance:

- compliance, including those who are ‘willing to do the right thing’ (those who ‘will pay’);
- persuasion, including those who ‘try to, but don’t always succeed’ (‘can’t pay’/’might pay’);
- avoidance, including those who ‘don’t want to comply’ (‘might pay’/’won’t pay’); and
- refusal, including those who ‘have decided not to comply’ (‘won’t pay’).

4.3.108 The compliance model also includes a fifth group, known as ‘game players’, describing those people who may comply but their attitude is one of ‘winning against the system’.316

Different enforcement responses according to compliance model

4.3.109 The MPES has developed different enforcement responses to target each group that falls within a different attitude or behaviour. For example:

Debtors within the ‘Avoidance’ category require moderate enforcement action, data analysis and regular monitoring. This level requires significant resourcing for the imposition of sanctions, client contact, assessing, processing and reviewing of payment variations.317

4.3.110 In England and Wales, different enforcement actions are also taken against different groups, based on their history of compliance. In that jurisdiction, a person who has an outstanding Magistrates’ Court fine and who has not made payments as set out in a collection order for that fine is considered an ‘existing defaulter’. If a new fine or penalty is registered for enforcement against an ‘existing defaulter’, an attachment of earnings order or deduction from benefits order must be made.318

The Council’s view

4.3.111 A compliance model similar to that used by the Tasmanian MPES would assist the administrative body in the targeting of enforcement sanctions and the case management of fine defaulters.

4.3.112 The use of a compliance model is particularly important in light of the Fines Reform proposal that sanctions may be applied in the enforcement process ‘closer in time to offending’ (see [5.4.1]–[5.4.25] and Appendix 2). In those circumstances, the flexibility in the discretion of the administrative body to impose enforcement sanctions must be balanced against the need to ensure that those sanctions are effectively targeted.

Recommendation 7: Administrative body should develop a compliance model to assist in the case management of fine and penalty defaulters

The administrative body should develop a compliance model, similar to that employed by the Monetary Penalties Enforcement Service in Tasmania, to guide the use of enforcement sanctions and provide for case management and targeting of particular categories of fine and penalty defaulters.

316. Department of Justice (Tas) (2009), above n 274, 15.
317. Monetary Penalties Enforcement Service (Tas), Submission to the Select Committee on the Cost of Living (2012) 8.
318. Courts Act 2003 (UK) sch 5 paras 3(1), 8, 13(1).
High volume tolling infringement offenders

4.3.113 As discussed at [3.2.20], the infringements system is intended to be an efficient way of responding to offending of a low level of seriousness. However, an infringement penalty should not be the default response to continual repeat offending by a single individual. An infringement penalty should not operate as a retrospective licence, or a ‘licence paid in arrears’ that allows the offending conduct to be continuously repeated.319

4.3.114 One of the advantages of a case management system of court fines and infringement penalties enforcement is that, in appropriate circumstances, consolidated, person-based information can be circulated between the administrative body and an enforcement agency.

4.3.115 During consultation, a number of stakeholders spoke about the need to provide an intervention into, or ‘brake’ on, a person’s offending,320 particularly when it involves the accrual of significant amounts of unpaid infringement penalties. Because the infringements system can be highly automated, it was considered important to target high volume offenders early, and bring them before a court or another authority or officer, to find out why that person may be offending and to possibly address the underlying causes of the behaviour.321

Intervention to address high volume tolling infringement offending

4.3.116 A key example of high volume offending is tolling offences, that is, driving a vehicle that has not been registered with the tolling operator on a toll road (in other words, not paying toll fares).322

4.3.117 Figure 48 (page 302) shows the substantial number of offenders with a very high number of tolling charges. As discussed at [9.5.1], the highest number of charges for a person was 753, while the highest number of charges for a corporation was 799.

4.3.118 Clearly, some form of intervention is required to address the continual offending by a person or a corporation that results in the issuing of over 700 infringement notices.

4.3.119 Stakeholders were asked what form that intervention should take. Some stakeholders considered that, rather than requiring a person to be brought before a court, the enforcement agency should be the first point of contact for addressing repeat infringement offending.323 It was suggested that an enforcement agency could refer a person to support services, for example, where the offending is related to the existence of special circumstances.324 It is unlikely, however, that an agency could compel a person to engage with those support services.

4.3.120 Similarly, there is no bar to the enforcement agency corresponding with the offender to draw attention to the number of infringement notices that have been issued to that person, and the need for behavioural change. Stakeholders noted, however, that high volume infringement offenders currently receive numerous pieces of correspondence that are frequently ignored.325

320. Meeting with Magistrates’ Court of Victoria – Special Circumstances List (9 January 2014).
322. Melbourne City Link Act 1995 (Vic) s 73; EastLink Project Act 2004 (Vic) s 204.
323. Meeting with Magistrates’ Court of Victoria – Special Circumstances List (9 January 2014).
324. Meeting with Magistrates’ Court of Victoria – Special Circumstances List (9 January 2014).
325. Roundtable 2 – Payment and Enforcement (26 August 2013).
4.3.121 Unlike an enforcement agency, the court has the authority to consider a person’s circumstances and impose a sanction that compels a person to address the underlying causes of the offending behaviour.

4.3.122 Additionally, it was noted during consultation that often when a person attends the Magistrates’ Court on the hearing of an infringement matter, this can be the first opportunity the person has to make contact with the court’s support officers, who can provide linkages to support services, such as drug or alcohol counselling, financial counselling, or accommodation services.326

Victoria Police Toll Enforcement Office response to high volume offending

4.3.123 If multiple tolling infringement penalties are registered with the administrative body (up to a number or frequency agreed to between the Victoria Police Toll Enforcement Office and the administrative body), the administrative body should notify Victoria Police that the person is a high volume infringement offender.

4.3.124 As a further means of seeking engagement, the administrative body should also send a notice to the offender with the same information about the number of infringements incurred, along with information about contacting the administrative body to make arrangements for the payment of existing infringement penalties.

4.3.125 Where the Victoria Police Toll Enforcement Office receives a notice from the administrative body that a person is declared a high volume infringement offender, the Victoria Police Toll Enforcement Office should prosecute further tolling infringement offending by that person by way of a charge and summons to court.

4.3.126 Where outstanding infringement penalties have been paid or discharged, or outstanding tolling infringement warrants have been satisfied or withdrawn, the administrative body should withdraw the high volume infringement offender notice.

The Council’s view

4.3.127 The credibility of the infringements system relies on the appropriate use of infringement notices as a response to offending behaviour. Where a person has received hundreds of infringement notices for the same offence from the same agency, it strongly suggests that an infringement notice is not the appropriate response.

4.3.128 While prosecuting tolling infringement offenders in court may potentially contradict other recommendations aimed at reducing the number of people who come before the court on the basis of infringement matters, this approach is designed to address the relatively small number of offenders who accrue very large tolling infringement penalty debt. Currently, high volume tolling offenders often end up in court. If the matter is proven after a revocation application (as commonly occurs), the court must determine an appropriate penalty taking into account the principle of totality, which often requires much of the outstanding infringement penalties to be discharged.327

4.3.129 Alternatively, the person may end up in court for an infringement warrant enforcement hearing under section 160 of the Infringements Act, in which case the court must still deal with the high volume of tolling infringement debt that has accrued, often through discharge of most, or a large proportion, of the outstanding amount.

326 Meeting with Magistrates’ Court of Victoria – Special Circumstances List (9 January 2014).
327 See discussion of enforcement review in Chapter 5.
4.3.130 Bringing high volume tolling offenders to court on a charge and summons, before they accrue potentially hundreds of thousands of dollars in unpaid tolling infringement penalties, would allow the court to both consider the underlying causes of the offending and impose an appropriate penalty.

4.3.131 For persons or corporations that deliberately refuse to pay tolls and continually reoffend, the penalty imposed by the court would be able to reflect this wilful disregard of the law at an earlier stage, and without the need for the court to discharge large amounts of accrued debt to account for totality.

Recommendation 8: Prosecuting high volume tolling infringement offenders

In consultation with the administrative body, the Victoria Police Toll Enforcement Office should establish limits on the acceptable number and frequency of tolling infringement notices it may register with the administrative body against individual offenders over a specified period.

Where an offender exceeds the limit (as set by the Victoria Police Toll Enforcement Office), the administrative body should notify the Victoria Police Toll Enforcement Office and the offender that the offender has been declared a high volume tolling offender.

The Victoria Police Toll Enforcement Office should consider whether to prosecute further offending by that offender by way of a charge and summons to court.

Where outstanding infringement penalties have been paid or discharged, or outstanding tolling infringement warrants have been satisfied or withdrawn, the administrative body should withdraw the high volume tolling offender notice.

4.3.132 Consideration should be given to extending the high volume offender notice scheme to cover other infringement offences, if the administrative body identifies that offenders are accruing large amounts of outstanding infringement debt in relation to those offences.

Reminders through SMS messaging

4.3.133 A recent study in the United Kingdom applied both communications technology and behavioural economics techniques to the collection of outstanding fines.

4.3.134 Figure 23 is an extract from a study by Haynes et al. on the collection of delinquent fines, which examined the effect of SMS-based reminders on the payment of court fines.328

4.3.135 The results of the study demonstrate a significant increase in the response rate of people who received a text message reminding them to pay (compared with those who did not receive a message) at the point at which a bailiff was about to visit to seize property. A further increase was observed where that message was personalised.329

328. Laura Haynes et al., Test, Learn, Adapt: Developing Public Policy with Randomised Controlled Trials (Cabinet Office Behavioural Insights Team (UK), 2012) 10.

329. Haynes et al. (2012), above n 328, 10.
Box 1: Demonstrating the impact of text messaging on fine repayments

The Courts Service and the Behavioural Insights Team wanted to test whether or not sending text messages to people who had failed to pay their court fines would encourage them to pay prior to a bailiff being sent to their homes. The way this question was answered is a clear example of the ‘test, learn, adapt’ approach, and the concurrent testing of multiple variations to find out what works best.

In the initial trial, individuals were randomly allocated to five different groups. Some were sent no text message (control group), while others (intervention groups) were sent either a standard reminder text or a more personalised message (including the name of the recipient, the amount owed, or both).

The trial showed that text message prompts can be highly effective (Figure 5).

A second trial was conducted using a larger sample (N=3,633) to determine which aspects of personalised messages were instrumental to increasing payment rates. The pattern of results was very similar to the first trial. However, the second trial enabled us to be confident not only that people were more likely to make a payment on their overdue fine if they received a text message containing their name, but that the average value of fine repayments went up by over 30%.

The two trials were conducted at very low cost: as the outcome data was already being collected by the Courts Service, the only cost was the time for team members to set up the trial. If rolled out nationally, personalised text message reminders would improve collection of unpaid fines; simply sending a personalised rather than a standard text is estimated to bring in over £3 million annually. The savings from personalised texts are many times higher than not sending any text reminder at all. In addition to these financial savings, the Courts Service estimates that sending personalised text reminders could reduce the need for up to 150,000 bailiff interventions annually.
The imposition and enforcement of court fines and infringement penalties in Victoria

Centralised contact information: mobile phones and email

4.3.136 The centralisation of fine and penalty enforcement through the administrative body affords the opportunity to collect and consolidate contact information that relates to a specific person. In accordance with Recommendation 6, a unique identifier should be ascribed to each individual. Wherever possible, the administrative body should collect the mobile number and email address for an individual as a means of contact in relation to outstanding fine and penalty debt. All application forms, for example, should include fields for mobile phone numbers and email addresses.

4.3.137 While a person may, over time, change physical address, the portability of mobile telephone numbers between carriers in Australia has decreased the rate at which people use landline services, and increased the use of mobile phone services that, by their nature, are portable to new physical addresses. In these circumstances, communications to a mobile phone, rather than to a physical address, may be more likely to be received and acted upon.

4.3.138 The decrease in the use of landline services demonstrates that a large number of people are using their mobile phone as the principal tool for voice communication. A 2010 study showed that the proportion of households without a landline telephone connection had doubled from 5% to 10% in the preceding 5 years.

4.3.139 As part of the role of the administrative body in case managing court fine and infringement penalty debtors, the use of SMS messaging should be trialled as a means of reminding people when a payment deadline is due, such as when a warrant will shortly be issued for non-payment.

4.3.140 Further, the administrative body should collect and use email addresses as a means of communicating with people, allowing links to resources on the administrative body’s website to be included within email communications where relevant.

Recommendation 9: Administrative body should trial the use of automated SMS reminders

The administrative body should trial the use of automated SMS messaging to remind people to pay prior to the expiry of compliance deadlines, such as prior to the issuing of a warrant.

The administrative body should collect and use email addresses as a means of correspondence with court fine and infringement penalty debtors.

IT and communication technology resourcing

4.3.141 The current IT systems employed by the courts and by IMES were frequently described during the Council’s consultations as an obstacle to, rather than assisting with, the payment and enforcement of court fines and infringement penalties.

4.3.142 The Magistrates’ Court utilises the Courtlink case management system, while IMES and Sheriff’s officers utilise the Victorian Infringement Management System (VIMS).


331. Australian Communications and Media Authority (2010), above n 330, 3.

332. Roundtable 2 – Payment and Enforcement (26 August 2013).

333. The County and Supreme Courts utilise separate systems: the County Court uses the Case and List Management System (CLMS) and the Supreme Court uses CourtView.
Both systems were described as ‘out dated’. In respect of VIMS, the Sheriff and Director of IMES reported to the Victorian Ombudsman that:

IMES acknowledges that VIMS is inadequate, and no longer supports best practice enforcement of outstanding infringements, enforcement orders and warrants.

While a number of stakeholders commented explicitly on the failings of the current IT systems, a greater number expressed frustration that current systems are unable to perform certain tasks. Performance of those tasks would necessarily require reform to the IT systems.

For example, some stakeholders commented that a person should be able to access a single source of his or her outstanding court fine and infringement penalty debt, which would, necessarily, require reform to the current IT systems, or provision of a new IT system to the administrative body. Similarly, stakeholders agreed that a person should have the ability to pay and manage court fines and infringement penalties online, or to make applications online, each of which require reforms to the current IT systems.

IT limitations on the use of sanctions

In his report, the Ombudsman highlighted that some existing enforcement sanctions, including orders for the attachment of earnings, orders for the attachments of debts, and charges against real property, were not currently utilised by IMES on the basis that (among other reasons) the IT system does not support them.

IT limitations on consolidating debt

The separate IT systems in Victoria that manage data for the Magistrates’ Court (Courtlink) and the infringements system, including IMES and the Infringements Court (VIMS), are not person-based or debtor-based.

Instead, events that occur in the Magistrates’ Court and are recorded in Courtlink are attached to a particular case, rather than a particular person. Similarly, events that occur during enforcement by IMES and the Infringements Court and are recorded by VIMS are attached to an individual infringement, rather than an infringement recipient.

A person may have multiple cases involving fines or multiple infringements (or indeed both). As a result of the limitations of both IT systems, there are difficulties in determining an individual person’s total court fine and infringement penalty debt.

IT limitations on transferring matters to court

The two IT systems (Courtlink and VIMS) do not communicate with one another. This creates an onerous workload for the Magistrates’ Court when matters move from the Infringements Court to the Magistrates’ Court.

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334. Roundtable 2 – Payment and Enforcement (26 August 2013); the Sheriff and Director of IMES, quoted in Victorian Ombudsman (2013), above n 1, 20.


336. Roundtable 2 – Payment and Enforcement (26 August 2013); Submission 3 (Youthlaw); Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 6 (North Melbourne Legal Service Inc.), endorsing Submission 7; Submission 7 (Infringements Working Group); Submission 8 (Brimbank Melton Community Legal Centre), endorsing Submission 7; Submission 10 (PILCH Homeless Persons’ Legal Clinic).

337. Roundtable 2 – Payment and Enforcement (26 August 2013); Submission 1 (Victorian Association for the Care and Resettlement of Offenders (VACRO)); Submission 3 (Youthlaw); Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 6 (North Melbourne Legal Service Inc.), endorsing Submission 7; Submission 7 (Infringements Working Group); Submission 8 (Brimbank Melton Community Legal Centre), endorsing Submission 7; Submission 10 (PILCH Homeless Persons’ Legal Clinic).


For example, when a person is to be brought before the Magistrates’ Court for an
ingfringement warrant enforcement hearing under section 160 of the Infringements Act, the
warrant information cannot be provided electronically from the VIMS system. Instead,
information contained on a physical printout of the warrant must be manually entered into
the Courtlink system. Despite the commitment of significant resources by the Magistrates’
Court to streamline this process, the limitations of the IT and communication technology
systems generate unavoidable delays.340

In order for infringement matters against children to be listed for hearing in the Children and
Young Persons Infringement Notice System (CAYPINS), the infringement information must
be manually entered. As a result, there can be a delay between lodgement for registration at
the court and entry onto the court’s CAYPINS IT system.341

Further, in addition to the difficulty of transferring matters between the infringement penalty
system and the courts, there is difficulty in tracking infringement cases through the system,
including determining how many infringement cases are heard in open court (see Chapter 8).
The Council considers that, wherever possible, the IT system of the administrative body should
track the flow of cases from the point of issue to resolution, including resolution in court.

Fines Reform

As part of the Fines Reform amendments, the government is developing a new IT system to
replace VIMS. The new Infringements Management and Enforcement (IME) system:

Will allow IMES to utilise a range of new enforcement sanctions currently available in the
Infringements Act 2006 (but not enforceable in the current environment largely due to the
limitations of VIMS). These include the power to garnishee wages and the power to charge and
sell land.342

The Ombudsman stated that, when contracted, the new system ‘was intended to increase
the functionality of VIMS’ through:

• linking an offender’s criminal and civil matters so Sheriff’s officers can view the total
  indebtedness, and action multiple warrants simultaneously;
• enabling garnisheeing of wages, charging and selling of real property, and the transferring
  of liability to company directors;
• increasing reporting capabilities;
• storing multiple addresses for an offender;
• implementing automated sanctions; and
• enabling the new system to expand as required.343

In order to allow for the harmonised management and enforcement of court fines and
infringement penalties, it is crucial that the administrative body receives adequate IT,
communications, and staff resourcing.

340. Meeting with Magistrates’ Court of Victoria (23 August 2013).
341. Meeting with Children’s Court of Victoria (16 September 2013). During the period of time required for manually processing
lodgement of a CAYPINS matter a person may still pay to the court the infringement penalty amount; however, this requires the
court to separately process the paperwork received from the enforcement agency relating to that person.
4.3.157 The Victorian Government should ensure that the IT and communications systems enable the administrative body to utilise all of the sanctions available to it as provided in legislation.

4.3.158 The Victorian Government should provide the necessary resources to allow for electronic transfer of matters between the administrative body and the Magistrates’ Court or the Children’s Court, wherever possible, and eliminate manual data entry when matters move between systems.

4.3.159 The IT and communications systems provided to the administrative body should be able to use SMS messaging for payment reminders (discussed at [4.3.133]–[4.3.140]).

4.3.160 Additionally, the Council considers that the administrative body should be adequately staffed to provide for the necessary case management of debtors, payment, and enforcement.

Recommendation 10: Provide adequate IT, communications, and staff resourcing

The administrative body should be supported by adequate resourcing, including:

- sufficient staff, including staff with expertise in enforcement review and consideration of special circumstances;
- IT systems that communicate with the various court systems and that allow for the use of all existing and proposed enforcement sanctions; and
- communication technology, including:
  - online resources that allow for online management and payment;
  - email communication with debtors; and
  - technology to allow the use of SMS reminders.

Reporting by the administrative body

4.3.161 Currently, the Attorney-General releases an annual report containing data on, and analysing the operation of, the infringements system in Victoria. These reports also identify trends in infringements activity and enforcement action.

4.3.162 The Infringements (Reporting and Prescribed Details and Forms) Regulations 2006 (Vic) provide that enforcement agencies must report to the Attorney-General on the number of:

- official warnings served by the enforcement agency;
- official warnings withdrawn by the enforcement agency;
- infringement notices served by the enforcement agency;
- infringement notices withdrawn by the enforcement agency;
- persons served with an infringement notice who elect to have the matter of the infringement offence heard and determined in the Magistrates’ Court or, in the case of a child, in the Children’s Court;
- applications for internal review received by the enforcement agency under each of the grounds (and their outcomes); and
- applications for payment plans received (and their outcomes).  

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345. Infringements (Reporting and Prescribed Details and Forms) Regulations 2006 (Vic) r 5(l).
4.3.163 The administrative body should publish its own data and analysis (intended for inclusion within the Attorney-General’s annual report or separately) on its functioning, including data on the payment of fines and penalties and the use of sanctions. These data should be in addition to the material provided by enforcement agencies to the Attorney-General’s annual report on the infringements system.

4.3.164 The Council considers that the reporting of these data may:

- encourage transparency in the functioning of the administrative body and its use of enforcement sanctions;
- provide community confidence in the use of court fines as a sentence and infringement penalties as a response to infringement offending;
- encourage compliance by raising community awareness of the potential consequences of non-payment of court fines and infringement penalties; and
- assist in the evaluation of the use of sanctions for the enforcement of court fines and infringement penalties.

Recommendation 11: Administrative body should report on its functions

The administrative body should publish reports on the performance of its functions, including the management and enforcement of court fines and infringement penalties. Reports should include data on:

- the payment of court fines and infringement penalties;
- the review of enforcement;
- the use of enforcement sanctions and their success; and
- the flow of people through the infringements system, including where infringement matters are resolved in the Magistrates’ Court.

4.4 Non-monetary discharge of fines and penalties

4.4.1 This section discusses the discharge of fines and penalties through community work (whether ordered by a court or permitted by the Sheriff) and work and development permits. The discharge of fines and penalties through imprisonment is discussed in Chapters 6 and 7.

Community work

4.4.2 The terms of reference request the Council to consider ‘matters including issues arising from the conversion of fines to an order for community work’.346 During consultations, a number of problems were identified with the way in which fines and penalties may be discharged through the performance of community work.

346. Letter from Attorney-General, Hon Robert Clark, MP, to Professor Arie Freiberg, Chairperson, Sentencing Advisory Council, 18 December 2012.
4.4.3 These problems include:

- the different ways in which community work is available for the discharge of court fines and infringement penalties, and the lack of harmonisation between systems;
- the timing of the availability of community work for the discharge of infringement penalties occurring late in the enforcement process, after an infringement warrant has been issued; and
- the exclusion of people with more than 100 penalty units worth of debt from a court-imposed community work order or a Sheriff-issued community work permit.

Community work orders for court fines

4.4.4 There are two avenues to community work for court fines. First, an offender who has been fined by a court may apply to the court for an order allowing him or her to perform unpaid community work instead of paying the fine (known as a ‘fine conversion order’), where the fine is not more than an amount equivalent to 100 penalty units.347

4.4.5 Second, on default of payment of a court fine, the court may issue a ‘warrant to arrest with debt attached and community based order option’ that allows the person to consent to the completion of a ‘fine default unpaid community work order’ in discharge of the court fine debt.349 Alternatively, if a person in default of payment is arrested and brought before the court, he or she may be ordered by the court to complete community work under a fine default unpaid community work order.350

4.4.6 As discussed at [2.8.42], for each order, the value of unpaid community work is one hour for each 0.2 of a penalty unit or part of 0.2 of a penalty unit. An offender may be sentenced up to the equivalent of 100 penalty units, with a minimum of 8 hours and a maximum of 500 hours.351 In 2012–13, 0.2 of a penalty unit was equivalent to $28.87.

Contravention of a community work order for court fines

4.4.7 Contravention of a fine conversion order or a fine default unpaid community work order is an offence punishable by a maximum Level 10 fine (10 penalty units).352

4.4.8 In sentencing a person for that offence, the court may also impose a sentence of imprisonment of one day for each penalty unit that remains unpaid, up to a maximum of 24 months, if the court considers that a fine is inadequate due to:

- the nature of the offence;
- the characteristics of the offender; or
- the offender intentionally refusing to pay the fine or instalment and refusing to perform unpaid community work.353
New provisions

4.4.9 On 1 September 2014 (if not before), certain provisions of the Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic) will commence, which provide new powers on contravention of a fine conversion order or a fine default unpaid community work order.

4.4.10 In addition to confirming, varying, or cancelling the order (and resentencing or making no further order), a new section 83ASA of the Sentencing Act provides that the court may make a number of orders similar to the current section 160 of the Infringements Act, if the circumstances of the offender:

- have materially altered since the community work order was made (and the offender is unable to comply); or
- have been wrongly stated or were not accurately presented to the court before the community work order was made.

4.4.11 If either of these conditions applies, the court may:

- discharge the outstanding fine or fines in full; or
- discharge up to two-thirds of the outstanding fine or fines; or
- discharge up to two-thirds of the outstanding fine or fines and order that the offender be imprisoned for a period of one day in respect of each penalty unit, or part of a penalty unit, to which the remaining undischarged amount of the outstanding fine or fines is an equivalent amount; or
- adjourn the further hearing of the matter for a period of up to six months.

4.4.12 If the court makes an imprisonment order, it may make this order subject to an instalment order (this is otherwise known as an "imprisonment in lieu order"). Also, if the court considers that the above orders are not appropriate (for example, for deliberate non-payment or deliberate non-compliance with a community work order), the court may make an order for imprisonment.354

Discharge of court fines through community work

4.4.13 As discussed at [2.8.47], 12.6% of cases given a court fine in 2004–05 later received community work, either through a fine default unpaid community work order or through the offender applying for a fine conversion order, in order to discharge that fine.

4.4.14 Figure 24 shows the proportion of those cases receiving a community work order that successfully or unsuccessfully discharged the unpaid fines from 2010–11 to 2012–13. The average proportion of orders successfully completed over that period was just under half (46.9%).

4.4.15 The number of orders for court-ordered community work declined over the time period (from 10,048 orders in 2010–11 to 7,202 orders in 2012–13).

4.4.16 The proportion of people successfully discharging court fines through the completion of a community work order increased between 2010–11 and 2012–13.

4.4.17 Data on the successful discharge of fine conversion orders and fine default unpaid community work orders have only recently begun to be recorded separately, as a result of these orders being differentiated in the Sentencing Act from 16 January 2012.355


355. Sentencing Amendment (Community Correction Reform) Act 2011 (Vic).
Chapter 4: Harmonising payment and management of court fines and infringement penalties

Figure 24: Percentage of community work orders for court fines, by type of discharge given, 2010–11 to 2012–13

<table>
<thead>
<tr>
<th>Year of discharge</th>
<th>Successful discharge</th>
<th>Unsuccessful discharge</th>
<th>Not counted discharge</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010–11 (n = 10,048)</td>
<td>48.3%</td>
<td>34.0%</td>
<td>17.7%</td>
</tr>
<tr>
<td>2011–12 (n = 9,723)</td>
<td>40.1%</td>
<td>41.7%</td>
<td>18.2%</td>
</tr>
<tr>
<td>2012–13 (n = 7,202)</td>
<td>52.4%</td>
<td>30.1%</td>
<td>17.5%</td>
</tr>
</tbody>
</table>

Not counted discharge includes circumstances where the order is not completed for reasons other than non-compliance, including death, the order being set aside, the order being varied, or the warrant being withdrawn.

4.4.18 Despite this, preliminary data show that, where fine conversion orders have been separately identified, excluding ‘not counted discharges’, the successful completion rate in 2012–13 was 93.2%, while for fine default unpaid community work orders, the successful completion rate in 2012–13 was approximately 76.4%. Fine conversion orders most likely have a higher completion rate than court-imposed community work orders because the former are self-initiated.

Community work permits for infringement penalties

4.4.19 Unlike for court fines, a person cannot apply to discharge an infringement penalty through community work. An infringement offender who has been arrested by the Sheriff under an infringement warrant, however, may be released on a community work permit if the person is eligible and consents.356

4.4.20 As with court-ordered community work, the value of unpaid community work under a community work permit is one hour for each 0.2 of a penalty unit or part of 0.2 of a penalty unit with a minimum of 8 hours and a maximum of 500 hours.357 For example, a penalty debt of approximately $290 may be discharged through 10 hours of community work (excluding any enforcement costs that have to be discharged). An infringement offender is ineligible for the permit if his or her infringement debt is greater than 100 penalty units.358

4.4.21 Stakeholders were generally of the view that a person should be able to discharge infringement penalties as soon as possible through unpaid community work.359

4.4.22 Some stakeholders spoke of their clients’ frustration that, although having no capacity to pay, their clients could not access community work as a means of discharging infringement penalties until a warrant had been issued.360 As a result, the additional enforcement costs were accrued while awaiting the opportunity to complete community work.

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357. Infringements Act 2006 (Vic) s 152(1).
358. Infringements Act 2006 (Vic) s 147(2).
Saunders et al. noted that:

People who are suffering from financial hardship who wish to perform community work in lieu of paying the fine must wait until enforcement action has taken place, meaning that late fees will be added to their debt. Additionally, there is no option to allow expiation via alternative methods such as counselling, self-development or education courses.\(^\text{361}\)

The additional enforcement costs are currently:

- $23.10 for the penalty reminder notice;
- $77.10 for the enforcement order; and
- $56.50 for the infringement warrant.

As a consequence, if the Sheriff permits a person to complete a community work permit (in respect of one infringement penalty), the enforcement costs of $156.70 will exceed the current penalty unit amount of $144.36.

One hour of community work is required for every 0.2 of a penalty unit. Currently, 0.2 of a penalty unit is equivalent to $28.87. Therefore, a person will be required to complete in excess of five hours of community work under a community work permit to repay the enforcement costs incurred, before paying off any infringement penalty debt.

**Discharge of infringement penalties through community work permits**

Figure 25 shows the percentage of community work permits for the period from 2010–11 to 2012–13 according to whether they were successfully or unsuccessfully discharged. Successful discharges account for approximately half of the community work permits discharged from 2010–11 to 2012–13 (from 45.5% in 2011–12 to a high of 56.1% in 2012–13).

The number of people who received community work permits from the Sheriff (approximately 1,500 people) is considerably smaller than the number of community work orders made by the courts, and, unlike for court orders, the number of community work permits has remained relatively stable over the last three years.

![Figure 25: Percentage of community work permits for infringement penalties, by type of discharge given, 2010–11 to 2012–13](image)

Not counted discharge includes circumstances where the order is not completed for reasons other than non-compliance, including death, the order being set aside, the order being varied, or the warrant being withdrawn.

361. Saunders et al. (2013), above n 194, 8.
Chapter 4: Harmonising payment and management of court fines and infringement penalties

Should the availability of community work be harmonised?

4.4.29 A community work permit is only available to discharge infringement penalties after an infringement warrant has been issued and executed by the Sheriff, and the Sheriff is unable to seize personal property to satisfy the outstanding warrant. The court fine system, however, allows an offender to apply to the court for a fine conversion order, immediately upon receiving a court fine.

4.4.30 The proportion of persons successfully discharging court-ordered community work and Sheriff-issued community work permits was relatively similar (52.4% and 56.1% in 2012–13 respectively). Almost seven times as many people were ordered to discharge court fines through community work than were permitted to complete a community work permit for infringement penalty default. The number of people who receive infringement penalties, however, is far greater than the number of people who receive a court fine (see [3.5.2]).

4.4.31 As a consequence, if people are allowed to discharge their infringement penalties through community work upfront, such a provision may allow those people who ‘will pay’ or ‘might pay’ to discharge their penalties in preference to paying.

4.4.32 Unless there are compelling policy reasons otherwise, the primary focus of enforcement should be to obtain payment rather than allowing discharge through alternative means. This is particularly the case when alternative means (such as a community work permit) are costly and impose additional burdens on the corrections system, and so alternative means of discharge should be reserved for people (and at the stage of enforcement) where there is no other option.

4.4.33 Victoria Legal Aid noted that, for many of their clients, community work permits are not an option for a number of reasons, stating:

many of our clients accrue large amounts of fines that exceed the threshold of 100 penalty units for eligibility for a [community work permit]. In addition, the various vulnerabilities of our clients make many of them unsuitable for the [community work permit] scheme. People with physical, intellectual or mental illness may not be able to undertake the work required of participants in the scheme. Even if people are eligible, they may have difficulty complying with some of the conditions attaching to these orders.362

The Council’s view

4.4.34 Consideration was given to whether the availability of community work should be harmonised so that it is available upfront for infringement penalties. Stakeholders described the experience of people who simply could not pay, and were unable to access a community work permit until the default stage, thereby accruing enforcement costs and delaying the resolution of matters.363

4.4.35 One of the key objectives of the recommendations for fine and penalty enforcement is to target those who ‘will pay’ and ‘might pay’ and reserve other options for those who legitimately ‘can’t pay’.

4.4.36 Work and development permits (see [4.4.42]–[4.4.47]) better target infringement recipients who ‘can’t pay’ or cannot comply with the conditions of a community work permit. On the basis that work and development permits will be available for such people, and in light of the recommendations regarding adjusted penalty amounts for those experiencing financial hardship, community work should not be available upfront for infringement penalties, as it will in part be used by people who choose not to pay.

362. Submission 4 (Victoria Legal Aid).
4.4.37 Offering infringement recipients community work permits from the outset is also contrary to one of the primary aims of the infringements system – to address offending behaviour outside the corrections system. The volume of infringement penalties that will be registered with the administrative body has the potential to place a significant burden on community corrections if there is a large uptake of community work permits early in the process.

4.4.38 As community work costs the state, the option of community work for someone who ‘will pay’ or ‘might pay’ impacts on the ability of the state to provide community work for someone who legitimately ‘can’t pay’.

4.4.39 In light of these considerations, community work permits should not be made available as soon as infringement penalties are registered with the administrative body. Work and development permits (see [4.4.42]–[4.4.47]) are the preferred option for infringement penalties at the initial stage of imposition and after registration.

4.4.40 Further, there should not be changes to the current provisions governing community work orders in respect of court fines. For court fines, fine conversion orders should continue to be available for the discharge of court fines upon application of the fine recipient and consideration by the court. These applications could be forwarded by the administrative body to the court for its consideration and approval.

4.4.41 Fine default unpaid community work orders should also continue to be available as a means of discharging:

- court fines after a court fine default hearing, or where a warrant to arrest with debt attached and a ‘community based order option’ has been issued and the offender consents; and
- infringement penalties, after an infringement warrant enforcement hearing.

### Work and development permits

#### Creation of a work and development permit scheme

4.4.42 The work and development order (WDO) scheme was introduced in New South Wales on a two-year trial basis in July 2009 as a way for highly disadvantaged people to address outstanding fine and penalty debt.364

4.4.43 Under the scheme, people who are homeless, mentally ill, experience acute financial hardship, or are cognitively impaired can apply to the fines enforcement body in New South Wales (the State Debt Recovery Office) to have their outstanding fine debt discharged by participation in voluntary unpaid work and/or agreed programs or treatment courses, including:

- drug or alcohol treatment;
- medical or mental health treatment (including disability case management);
- financial or other counselling;
- educational/vocational or life skills courses; and
- mentoring programs (for those aged under 25).365

4.4.44 Table 8 shows the value of the ‘cut out rate’ for each work or development activity (that is, the rate at which outstanding fines and infringement penalties can be discharged for completion of the relevant activity) and the maximum amounts.

4.4.45 When the pilot program was evaluated after two years, fines worth over $2 million were being, or had been, managed through work and development orders. Further, over 140 organisations and almost 80 health practitioners were enrolled in the scheme, and there was unanimous support for its continuation.366

4.4.46 The evaluation of the work and development scheme stated that it has provided a number of benefits including:

- reduced reoffending;
- reduced costs to government;
- reduced stress and hopelessness among participants; and
- positive engagement of participants with constructive activities.367

4.4.47 Stakeholders in New South Wales have commented that work and development orders ‘provide a meaningful, appropriate and effective response to offending by vulnerable groups’.368

### Table 8: Value of completed work and development activities, New South Wales, as at March 2012369

<table>
<thead>
<tr>
<th>Activity</th>
<th>Cut out rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpaid work for or on behalf of an approved organisation</td>
<td>$30 per hour worked, to a maximum of $1,000 per month; breaks are not to be counted</td>
</tr>
<tr>
<td>Medical or mental health treatment in accordance with a practitioner’s treatment plan</td>
<td>$1,000 per month for full compliance (or a proportion for partial compliance)</td>
</tr>
<tr>
<td>Educational, vocational, or life skills course</td>
<td>$50 per hour or $350 per full (7 hour) day, to a maximum of $100 per month</td>
</tr>
<tr>
<td>Financial or other counselling (including attending case management meetings)</td>
<td>$50 per hour or $350 per full (7 hour) day, to a maximum of $1,000 of fine debt per month</td>
</tr>
<tr>
<td>Drug or alcohol treatment</td>
<td>$50 per hour or $350 per full (7 hour) day, to a maximum of $1,000 per month</td>
</tr>
<tr>
<td>Participation (as a mentee) in a mentoring program</td>
<td>$1,000 per month for full compliance (or a proportion for partial compliance)</td>
</tr>
</tbody>
</table>

4.4.48 There was broad support among stakeholders for the introduction of a work and development permit along similar lines to the order that exists in New South Wales.370 Saunders et al. recommended that:

> Community work and other expiation options should be available in the first instance, such as those that are available under the Work and Development Order scheme in New South Wales, which includes poverty as a criterion. Methods of expiation could include attending counselling, self-development programs and education courses.371
VACRO submitted that they ‘support the ability for people with special circumstances to pay off fines by completing a work and development order’, while PILCH Homeless Persons’ Legal Clinic ‘strongly supports the introduction of work and development order[s] similar to those available in New South Wales’. The Victorian Government has indicated that, as a part of the Fines Reform amendments, it will introduce a work and development permit limited to the infringement stage (see Appendix 2), that is, it will not be available once the matter proceeds to the enforcement stage. This initial limitation on availability is understandable in light of the fact that use of the work and development permit may need to be trialled and evaluated before being rolled out more broadly.

The particular group of persons that the permit is intended to assist, however, is perhaps less likely to apply for the permit within 28 days of an infringement notice being issued, prior to registration of the notice with the administrative body. For this reason, the availability of the permit should be extended to the enforcement stage as soon as possible.

Victoria Legal Aid noted that the work and development permit scheme could be implemented through a central agency, which would provide oversight and:

- could also have responsibility for identifying suitable candidates for [work and development permits] as well as assessing applications from individuals, their representatives or support workers. This centralised agency would also have the key responsibility of ensuring that any orders complemented any existing treatment or justice orders – for example mental health treatment orders.

The Council’s view

The Council supports the introduction of a work and development permit, on the basis that it should be made available to infringement penalty recipients at the infringement stage, and also extended to infringement penalty and court fine recipients at the enforcement stage, after these debts have been registered with the administrative body.

Recommendation 12: Work and development permits

A work and development permit scheme should be introduced in Victoria based on the work and development order scheme in New South Wales.

A person should be able to apply for a work and development permit as a means of paying:

- an infringement penalty, both prior to and after that infringement penalty is registered with the administrative body; and
- a court fine, after the court fine is registered with the administrative body.

Test for eligibility for work and development permit

In New South Wales, the test for eligibility for a work and development order requires that the person:

- has a mental illness, intellectual disability, or cognitive impairment;
- is homeless;
- has a serious addiction to drugs, alcohol, or volatile substances; or
- is experiencing financial hardship.

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372. Submission 1 (Victorian Association for the Care and Resettlement of Offenders (VACRO)).
373. Submission 10 (PILCH Homeless Persons’ Legal Clinic).
374. Submission 4 (Victoria Legal Aid).
375. Fines Act 1996 (NSW) div 8, sub-div 1.
4.4.55 These criteria for eligibility are similar to the criteria for the ‘special circumstances’ test in Victoria under section 3 of the Infringements Act; however, they also include financial hardship. Stakeholders considered that the same criteria should be applied to the test for eligibility for a work and development permit in Victoria.

4.4.56 An important distinction between this test and the test for special circumstances is that eligibility for a work and development permit should not require any connection or nexus with the offending behaviour that resulted in the infringement penalty or court fine.

4.4.57 The work and development permit is a means of discharging the penalty or fine, rather than a defence or excuse for the behaviour; and so the existence of the particular criteria at the time of application for the permit should be sufficient.

**Recommendation 13: Work and development permit eligibility**

The test for a work and development permit should be that, at the time of application for a permit, the applicant:

- has a mental or an intellectual disability, disorder, disease, or illness; or
- has a serious addiction to drugs, alcohol, or a volatile substance within the meaning of section 57 of the Drugs, Poisons and Controlled Substances Act 1981 (Vic); or
- is homeless; or
- is experiencing severe financial hardship.

**Work and development order as a sentencing option**

4.4.58 A work and development permit could potentially be used as a sentencing order in its own right. This would allow a person to complete pro-social activities (such as attending drug or alcohol treatment) that may address the underlying causes of the offending behaviour, while discharging a court fine or infringement penalty debt.

4.4.59 In some circumstances, such an order may be more appropriate than a fine or a community correction order (CCO), particularly where a community correction order may be considered too severe a sentence, or where, because of the circumstances of the offender, a fine is unlikely to be paid.

4.4.60 This order could, for example, be employed as part of a criminal justice diversion plan, or as a condition of an adjourned undertaking.

4.4.61 Examination of the use of such an order, as part of the wider use of low-end sentencing orders, is beyond the scope of this report. Depending on the uptake and receipt into practice of the work and development permit, the Victorian Government should consider the creation of a work and development order within the context of an examination of other low-end sentencing orders.

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376. Roundtable 2 – Payment and Enforcement (26 August 2013).
4.5 Additional measures to improve payment

Notice of fine to be provided in court

4.5.1 Both court fine and infringement penalty recipients should be given a document at the time of receiving a fine or penalty that clearly sets out the amount owed, the due date, the person’s options for paying the fine or penalty, and the relevant contact details for exercising payment options.

4.5.2 Presently, there is a lack of information:
- in court when a fine is imposed;
- on the options available when receiving a court fine or infringement notice (see [4.3.73]–[4.3.80]); and
- on a person’s consolidated outstanding court fine and infringement penalty debt (see [4.3.73]–[4.3.80]).

Notice of court fine

4.5.3 The imposition of a fine in the Magistrates’ Court occurs most commonly after a guilty plea and a sentencing hearing. Although it will vary from case to case, the sentencing process is often relatively brief given the volume of matters dealt with by the Magistrates’ Court. For many offenders, the experience is both stressful and rapid, and the offender’s ability to receive and retain essential information about the conditions of a fine – including such things as payment terms, or the due date – may be compromised.

4.5.4 Currently, a person fined by the Magistrates’ Court will receive a notice of the fine, mailed to the address registered with the court, several days after the imposition of the fine. However, to provide immediate certainty about the terms of the fine imposed, and to encourage action being taken on payment of the fine, a person should receive paperwork at the time of sentencing that contains the terms of the order and the options for payment, including immediate payment.

4.5.5 During consultation, a roundtable participant stated:

From an advocate’s perspective, I do appreciate … the sentiment that something else could be done while you’re at court, because often it’s quite hard to … engage with … more transient clients, and having them at court at all is quite a feat. And so if there’s a way [to] … take an immediate step to get the ball rolling … while at court, that would definitely assist in the uptake, I think, of the payment arrangements and things like that.

Capturing the ‘court moment’

4.5.6 Dr Rory Gallagher, a specialist in applied behavioural science, has spoken of the need for courts to capture the ‘court moment’ experienced by a person when he or she comes before a magistrate or judge and receives a sentence. There may be an improvement in compliance if the seriousness and authority of the court conveyed during a sentencing hearing are extended to the payment process, which should occur as soon as possible after the sentencing event.

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377. A 2006 study of Australian magistrates found that the mean time for all sentenced matters was 7 minutes and 15 seconds, and the median time was only 5 minutes and 25 seconds: Kathy Mack and Sharyn Roach Anleu, National Court Observation Study: Overview of Findings, Magistrates Research Project Report no. 5–06 (Flinders University, 2006), cited in Ian Gray, ‘Sentencing in Magistrates’ and Local Courts in Australia’ (paper presented at the Sentencing Conference, National Judicial College of Australia/ANU College of Law, February 2008) 6.


379. Meeting with Dr Rory Gallagher (26 June 2013).
4.5.7 Although a person is not in default of a court fine until he or she has defaulted in payment for more than one month, the fine itself is payable immediately unless the court orders otherwise. In those circumstances, an emphasis on immediate payment may result in greater compliance.

4.5.8 A report by the United Kingdom Comptroller and Auditor General on the collection of fines found that one of the key factors in improving payment of court fines was:

A more robust approach by the courts in requiring immediate payment by the offender – either in full or as the first instalment of an agreed payment plan – and in providing facilities to enable offenders to pay their fine at the court building.380

4.5.9 Clarification was provided to courts in the United Kingdom that fines are payable immediately, in the absence of an extension of time to pay. This resulted in an increase in the number of offenders who paid on the day. Further, a policy was introduced of ‘asking offenders for immediate payment [and] accepting other payment terms only when they are satisfied that the offender has no means to pay immediately’.

4.5.10 As a result of this practice, 10% of offenders paid their fines immediately. The report noted that:

If all areas achieved this level of performance, it could potentially double the amount paid immediately … This would lead to savings … in enforcement costs which would otherwise be incurred.382

Recommendation 14: Person issued with court fine to be provided with notice of fine in court

At the time of sentencing a person to a fine, the court should be required to give the offender a written notice of the fine.

This notice should:

- state the amount of the fine;
- state the date on or before which payment of the fine is to be made (emphasising that, unless otherwise ordered by the court, a fine is immediately payable on the day of sentencing and can be paid using facilities at the court);
- state the times, places, and methods by or at which payment of the fine may be made;
- inform the defendant of the defendant’s rights of appeal;
- inform the defendant that he or she may apply to the administrative body for an extension of time to pay, whether by instalments or otherwise;
- inform the defendant that he or she may be eligible to apply to the administrative body for a work and development permit; and
- inform the defendant that if the fine is not paid within 28 days from the day on which the fine was imposed, and no order has been made by the court granting time or payment by instalment, the administrative body may commence enforcement action.

Adequate IT, staffing, and communications resources should be provided to the courts in order to provide the notice of fine at the time of sentencing and for immediate payment to be made.

381. Ibid 2.
382. Ibid.
The imposition and enforcement of court fines and infringement penalties in Victoria

Should a prompt payment discount for infringement penalties be introduced?

Principle of early plea

4.5.11 In sentencing law, a court must consider whether an offender pleaded guilty and at what stage. The fact that an offender pleads guilty is a matter that should be taken into account in mitigation of sentence. A guilty plea saves the community the cost and inconvenience of a trial, as well as saving costs that must otherwise be expended on providing judicial and court facilities, prosecutorial operations, legal aid to the offender, witness fees, and the fees paid (and inconvenience caused) to any jurors.

4.5.12 As with a guilty plea in court, the early payment of an infringement penalty might be considered a mitigating circumstance that warrants a discounted penalty. Early payment could indicate that the person is willing to accept responsibility for the commission of the offence, and may demonstrate remorse. Further, early payment has the utilitarian benefit of avoiding further enforcement costs.

Other jurisdictions

4.5.13 A number of jurisdictions provide a discounted infringement penalty amount if payment is made within a short period of time (usually within 14 or 21 days).

4.5.14 In the United Kingdom, for example, £80 penalty fares, issued by Transport for London for the offence of fare evasion, are reduced to £40 if payment is made within 21 days. Also in the United Kingdom, under the civil enforcement regime, local authorities offer motorists a 50% discount on a penalty charge (commonly issued for parking offences) if motorists pay within 14 days of receiving a penalty charge notice.

4.5.15 In Canada, parking fines issued by the City of Vancouver follow the same model, providing graduated, increased penalties depending on the time at which the penalty is paid: a 50% reduction if paid within 14 days, no reduction in the full amount if paid within 35 days, and the full amount plus a penalty if paid after 35 days.

4.5.16 Some jurisdictions also provide a discounted penalty amount for public order offences. In Scotland, for example, the police may issue a fixed penalty notice (FPN) for a number of offences, including vandalism, being drunk and incapable in a public place, and breach of the peace. The fixed penalty for each of these offences is currently £75, and this amount is discounted to £50 if paid within 28 days.

389. Anti-Social Behaviour etc. (Scotland) Act 2004 (Scotland).
390. Anti-Social Behaviour etc. (Scotland) Act 2004 (Scotland).
Potential distorting effect of discounted penalty

4.5.17 Although prompt payment discounts are in use in the United Kingdom, a report of the United Kingdom Parliament suggests that the provision of a discount may have a distorting effect on the number of people who seek to challenge the issue of the notice (the United Kingdom equivalent of applying for internal review). The report noted that, while the discount is supposed to encourage prompt payment:

In practice however, this tends to deter many motorists from challenging the Penalty Charge Notices that they believe to be incorrect. Many motorists decide not to risk making a challenge to their Penalty Charge Notice because they believe the time delay involved will put at risk the 50 per cent discount.391

4.5.18 Further, during consultation, Victoria Police expressed concerns that a discounted penalty could potentially interfere with the exercise of discretion by a police officer. If an officer perceived that an offender would receive a discount, constituting a ‘lesser’ penalty, the officer may be more likely to issue an infringement penalty (given the prospect that the person would receive a discount) rather than an informal warning. As a result, Victoria Police were concerned that a discount would potentially interfere with the integrity of the infringements system.392

Existing rate of payment and targeting those who ‘will pay’

4.5.19 A discount will only act as an incentive to pay promptly for those who have the capacity to pay early but are not already doing so.

4.5.20 It is estimated that 68.65% of infringement notices issued in 2010–11 were resolved prior to the issue of an enforcement order, including:

- 0.83% (41,541) referred to court (either before or after internal review);
- 3.84% (190,790) withdrawn at internal review; and
- 63.98% (3,182,689) that were paid.393

4.5.21 After the enforcement order stage, a further 10.64% of infringement notices were resolved prior to the issue of a warrant. After warrants had been issued, 6.37% of the remaining 20.72% of matters were resolved.

4.5.22 The relatively high proportion of infringement penalties that are paid or resolved prior to the issue of an enforcement order suggests that the majority of people are able to pay the infringement notice without an inducement to early payment.

4.5.23 Further, the low proportion of infringement penalties resolved even after an infringement warrant has been issued suggests that people who still do not pay or resolve the matter at that stage are not compelled to do so by the issue of an infringement warrant, and in those circumstances, it is unlikely that a prompt payment discount would increase the rate of repayment.

4.5.24 In light of the above, the Council does not recommend the introduction of a prompt payment discount for infringement penalties.

392. Meeting with Victoria Police – Road Policing Enforcement Division (24 September 2013).
393. See [3.10.1]–[3.10.4].
Chapter 5: Enforcement by the administrative body
5.1 Introduction

5.1.1 The enforcement of court fines and infringement penalties is essential to their effectiveness and credibility. However, monetary penalties are one of the few sanctions that can be evaded, as Zedner observes:

the fine relies more heavily upon the cooperation of the offender than do other penalties. Whilst other penalties require some degree of offender cooperation, offenders can refuse to pay a fine in a way that they cannot, for example, decline to be imprisoned.394

5.1.2 The terms of reference request the Council to consider:

The desirability of harmonising the enforcement mechanisms and procedures for court-imposed fines with those for infringement notices.395

5.1.3 The Council was also asked to review and report on the enforcement of court fines more generally, with a view to ‘[ensuring] the effective, efficient and principled use of fines as a sentence’. In this respect, the Attorney-General expressed particular concern that:

The complexity and disparity of current legislative and operational requirements for the imposition, management and enforcement of fines contribute to non-compliance, reducing public confidence in the system and reducing the effectiveness and efficiency of the use of fines as a sentencing option.396

5.1.4 Legislative amendments under Fines Reform will provide, among other things, ‘uniform debt payment and management methods’ and ‘common sanctions for enforcing infringement [penalties] and court fines’.397

5.1.5 Alongside the Department’s review, the Victorian Ombudsman reported in 2013 on the low rate of warrant execution for court fine and infringement penalty default. That review found that as at August 2013 there were 3.5 million unexecuted warrants valued at $1.2 billion.398 The data presented in Chapter 2 similarly reveal a low rate of warrant execution for court fine default.

5.1.6 The Victorian Ombudsman stated that several factors have contributed to the low rate of warrant execution, including the underutilisation of available enforcement sanctions. Accordingly, recommendations were made for improved enforcement strategies and sanctions, including the development of a targeted enforcement methodology (see Chapter 4), garnisheeing the wages of offenders who default on payment orders, and the introduction of international travel restrictions for defaulters.399

5.1.7 The Council has recommended that an administrative body should be established to centralise the payment, management, and enforcement of court fines and infringement penalties (see [4.3.46]–[4.3.49]).

395. Letter from Attorney-General, Hon Robert Clark, MP, to Professor Arie Freiberg, Chairperson, Sentencing Advisory Council, 18 December 2012.
396. Ibid.
397. See Appendix 2: Department of Justice, Overview of the Fines Reform Legislative Amendment Package (2014).
398. The majority of these warrants relate to infringement penalty default, given the greater number of infringement matters than fines in any one year: Victorian Ombudsman (2013), above n 3, 9.
5.1.8 This chapter examines the enforcement of court fines and infringement penalties by the administrative body, and considers the following issues in particular:

- the harmonisation of enforcement procedures for court fine and infringement penalty default;
- the harmonisation of enforcement sanctions for court fine and infringement penalty default;
- the timing of enforcement sanction use;
- the harmonisation of warrant procedures on the enforcement of court fines and infringement penalties;
- enforcement against corporations; and
- additional enforcement sanctions and strategies for court fine and infringement penalty default.

5.2 Harmonisation of enforcement procedures

5.2.1 It is generally desirable to harmonise the procedures for court fine and infringement penalty enforcement. The main element of procedural harmonisation is the enforcement of court fines and infringement penalties by a central administrative body. While the enforcement of fines and penalties should occur under the auspices of the one body, a distinct procedure will be necessary for infringement penalty enforcement, due to the unique nature of this sanction in comparison with court fines.

Infringement penalty enforcement procedure

5.2.2 Unlike court fines, which are ordered following a determination of guilt by a court, infringement penalties are issued on an administrative basis without any enquiry by the court into a person’s guilt or personal circumstances. The enforcement of infringement penalties must therefore contain some scope for review of the issuing of the infringement notice.

Current procedure: enforcement order revocation

5.2.3 At present, if an infringement penalty remains unpaid after a penalty reminder notice has been sent, the enforcement agency may lodge the details of the infringement notice with the Infringements Court. An infringements registrar may then make an enforcement order requiring the person to pay the outstanding amount of the infringement penalty and any associated costs.

5.2.4 Once an enforcement order is made, the person may:

- pay the infringement penalty in total;
- apply for a payment order;
- apply for revocation of the enforcement order; or
- do nothing (in which case the Infringements Court will issue a ‘Notice to Issue an Infringement Warrant’).

400. The enforcement of court fines and infringement penalties by the court is examined in Chapter 6.
401. Infringements Act 2006 (Vic) ss 54, 59(1).
5.2.5 An application for revocation of the enforcement order may be made by:

- the enforcement agency;
- the person against whom the order has been made; or
- a person acting on behalf of a person with special circumstances (as defined).402

5.2.6 The grounds for revocation are not specified in the Infringements Act 2006 (Vic) (‘Infringements Act’), though special circumstances are impliedly a ground for revocation under section 65(1)(c). Information on the Infringements Court website suggests that revocation will:

only be granted where mitigating circumstances or social justice issues are identified by the Infringements Court Registrar as worthy of consideration by the issuing agency [or] a Magistrate in an open court.403

5.2.7 In 2012–13, 21.9% of revocation applications (36,203) were granted by the Infringements Court, and 78.1% of applications (129,117) were refused. Of the applications granted, the largest proportion (15.8% of all applications, or 26,108) were granted on the ground of special circumstances.

5.2.8 If an application for revocation is granted, the enforcement order ceases to have effect, but the original infringement notice stands.404 The infringement matter is then referred to the Magistrates’ Court for hearing and determination, unless the enforcement agency ‘opts out’ of prosecution within 21 days of being notified that the enforcement order has been revoked.405

5.2.9 If an application for revocation is refused, the infringement penalty will continue to be enforced. At this stage, the person may:

- pay the infringement penalty in total;
- apply for a payment order;
- make a second revocation application to the Infringements Court (or an application to the Magistrates’ Court for leave to make a third or subsequent revocation application);406
- lodge a written objection within 28 days of being notified of the refusal (in which case the objection to the refusal of revocation will be listed for hearing in the Magistrates’ Court);407 or
- do nothing (in which case the Infringements Court will issue a ‘Notice to Issue an Infringement Warrant’).

New procedure: enforcement review

5.2.10 Under Fines Reform, the process of enforcement order revocation will be replaced by a process known as ‘enforcement review’. The Department of Justice has stated that:

The Bill … abolishes the existing revocation scheme and replaces it with a scheme similar to internal review that will be available after an infringement [penalty] is registered for enforcement with the Director. The new scheme will be known as ‘enforcement review’ and will have identical

402. Infringements Act 2006 (Vic) s 65. An application for revocation cannot be made for a drink-driving infringement, a drug-driving infringement, or an excessive speed infringement under the Road Safety Act 1986 (Vic), a work safety infringement under the Transport (Compliance and Miscellaneous) Act 1983 (Vic), or offences involving alcohol or other drugs in relation to marine transport under the Marine (Drug, Alcohol and Pollution Control) Act 1988 (Vic): Infringements Act 2006 (Vic) s 63A.


404. Infringements Act 2006 (Vic) s 66.

405. Infringements Act 2006 (Vic) ss 66(5), 69(1).


407. Infringements Act 2006 (Vic) s 68.
grounds for review to existing internal review grounds plus an additional ground to give people genuinely unaware of having received an infringement notice an opportunity to deal with the [infringement penalty] and not be at any disadvantage. The Director will be responsible for determining enforcement applications and will provide people with an additional avenue to have the appropriateness of an infringement notice reviewed.\(^{408}\)

5.2.11 The Council supports the proposal under Fines Reform to replace the current process of applying for revocation of an enforcement order with a new process of enforcement review.

5.2.12 Replacing the process of ‘revocation’ with ‘enforcement review’ is not simply a matter of semantics. Saunders et al. found that infringement recipients who had received notice of revocation often assumed, quite reasonably, that this was the end of the infringement matter and so they did not take any further action.\(^ {409}\) This confusion may be avoided by procedural and terminological change, which clarifies that it is the enforcement order, not the issuing of the infringement notice, that is subject to review, and that a successful application for review may still result in prosecution of the infringement matter by the enforcement agency.

5.2.13 The more particular aspects of enforcement review, such as the grounds of review and the number of opportunities for review, are examined below.

Recommendation 15: Replace enforcement order revocation with enforcement review

The *Infringements Act 2006* (Vic) should be amended to replace the process of applying for ‘revocation’ of an enforcement order with the process of applying for ‘enforcement review’.

Grounds for enforcement review

5.2.14 Currently, the grounds for revocation of an enforcement order are not specified in the *Infringements Act*. Impliedly, and in practice,\(^ {410}\) special circumstances (as defined) are a ground for revocation under section 65(1)(c) of the *Infringements Act*.

5.2.15 Under the proposed Fines Reform amendments, the grounds for enforcement review will be identical to the grounds for internal review.\(^ {411}\) An application for internal review may be made on the grounds that:

- the decision to issue the infringement notice:
  - was contrary to law; or
  - involved a mistake of identity;
- special circumstances apply to the person; or
- exceptional circumstances exist that excuse the conduct for which the infringement notice was issued.\(^ {412}\)

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408. See Appendix 2: Department of Justice, *Overview of the Fines Reform Legislative Amendment Package* (2014).

409. Saunders et al. (2013), above n 194, 60.

410. Meeting with IMES and Infringements Court staff (4 October 2013).


412. *Infringements Act 2006* (Vic) s 22. See Chapter 8 for a discussion of internal review, including review on the ground of special circumstances.
The Council's view

5.2.16 Defining the grounds for revocation (or enforcement review under the proposed amendments) has the benefit of increased transparency and may assist infringement recipients to frame their application, which is likely to increase the efficiency of the infringements system. Aligning the grounds for enforcement review with the grounds for internal review acts as a 'safety net' for infringement recipients who maintain that they have valid grounds for challenging the infringement notice.

5.2.17 As observed at [5.2.2], the enforcement of infringement penalties should make proper provision for the review of the issuing of the infringement notice, since infringement notices are issued on an administrative basis without any enquiry by the court into guilt. Harmonising the grounds for review also allows for the development of uniform review processes and practices, particularly with the proposed introduction of formal oversight and monitoring of internal review by the administrative body (see Recommendations 41 and 42).

5.2.18 Consistent with both the existing right under section 37 of the Infringements Act (whereby a person may apply to an infringements registrar for cancellation of an infringement notice if he or she was unaware of its service) and the Fines Reform amendments, enforcement review should also be available if a person is genuinely unaware of having been issued with an infringement notice.

5.2.19 A person may have not received an infringement notice due to absence from his or her residential address. Alternatively, a person may not have special circumstances within the meaning of the Infringements Act, but may nonetheless be experiencing a level of stress or disruption that prevents him or her from dealing with correspondence on a regular basis (for example, due to illness or a family crisis).

Recommendation 16: Grounds for enforcement review

The Infringements Act 2006 (Vic) should be amended to specify that the grounds available for enforcement review by the administrative body are the same as the grounds for internal review of an infringement notice by an enforcement agency, including the ground of special circumstances.

Enforcement review should also be available if a person is genuinely unaware of having been issued with an infringement notice.

Enforcement review on the ground of special circumstances

5.2.20 An enforcement order may currently be revoked on the ground of special circumstances. Under the enforcement review system to be established as part of the Fines Reform amendments, it is recommended that special circumstances be a formal ground of enforcement review by the administrative body (see Recommendation 16).

5.2.21 In response to stakeholder consultation and data analysis, the Council has considered whether enforcement review on the ground of special circumstances should be conducted by the administrative body, or an external panel independent of the administrative body, due to the unique issues raised by this ground of review.

413. Infringements Act 2006 (Vic) s 65(1)(c).
5.2.22 Under the Infringements Act, ‘special circumstances’ is defined as a mental illness, intellectual disability, or a drug/alcohol addiction that results in a person being unable to understand that his or her conduct constitutes an offence, or being unable to control conduct that constitutes an offence. Special circumstances also include homelessness, where homelessness results in a person being unable to control conduct that constitutes an offence.414

5.2.23 Applications for revocation on the ground of special circumstances are relatively common. In 2012–13, 26,108 revocation applications (or 15.8% of the total 165,320 revocation applications) were granted by the Infringements Court on the ground of special circumstances. This suggests that there will be considerable demand for enforcement review on the ground of special circumstances by the administrative body.

**Issues with enforcement review on the ground of special circumstances**

5.2.24 Applications for internal review and revocation on the basis of special circumstances present similar challenges for infringement recipients and enforcement agencies (issues regarding internal review are discussed in detail in Chapter 8).

5.2.25 Legal practitioners and enforcement agencies reported that the nexus between a person’s circumstances (particularly homelessness) and the infringement offending is not always clear on the available evidence.415

5.2.26 In addition, special circumstances applications present evidentiary challenges. It is often difficult for legal practitioners to gather evidence of special circumstances due to a client’s mental illness, intellectual disability, or homelessness. A person applying for revocation (or enforcement review) on the ground of special circumstances may have had infrequent contact with legal and health service providers (if at all), and may not present to service providers until an infringement penalty has reached an advanced stage of enforcement.416

**The Council’s view**

5.2.27 A particular level of skill and resources is required in order to determine claims of special circumstances. Three different models of enforcement review on the ground of special circumstances have been considered:

- review by an external panel independent of the administrative body (Option 1);
- review by the administrative body (Option 2); or
- review by a specialist unit within the administrative body (Option 3).

5.2.28 **Option 1.** Review by an external panel has the advantage of being truly independent of the infringements system and therefore able to provide a level of oversight that may enhance the credibility of the system overall. However, this option was considered unnecessary given:

- the systemic reforms to be instituted as part of Fines Reform (including additional oversight of internal review); and
- the recommendation for an amended test for special circumstances (see Recommendation 44).

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415. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); see Chapter 8 for discussion and recommendations for special circumstances concerning the nexus with offending.

416. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Submission 10 (PILCH Homeless Persons’ Legal Clinic).
5.2.29 **Option 2.** Review by the administrative body was strongly supported by several stakeholders.\(^{417}\) The PILCH Homeless Persons’ Legal Clinic stated that this would ‘encourage greater rigour and consistency in decision-making and ultimately reduce the burden on the courts’.\(^{418}\) Special circumstances matters may be less likely to proceed to open court if procedures are in place for effective internal review and enforcement review.\(^{419}\)

5.2.30 **Option 3.** Review by a specialist unit within the administrative body was considered the most appropriate model. A specialist unit would have the expertise to assess the unique and sometimes complex issues raised by special circumstances applications. The unit should contain personnel with expertise in areas relevant to the assessment of special circumstances under the *Infringements Act*, including mental health, intellectual disability, homelessness, and drug/alcohol addiction. It may also be necessary for a person with expertise in enforcement to sit within the specialist unit. Such a unit should be formalised within the administrative body and made widely known to infringement recipients and enforcement agencies.

**Recommendation 17: Enforcement review on the ground of special circumstances**

The administrative body should establish a specialist unit to conduct enforcement reviews on the ground of special circumstances.

**Enforcement agency must opt in**

5.2.31 At present, if a revocation application is granted by the Infringements Court, the enforcement order is revoked and ceases to have effect, but the original infringement notice stands.\(^{420}\) The infringement matter will then be referred to the Magistrates’ Court for hearing and determination, unless the enforcement agency ‘opts out’ of prosecution by filing a request for non-prosecution with an infringements registrar within 21 days of being notified that the enforcement order has been revoked.\(^{421}\) If the matter proceeds to the Magistrates’ Court and a finding of guilt is made, the person is sentenced under the *Sentencing Act 1991* (Vic) (‘*Sentencing Act*’).

5.2.32 Financial counsellors and legal practitioners reported an issue with some enforcement agencies failing to opt out of prosecution following a successful revocation, and then failing to appear in court, particularly in cases heard in the Special Circumstances List of the Magistrates’ Court.\(^{422}\) If the enforcement agency does not appear, the matter is commonly struck out. Non-appearance wastes valuable court resources and places unnecessary stress on the infringement recipient, particularly where that person may have special circumstances.\(^{423}\)

5.2.33 While prosecution is properly at the discretion of the enforcement agency, various stakeholders strongly suggested that, following a successful revocation application, the enforcement agency should have to ‘opt in’ to prosecute, rather than opt out.\(^{424}\)

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418. Submission 10 (PILCH Homeless Persons’ Legal Clinic).
419. See Chapter 8.
422. Roundtable 2 – Payment and Enforcement (26 August 2013); see Chapter 8.
423. See Chapter 8.
424. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Submission 4 (Victoria Legal Aid); Submission 10 (PILCH Homeless Persons’ Legal Clinic).
5.2.34 In the experience of the PILCH Homeless Persons’ Legal Clinic, the majority of revocation applications made by its clients are successful on the basis of special circumstances. Nonetheless, PILCH stated that most of these matters proceed to court because the enforcement agency does not opt out of prosecution. PILCH submitted that the Infringements Court, or an equivalent body, should be able to cancel an infringement notice, and the enforcement agency should be permitted to opt in to prosecution prior to cancellation of the notice. PILCH stated that:

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.425

5.2.35 The Infringements Working Group similarly suggested that if a person applies for enforcement review on the ground of special circumstances, the administrative body should be able to cancel an infringement notice if special circumstances are found to exist, except where the person’s conduct has seriously endangered community members.426

The Council’s view

5.2.36 The question of whether to prosecute an alleged infringement offence is a matter for the enforcement agency. Accordingly, the administrative body should not have the power to cancel an infringement notice. If an application for enforcement review is successful, the administrative body should cease enforcement and refer the matter back to the enforcement agency to decide whether to prosecute the matter in court.

5.2.37 If at enforcement review the administrative body finds that there are sufficient grounds to cease enforcement, the default position should be that, in the absence of action by the enforcement agency, prosecution should not continue.

5.2.38 Instead, the enforcement agency should be required to opt in to prosecution of the matter in the Magistrates’ Court if it does not agree with the decision of the administrative body. This requirement should ensure that matters only proceed to the Magistrates’ Court if the enforcement agency actively decides to prosecute, rather than by default.

5.2.39 With respect to government enforcement agencies, a requirement to opt in to prosecution, and undertake a considered assessment of whether prosecution is necessary, is consistent with the Model Litigant Guidelines that the State of Victoria, its departments, and its agencies must follow in the conduct of litigation.427 The Model Litigant Guidelines do not only apply to civil litigation; for example, they expressly apply to the Director and the Office of Public Prosecutions.428

425. Submission 10 (PILCH Homeless Persons’ Legal Clinic).
426. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
5.2.40 Under the *Model Litigant Guidelines*, agencies are required to:

- avoid litigation wherever possible;
- act fairly in handling claims and litigation brought by or against the state or an agency;
- act consistently in the handling of claims and litigation; and
- not take advantage of a claimant who lacks the resources to litigate a legitimate claim. 429

5.2.41 If the enforcement agency does not opt in to prosecution, the infringement notice should be unenforceable, as the administrative body will have conducted an enforcement review and the enforcement agency will have had 28 days 430 in which to decide whether to prosecute the matter following the administrative body’s decision.

5.2.42 This reform should provide greater certainty to infringement recipients who have successfully applied for enforcement review, and to enforcement agencies, the administrative body and the Magistrates’ Court in their management of infringement matters.

### Recommendation 18: Agency must opt in to prosecute infringement offence following successful enforcement review

The *Infringements Act 2006* (Vic) should be amended to provide that, following a successful application for enforcement review:

- the administrative body should provide the enforcement agency with notice of the decision along with the reasons for the decision; and
- if the enforcement agency wishes to continue the prosecution, the enforcement agency must, within 28 days of being notified of the successful application, request the administrative body to refer the matter to the Magistrates’ Court for hearing and determination; and
- if the administrative body does not receive a request from the enforcement agency to refer the matter to the Magistrates’ Court within 28 days of the enforcement agency being notified of the successful application, the infringement notice is unenforceable by the administrative body.

### Number of opportunities for enforcement review

5.2.43 At present, if the Infringements Court refuses to revoke an enforcement order, a person may make a second revocation application to the Infringements Court (without the need for leave of the Magistrates’ Court), or a third or further revocation application (with the leave of the Magistrates’ Court). 431 There is no limit on the number of revocation applications that may be made, if leave is granted.

5.2.44 These provisions have led to what has been described as matters ‘churning’ around between the Infringements Court and the Magistrates’ Court. This occurs when a person makes multiple attempts at revocation in the Infringements Court, and then seeks leave to make further revocation applications, or objects to a refusal of revocation, in the Magistrates’ Court. 432 This is burdensome and inefficient for infringement penalty recipients, the Infringements Court, the enforcement agencies seeking to finalise payment of penalties, and the Magistrates’ Court. Further, it provides ample opportunity for those who ‘won’t pay’ to delay resolving matters for lengthy periods of time.
5.2.45 In 2012–13, 21.9% of revocation applications (36,203) were granted by the Infringements Court, and 78.1% of applications (129,117) were refused. Given the very high proportion and number of revocation applications that were refused, there is significant potential for payment evasion and the duplication of work if a limit is not placed on the number of revocation applications that may be made (or, under the Fines Reform amendments, the number of applications for enforcement review that may be made).

The Council’s view

5.2.46 A limit should be placed on the number of applications that a person may make to the administrative body for enforcement review. Given that an infringement recipient will have already had an opportunity for internal review by the enforcement agency, most recipients should be entitled to only one application for enforcement review.

5.2.47 A person should be entitled to second or subsequent applications for enforcement review, however, if he or she seeks review on the ground of special circumstances and has new or additional information in support of an application on this ground, or acquires legal or other representation for the purpose of making this application (‘other representation’ may include assistance from a financial counsellor or a drug and alcohol counsellor). This exception is necessary given the difficulties in gathering evidence of special circumstances, and the typically late presentation of people with special circumstances to legal practitioners and other service providers.433

Recommendation 19: Limit on number of applications for enforcement review

The Infringements Act 2006 (Vic) should be amended to provide the following:

• A person may only make one application to the administrative body for enforcement review if that application is based on a ground other than special circumstances.

• A person may make more than one application to the administrative body for enforcement review based on the ground of special circumstances if:

  – the person acquires legal or other representation (for example, representation by a financial counsellor) for the purpose of making a second or subsequent application; and/or

  – the person has new or additional information in support of a second or subsequent application.

Objection following unsuccessful enforcement review

5.2.48 At present, if the Infringements Court refuses to revoke an enforcement order, a person may, within 28 days of being notified of the refusal, object to the refusal in the Magistrates’ Court.434 If an objection application is granted, the Magistrates’ Court will proceed to hear and determine the infringement matter and, if a finding of guilt is made, sentence the person under the Sentencing Act.

433. See [5.2.26].

434. Infringements Act 2006 (Vic) s 68. An objection application may be made more than 28 days and less than 3 months after receiving notice of revocation refusal, but an infringements registrar is not obliged to refer the matter to the Magistrates’ Court in these circumstances: Infringements Act 2006 (Vic) s 68(2)(b).
5.2.49 In 2012–13, a total of 23,823 objection applications were lodged with the Magistrates’ Court. The majority (65.9% or 15,708) were granted, and a minority (34.1% or 8,115) were refused. The granting of objection applications does not necessarily result in the dismissal of an infringement-originating charge by the court; instead, the court may determine that the offence was committed and sentence the person accordingly.

5.2.50 There is a lack of clarity around the circumstances in which objection applications will be granted. In *Zaffiro v Springvale City Council* (‘*Zaffiro*’), Byrne J held that:

> If [the magistrate] concluded on the whole of the material before him, that [the applicant] is a person who ought in the circumstances now … be given an opportunity to present evidence and argument in mitigation and to throw herself on the mercy of the Court, plainly his duty is to revoke the enforcement orders and to proceed to hear and determine the matter.\(^{435}\)

5.2.51 *Zaffiro* suggests that the test is very broad, with Byrne J holding that the court should intervene even where the offender:

has put [themselves] in the predicament by ignoring or neglecting the opportunities to have the matter heard in court. Such a person may be a stubborn or defiant offender; a person who wants to make a stand of principle; a person who is unable to cope psychologically with the prospect of a large and increasing aggregate penalty and who hopes, simply, that it may go away; a person who, by reason of some disability or lack of English, does not understand the consequences of ignoring the notices given; a person who faced with a large penalty including costs does not have the means to pay; or a person who for some good reason believes that the process has been abandoned.\(^{436}\)

5.2.52 It is hard to conceive of an applicant who would fall outside of the broad *Zaffiro* test, and so it is unsurprising that it is cited by applicants in the Magistrates’ Court seeking the court’s review of revocation refusal.\(^{437}\)

5.2.53 The *Zaffiro* case was decided under the former Penalty Enforcement by Registration of Infringement Notice (PERIN) system. At the time of judgment (1996), imprisonment occurred automatically if a person did not comply with an enforcement order and sufficient property was not available to satisfy the amount owing.\(^{438}\) It is likely that Byrne J was therefore concerned that an infringement recipient should be given a full opportunity to be heard on the substantive infringement offence.\(^{439}\)

5.2.54 Under the current infringements system, and in light of the recommendations in this report, it is perhaps less necessary for the Magistrates’ Court to re-examine revocation (or enforcement review) applications and potentially hear and determine the substantive infringement offence, given that greater protection is now afforded to infringement recipients. Under the *Infringements Act*, the use of imprisonment is within the discretion of the court, a range of less severe enforcement sanctions is available prior to the imposition of imprisonment, and opportunities are provided for internal review by enforcement agencies and review by the Infringements Court (or the administrative body under the Fines Reform amendments). Furthermore, it is recommended in this report that a work and development permit be made available, that the court have greater discretion at infringement warrant enforcement hearings to impose the most appropriate order in the circumstances of the case, and that imprisonment be a sanction of last resort (see Recommendations 12, 30 and 31).


\(^{436}\). *Zaffiro v Springvale City Council* (Unreported, Supreme Court of Victoria, Byrne J, 28 March 1996) 11–12.

\(^{437}\). The Council made this observation about revocation applications in the Melbourne Magistrates’ Court on 23 October 2013.

\(^{438}\). *Magistrates’ Court Act 1989 (Vic)* sch 7 cl 5 as amended by *Magistrates’ Court (Amendment) Act 1994 (Vic)* (schedule repealed).

\(^{439}\). *Zaffiro v Springvale City Council* (Unreported, Supreme Court of Victoria, Byrne J, 28 March 1996) 10–12.
5.2.55 Some stakeholders supported the opportunity to object to the Magistrates’ Court following an unsuccessful revocation application. The Infringements Working Group submitted that:

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 ... the ability of individuals to avoid arbitrary or unjust outcomes.440

The Council’s view

5.2.56 On the basis of this report’s recommendations and the Fines Reform amendments, there should be no right to object to the Magistrates’ Court following unsuccessful enforcement review by the administrative body. The current right to object to the Magistrates’ Court has significant implications for the court, with 15,708 objection applications granted in 2012–13.

5.2.57 While these data may suggest that a substantial number of infringement notices require oversight by the Magistrates’ Court, there is already provision for this and other forms of oversight within the infringements system. Oversight will be enhanced by several recommendations made elsewhere in this report.441

5.2.58 In particular, infringement recipients have the right to elect to have the infringement matter heard and determined by the Magistrates’ Court, up until the point an enforcement order is made.442 At a minimum, an infringement recipient is permitted 56 days in which to make this election, on the basis of the following lifecycle:

- after an infringement notice is issued, a person has 28 days in which to pay the infringement penalty, or 42 days in which to pay if the infringement notice has been served by post and not served personally;443
- if an infringement penalty is not paid within 28 days (or 42 days in the case of service by post), a penalty reminder notice must be issued by the enforcement agency and a person is given at least 28 further days in which to pay the infringement penalty.444

5.2.59 In addition to the right to elect to have the matter heard by the Magistrates’ Court, an infringement recipient may:

- request internal review by the enforcement agency up until the infringement notice is lodged with the Infringements Court (under the current system) or the administrative body (under the new system);445
- request an enforcement review by the administrative body, which will be available on the same grounds as internal review and where a person is genuinely unaware of having been issued with an infringement notice (if Recommendation 16 is accepted);
- apply to a specialist unit within the administrative body, which will assess applications for enforcement review on the ground of special circumstances (if Recommendation 17 is accepted); or
- reapply for enforcement review on the ground of special circumstances where the recipient has new or additional information in support of the application or acquires legal or other representation for the purpose of making the application (if Recommendation 19 is accepted).

440. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
441. See Recommendations 41, 42.
442. Infringements Act 2006 (Vic) s 16(1).
444. Infringements Act 2006 (Vic) s 29.
5.2.60 If a person does not pay and is unsuccessful after applying for enforcement review (or does not apply), enforcement sanctions will continue to be applied and ultimately an infringement warrant may be issued. If the person is arrested on an infringement warrant, an infringement warrant enforcement hearing will be conducted by the Magistrates’ Court.\textsuperscript{446}

5.2.61 The Council’s recommendations regarding the powers of the court at an infringement warrant enforcement hearing are discussed in detail in Chapter 6. It is recommended that alternatives to imprisonment, such as full or partial penalty discharge, be made available to all infringement recipients at a hearing under section 160 of the \textit{Infringements Act} (see Recommendation 30). Recommendation 20 is contingent upon Recommendation 30. The recommendations for enforcement review and the powers of the court on infringement default represent a package of reforms.

5.2.62 In light of the current and proposed forms of oversight, withdrawal of the right to object to revocation refusal/unsuccessful enforcement review strikes an appropriate balance. The right to contest the infringement matter before the court will remain available up until the point that the enforcement process commences (a minimum period of 56 days). This should provide the majority of infringement recipients with sufficient time in which to determine whether court intervention is warranted. Specific protections have been recommended for persons claiming special circumstances, who may not access legal services until the enforcement process commences. Further, for persons claiming special circumstances and persons who may be experiencing other forms of hardship or disadvantage, this report recommends that work and development permits be made available both prior to and after an infringement penalty is registered with the administrative body (see Recommendation 12). This reform would provide an additional safety net for persons who may have otherwise objected to the Magistrates’ Court following revocation refusal, or unsuccessful enforcement review under the new system.

5.2.63 Finally, a right of judicial review to the Supreme Court will remain available, but this is unlikely to be taken up by the majority of infringement recipients, given the cost of Supreme Court proceedings relative to infringement penalty amounts.

\textbf{Recommendation 20: No right to object to Magistrates’ Court following unsuccessful enforcement review}

The procedure under section 68 of the \textit{Infringements Act 2006 (Vic)} allowing a person to object in the Magistrates’ Court to a refusal by the Infringements Court to revoke an enforcement order should be abolished, and no equivalent right should be provided under the Fines Reform amendments.

Subject to the right to make a second or subsequent application for enforcement review on the ground of special circumstances, where an application for enforcement review is unsuccessful, enforcement of the infringement penalty by the administrative body should continue.

\textsuperscript{446} \textit{Infringements Act 2006 (Vic)} s 159, 160.
5.3 Harmonisation of enforcement sanctions

5.3.1 Consideration has been given to whether the enforcement sanctions for court fines and infringement penalties should be harmonised.

5.3.2 At present, enforcement sanctions may only be imposed for court fine or infringement penalty default once a warrant for default has been issued. However, under Fines Reform, enforcement sanctions will be available to the administrative body earlier in time. The timing of enforcement sanction use is discussed below at [5.4.1]–[5.4.25].

Current sanctions

Court fines

5.3.3 A person may be arrested and brought before the court if he or she defaults in payment of a court fine for more than one month. Before a warrant for arrest may be executed, the person has seven days in which to pay the fine or obtain an instalment order or time to pay order. If none of these things occur, the person may be arrested and brought before the court, and enforcement sanctions may be imposed.

Infringement penalties

5.3.4 If an infringement penalty is not paid, an enforcement order may be made by the Infringements Court. If an enforcement order is made and a person defaults on payment of the penalty for more than 28 days, an infringement warrant will be issued by an infringements registrar. Before a warrant may be executed, the person has seven days in which to pay the penalty, apply for a payment order, or apply for revocation of the enforcement order. A person is notified of this right by a ‘seven-day notice’. During the period of the seven-day notice, the person executing the infringement warrant may seize and take possession of personal property.

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447. See Appendix 2: Department of Justice, Overview of the Fines Reform Legislative Amendment Package (2014).
448. Sentencing Act 1991 (Vic) s 62(1); the period for default will be 28 days from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69(4) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
452. Infringements Act 2006 (Vic) s 80(1).
453. Infringements Act 2006 (Vic) s 88. The seven-day notice period does not apply to corporations (section 88 of the Act expressly applies to natural persons only). The seven-day notice is served by the person responsible for executing the infringement warrant; this person may be the Sheriff, the police, a commissioner within the meaning of the Corrections Act 1986 (Vic), or any other person authorised by law to execute an infringement warrant: Infringements Act 2006 (Vic) ss 84, 88.
454. Infringements Act 2006 (Vic) s 89.
5.3.5 The warrant may be executed if the person subject to the warrant takes no action during the seven-day period. In executing the warrant, the Sheriff (or any other person responsible for executing the warrant) may sell any personal property seized during the seven-day period.\footnote{Infringements Act 2006 (Vic) s 90(1)(b).} Once a warrant has been executed, a two-stage enforcement process begins:

- the Sheriff will apply enforcement sanctions, including seizure of personal property;\footnote{Infringements Act 2006 (Vic) s 82; pts 7–8, 10–11.}
- if the Sheriff cannot find sufficient personal property to recover the amount owing under the warrant, the Sheriff may arrest the person and impose a community work permit, or bring him or her before the Magistrates’ Court if the option of a community work permit has been exhausted.\footnote{Infringements Act 2006 (Vic) s 82(1)(c).} The court may then impose imprisonment or, in some circumstances, discharge the penalty (in full or in part) or order community work.\footnote{Infringements Act 2006 (Vic) s 160.}

5.3.6 Further details about the enforcement procedures for court fine and infringement penalty default are provided in Appendix 1.

### Comparison of sanctions

5.3.7 Table 9 compares the enforcement sanctions for court fine and infringement penalty default. In summary:

- licence- and vehicle-related sanctions are available for infringement penalty default but not for court fine default;
- real property-related sanctions are available for infringement penalty default but not for court fine default; and
- attachment of earnings and attachment of debts sanctions are available for infringement penalty default but not for court fine default.

### Policy considerations

5.3.8 The Victorian Government intends to harmonise court fine and infringement penalty enforcement sanctions under the Fines Reform amendments.\footnote{See Appendix 2: Department of Justice, Overview of the Fines Reform Legislative Amendment Package (2014).}

5.3.9 The majority of Australian jurisdictions provide either largely or entirely uniform enforcement sanctions for court fine and infringement penalty default.\footnote{State Penalties Enforcement Act 1999 (Qld); Monetary Penalties Enforcement Act 2005 (Tas); Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA); Fines Act 1996 (NSW).}

5.3.10 Stakeholders consulted by the Council broadly expressed support for the harmonisation of enforcement sanctions.\footnote{Roundtable 2 – Payment and Enforcement (26 August 2013).}

5.3.11 Some stakeholders cautioned that any changes to enforcement sanctions need to contain sufficient safeguards for vulnerable persons; in particular, attention was drawn to the potentially severe or unintended consequences of extending some sanctions (particularly driver licence sanctions) that are currently available for infringement penalty enforcement to court fine enforcement.\footnote{Roundtable 2 – Payment and Enforcement (26 August 2013); Submission 3 (Youthlaw); Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank-Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).} These issues are examined at [5.4.5]–[5.4.25].
### Table 9: Enforcement sanctions for court fine default and infringement penalty default

<table>
<thead>
<tr>
<th>Sanction</th>
<th>Court fine default</th>
<th>Infringement penalty default</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detention, immobilisation, and sale of motor vehicles</td>
<td>Detention and immobilisation are not permitted</td>
<td>Yes(^a)</td>
</tr>
<tr>
<td></td>
<td>The sale of motor vehicles is not expressly permitted, but the seizure of personal property more generally is permitted(^a)</td>
<td></td>
</tr>
<tr>
<td>Suspension or non-renewal of driver licence or vehicle registration</td>
<td>No</td>
<td>Yes(^a)</td>
</tr>
<tr>
<td>Seizure and sale of personal property</td>
<td>Yes(^b)</td>
<td>Yes(^e)</td>
</tr>
<tr>
<td>Attachment of earnings order (garnisheeing wages)</td>
<td>No</td>
<td>Yes(^f)</td>
</tr>
<tr>
<td>Attachment of debts order (garnisheeing a bank account)</td>
<td>No</td>
<td>Yes(^h)</td>
</tr>
<tr>
<td>Charge over, or sale of, real property</td>
<td>No</td>
<td>Yes(^i)</td>
</tr>
<tr>
<td>Community work</td>
<td>Yes(^i)</td>
<td>Yes, the Sheriff may issue a community work permit, and the court may make a community work order in some circumstances(^j)</td>
</tr>
</tbody>
</table>

\(^{a}\) Sentencing Act 1991 (Vic) s 62(10)(c); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69H(2)(c) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\(^{b}\) Sentencing Act 1991 (Vic) s 62(10)(c); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69H(2)(c) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\(^{c}\) Sentencing Act 1991 (Vic) s 62(10)(a); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69H(2)(a) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\(^{d}\) Infringements Act 2006 (Vic) pt 7.

\(^{e}\) Infringements Act 2006 (Vic) pt 8.

\(^{f}\) Infringements Act 2006 (Vic) s 82(1)(b).

\(^{g}\) Infringements Act 2006 (Vic) pt 10 div 2. The order is made by an infringements registrar on his or her own motion or on application by the Sheriff, an enforcement agency, or the person subject to the warrant: Infringements Act 2006 (Vic) s 123(3).

\(^{h}\) Infringements Act 2006 (Vic) pt 10 div 3. The order is made by an infringements registrar on his or her own motion or on application by the Sheriff, an enforcement agency, or the person subject to the warrant: Infringements Act 2006 (Vic) s 129(3).

\(^{i}\) Infringements Act 2006 (Vic) pt 11.

\(^{j}\) Infringements Act 2006 (Vic) pt 12 div 1; s 160(3)(e).
The Council’s view

5.3.12 Since court fines are generally imposed for more serious offending than infringement penalties, there is no sound policy reason for having a more restrictive regime for the enforcement of court fines. The enforcement sanctions for court fine default should therefore be harmonised with those for infringement penalty default.

5.3.13 Harmonisation will enhance the effectiveness and credibility of court fines and infringement penalties by clarifying the possible consequences of default for fine and penalty recipients. Enforcement sanctions are more likely to produce compliance, and less likely to produce unfairness, if they are clear, predictable, and consistent.

5.3.14 The recommended introduction of additional safeguards in the enforcement process, such as work and development permits, will mitigate the effect of sanction expansion on vulnerable people or those who lack the capacity to pay.\(^{463}\)

Recommendation 21: Harmonised enforcement sanctions
The same sanctions should be available for the enforcement of court fines and infringement penalties.

The enforcement sanctions should include:
- detention, immobilisation, and sale of motor vehicles;
- suspension or non-renewal of a driver licence or vehicle registration;
- seizure and sale of personal property;
- attachment of earnings;
- attachment of debts; and
- registration of a charge over, and sale of, real property.

5.4 Timing of enforcement sanction use

5.4.1 Under the Fines Reform amendments, enforcement sanctions will be available at an earlier point in the enforcement process.\(^{464}\) The Department of Justice has stated that:

Stronger and more automated sanctions will be applied closer in time to offending ... Existing sanctions like driver licence and vehicle registration suspension will be rolled-out more widely together with new sanctions such as number plate removal, to encourage people to contact Fines Victoria so that the fine debt can be managed appropriately.\(^{465}\)

5.4.2 The Sheriff reported to the Victorian Ombudsman that Fines Reform will:

[make] the infringements system more effective for fine defaulters by shortening the time they have to pay and tailoring the lifecycle to reflect actual payment patterns, making it tougher by moving sanctions for non-payment closer to the issue of the fine, and implementing new and stronger sanctions for non-payment.\(^{466}\)

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\(^{463}\) See Recommendation 12.

\(^{464}\) See Appendix 2: Department of Justice, Overview of the Fines Reform Legislative Amendment Package (2014).

\(^{465}\) Ibid.

\(^{466}\) Victorian Ombudsman (2013), above n 3, 36.
5.4.3 At present, warrants for court fine and infringement penalty default are frequently unexecuted, which means that enforcement sanctions are not applied to a substantial number of defaulters.\(^\text{467}\)

5.4.4 The Infringements Working Group raised general concerns about any changes to enforcement sanctions, submitting that:

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.\(^\text{468}\)

**Suspension or non-renewal of driver licence or vehicle registration**

**Proposed changes**

5.4.5 More particular issues concerning enforcement sanction timing are raised by the use of licence- and vehicle-related sanctions. These sanctions are only available for infringement penalty enforcement at present; however, under a harmonised enforcement system they are likely to also apply to court fine enforcement (see Recommendation 21).

5.4.6 Under the current system, licence- and vehicle-related sanctions are only available at the ‘pointy end’ of the enforcement process once a warrant has been issued and the matter is with the Sheriff.\(^\text{469}\) Under the Fines Reform amendments, driver licence and vehicle registration sanctions will be ‘applied closer in time to offending’, and ‘rolled-out more widely’.\(^\text{470}\) The Victorian Ombudsman has stated that Fines Reform will introduce:

- automatic driver licence or registration suspension for offenders who default on payment orders, and [a requirement for offenders] to pay a number of instalments before sanctions are lifted.\(^\text{471}\)

**Licence or registration suspension**

5.4.7 At present, the Sheriff may direct VicRoads to suspend a driver licence or vehicle registration if an infringement warrant has been issued, a ‘seven-day notice’ has been served, and, in the seven days following service of the notice, the person or corporation has not:

- paid the infringement penalty;
- obtained a payment order (this option is not available for corporations); or
- had the enforcement order revoked.\(^\text{472}\)

5.4.8 Before the Sheriff can direct VicRoads to suspend a driver licence or vehicle registration, a person or corporation must be served with a Notice of Intention to Suspend (NOITS).\(^\text{473}\)

\(^{467}\) See [2.8.21]–[2.8.26]; Victorian Ombudsman (2013), above n 3, 4.

\(^{468}\) Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).

\(^{469}\) Infringements Act 2006 (Vic) s 108.

\(^{470}\) See Appendix 2: Department of Justice, *Overview of the Fines Reform Legislative Amendment Package* (2014).

\(^{471}\) Victorian Ombudsman (2013), above n 3, 37.

\(^{472}\) Infringements Act 2006 (Vic) ss 108, 110, 112(2).

\(^{473}\) Infringements Act 2006 (Vic) ss 110(2), 112(2).
5.4.9 The suspension ceases once the infringement penalty is paid, a payment order is obtained, the infringement warrant is cancelled, or other enforcement sanctions are applied (such as an attachment of earnings order), among other events. Accordingly, the main purpose of this sanction is to galvanise the person to take action.

5.4.10 Under the Infringements Act, it is an offence for a person to drive while his or her licence is suspended. The maximum penalty for this offence is a fine of 10 penalty units (or $1443.60 at the time of publication). This offence is separate from the general offence of driving while disqualified or suspended under the Road Safety Act 1986 (Vic) or the Sentencing Act. More severe maximum penalties apply for this offence (a fine of 30 penalty units or imprisonment for 4 months for the first offence, and a fine of 240 penalty units or imprisonment for 2 years for a subsequent offence).

Licence or registration non-renewal

5.4.11 Once an infringement warrant has been issued, the Sheriff may direct VicRoads to not renew a driver licence or vehicle registration regardless of whether or not a seven-day notice has been served. This direction ceases once the infringement penalty is paid, a payment order is obtained, the warrant is cancelled, or other enforcement sanctions are applied (such as an attachment of earnings order), among other events.

Policy considerations

5.4.12 Licence or vehicle registration suspension is a highly effective enforcement sanction. In 2010–11 and 2011–12, 97% of warrants where a NOITS was issued were cleared. The warrant was cleared either after the NOITS was issued and before the suspension commenced, or after the suspension commenced. The majority of warrants were cleared by payment of the amount owing or entry into a payment order.

5.4.13 The non-renewal of licences and vehicle registrations is also highly effective. The vast majority of warrants where non-renewal was directed were cleared in 2010–11 (85%) and 2011–12 (82%). Of all warrants where non-renewal was directed over this period, 70% resulted in full payment of the amount owing.

5.4.14 The Sheriff’s Operations (SEMR) stated that a NOITS is a ‘very good’ incentive for payment, and that automatic numberplate recognition technology has greatly reduced the ability to drive while a licence or vehicle registration is suspended.

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474. Infringements Act 2006 (Vic) s 162(2)(d).
475. Infringements Act 2006 (Vic) ss 110, 112.
477. Road Safety Act 1986 (Vic) s 30AA.
478. Road Safety Act 1986 (Vic) s 30. Under the Sentencing Act 1991 (Vic) s 89A, a driver licence may be suspended or cancelled if a person has been found guilty or convicted of any offence.
480. Infringements Act 2006 (Vic) s 114.
481. Infringements Act 2006 (Vic) s 115.
482. Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
5.4.15 Given the high rate of warrant clearance (particularly payment in full) following the issue of a NOITS or a direction for non-renewal of a licence or vehicle registration, it is likely that the use of these sanctions earlier in the enforcement process will result in higher rates of payment earlier in the enforcement process. However, two caveats are placed on this likelihood.

5.4.16 First, the suspension of a licence or vehicle registration may be less effective if the suspension process is automated and personal service of the NOITS is not required. The experience of community justice stakeholders indicates that personal service is a critical factor in the resolution of infringement matters. In relation to the personal service of seven-day notices, the PILCH Homeless Persons’ Legal Clinic acknowledged the burden that personal service places on the Sheriff, but strongly recommended that personal service of seven-day notices be retained, stating that:

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 [Homeless Persons’ Legal Clinic] frequently sees 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 that 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.483

5.4.17 Similarly, a stakeholder in the Council’s Fine Payment and Enforcement roundtable stated that:

Certainly for our clients, the personal service is really important … [the clients] are really transient, they move around a lot and that idea of being personally approached by the Sheriff and given a notice is a trigger often for them to seek legal assistance.484

5.4.18 The Sheriff’s Operations (SEMR) provided a different view, noting that delay in the enforcement process more generally allows people to evade enforcement, for example, by changing vehicle registration details.485 Personal service may cause considerable delay in enforcement if the person or corporation is difficult to trace.486 In addition, the Sheriff’s Office is grossly under-staffed to carry out personal service, which compounds delay. In 2012–13, 172 Sheriff’s officers were responsible for executing 3.5 million outstanding warrants.487

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483. Submission 10 (PILCH Homeless Persons’ Legal Clinic).
484. Roundtable 2 – Payment and Enforcement (26 August 2013).
485. Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
486. See [5.7.16]–[5.7.19].
5.4.19 Second, while the suspension of a licence or vehicle registration is very effective from an enforcement perspective (particularly the issuing of a NOITS in person), such sanctions may cause further hardship to disadvantaged or vulnerable persons, especially if sanctions are used at an early stage of the enforcement process. In particular, the suspension of a licence or vehicle registration may interfere with a person’s ability to seek or maintain employment. In this respect, the PILCH Homeless Persons’ Legal Clinic submitted that:

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.488

5.4.20 Similar comments were made by participants in the Council’s roundtable consultations, and in the submission by Brimbank Melton Community Legal Centre.489

5.4.21 The issues described above are compounded for people living in regional or outer-metropolitan areas who do not have access to adequate public transport (if at all), and who may have few alternatives to driving in order to complete essential daily tasks.490 This may result in the accrual of further penalties for driving while a licence is suspended,491 and an escalation into more serious offending.

5.4.22 Further, licence suspension may be particularly problematic if a person is not able to nominate another driver for driving-related infringement offences (for example, where a victim of family violence is too frightened to nominate the perpetrator of the violence as the person incurring the infringements). Non-payment of infringement penalties, or demerit point accrual, may then result in licence suspension. The Infringements Working Group provided a case study on this point.492

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 VicRoads stating that 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.

488. Submission 10 (PILCH Homeless Persons’ Legal Clinic).
489. Roundtable 2 – Payment and Enforcement (26 August 2013); Submission 8 (Brimbank Melton Community Legal Centre).
491. As noted at [5.4.10], the maximum penalty for driving while a licence is suspended under the Infringements Act 2006 (Vic) is a fine of 10 penalty units: Road Safety Act 1986 (Vic) s 30AAA.
492. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
5.4.23 Given that enforcement sanctions, such as licence or vehicle registration suspension, may exacerbate disadvantage, the Infringements Working Group and some participants in the Council’s roundtable consultations suggested that guidelines should be issued on the use of enforcement sanctions. According to the Infringements Working Group, such guidelines should ‘assist decision-makers to make appropriate decisions about sanctions in light of individual circumstances’. A similar concept is examined in Chapter 4 in relation to the implementation of a compliance model by the administrative body.

The Council’s view

5.4.24 Given that warrants against persons and corporations are frequently unexecuted, the availability of earlier enforcement sanctions will reduce delay in the enforcement process and scope for payment evasion, including through asset disposal and changes to vehicle registration details. This will strengthen the credibility and effectiveness of court fines and infringement penalties.

5.4.25 The use of enforcement sanctions, such as licence and vehicle registration suspension, at an earlier stage of the enforcement process, however, may cause further hardship to already disadvantaged or vulnerable persons. It may also result in an escalation of offending if people are unable to complete essential tasks without driving. It is therefore imperative that consideration is given to several of this report’s recommendations, which provide more appropriate options for people in such a position. These recommendations are:

- the introduction of a compliance model that will provide guidance around the use of enforcement sanctions, according to a typology of persons who ‘shouldn’t pay’, ‘can’t pay’, ‘will pay’, ‘might pay’, and ‘won’t pay’ (see Recommendation 7); and
- in relation to infringement penalties only:
  - the introduction of work and development permits, which allow an infringement penalty to be discharged through community work, treatment, or educative programs, in appropriate cases (see Recommendation 12); and
  - penalty adjustments for people experiencing financial hardship (see Recommendation 39).

5.5 Harmonisation of warrant procedures on enforcement

5.5.1 Any harmonisation of warrant procedures for court fine and infringement penalty default requires the resolution of the following issues:

- whether the Sheriff should have to attempt to satisfy the warrant by seizing personal property before arresting a person for court fine default and bringing him or her before the court (as is the case for infringement penalty default); and
- whether the Sheriff should be able to arrest a person for court fine default and bail the person to appear in court, without having to take the person before a police member (as is the case for infringement penalty default).

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493. Roundtable 2 – Payment and Enforcement (26 August 2013); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).

494. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
Seizure of personal property before arrest

5.5.2 A person can only be arrested on a warrant for infringement penalty default and brought before the court if the Sheriff cannot find sufficient personal property to recover the amount owing.495 (Data were unavailable on the success of property seizure prior to arrest for infringement penalty default.)

5.5.3 In contrast, a person can be arrested on a warrant for court fine default — and exposed to the threat of imprisonment — without the Sheriff having to attempt to satisfy the warrant by seizing personal property.496

Property seizure for court fine default

5.5.4 Property seizure for court fine default, unlike for infringement penalties, can only occur after arrest of the offender and order by the court.

5.5.5 Over the period from 2004–05 to 2012–13, warrants to seize property were executed in approximately 20% to 25% of the cases where property seizure was ordered by the Magistrates’ Court following court fine default. Where a warrant was executed, the outstanding fine was fully paid in 98.2% of cases. Warrants for property seizure, therefore, have a low rate of execution (similar to enforcement warrants generally) but are very effective in recovering outstanding court fines when execution can be achieved. The Sheriff’s Operations (SEMR) stated that property seizure warrants typically have low rates of execution because sufficient property cannot be found to recover the amount owing.497

5.5.6 Where sufficient personal property is available for seizure, seizure before arrest for court fine default would have the following advantages:

• it respects the nature of a monetary penalty by imposing some measure of ‘financial pain’ on the offender (a community work order may not have this effect, for example);
• it prevents the use of a court power — namely community work or imprisonment — that may be disproportionate to the original offending the fine was imposed for;
• it avoids unnecessarily burdening community correction services with the management of offenders on community work orders who are otherwise able to pay a fine (although the option of property seizure is available to the court on arrest of a fine defaulter,498 this option may not necessarily be exercised and community work may be ordered instead); and
• it avoids the emotional stress, stigmatisation, and legal costs occasioned by arrest.

5.5.7 In general terms, stakeholders suggested that the warrant procedures for arrest on court fine default and infringement penalty default should be harmonised, but did not specifically comment on whether property seizure should have to be attempted before a person can be arrested for court fine default.499

495. Infringements Act 2006 (Vic) s 82(1)(c).
497. Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
499. Roundtable 2 – Payment and Enforcement (26 August 2013); Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013); Submission 3 (Youthlaw).
The Council’s view

5.5.8 The Sheriff should be empowered – but not required – to attempt to seize personal property before arresting a person for court fine default and bringing him or her before the court. Since court fines are generally imposed for more serious offending than infringement penalties, an equally robust range of enforcement sanctions should be available to the Sheriff in relation to court fine default. This includes the ability to seize personal property without having to seek an order from the court to this effect. This would allow property seizure, where feasible, to be prioritised over sanctions such as community work and imprisonment, which may be a more proportionate and parsimonious response to the underlying offending.

5.5.9 Given the low rate of warrant execution in relation to property seizure, the Sheriff should be given a discretion about whether to attempt personal property seizure before arresting a person and bringing him or her before the court. This will avoid misallocation of the Sheriff’s resources and delay in enforcement by the court where property seizure is unlikely to be successful.

Recommendation 22: Seizure of personal property before arrest for court fine default

The Sheriff should be empowered to seize personal property before a person can be arrested for court fine default and brought before the court.

Arrest and bail without going before police

5.5.10 If a person is arrested by the Sheriff for infringement penalty default, the Sheriff may release the person on bail if it is not practicable to bring the person before a court after he or she is taken into custody.500

5.5.11 The Sheriff does not have this bail power after the arrest of a person for court fine default, however. If it is not practicable to bring the person before a court after he or she is taken into custody, the Sheriff must take the person before a member of the police (of or above the rank of sergeant), who may release the person on bail.501

5.5.12 A person may elect to go before a bail justice if the Sheriff or the police refuse bail, or if the person objects to the amount fixed for bail or any condition of bail. In these circumstances, the Sheriff or the police must bring the person before a bail justice as soon as practicable.502

500. Bail Act 1977 (Vic) s 10(1A).
501. Bail Act 1977 (Vic) s 10(1).
502. Bail Act 1977 (Vic) s 10(2).
5.5.13 The Sheriff’s Operations (SEMR) supported the harmonisation of bail powers on arrest for court fine default and infringement penalty default, as it is preferable for the Sheriff, rather than the police, to be able to release a person on bail. This enables the Sheriff to carry out several actions ‘on the spot’, for example, arrest, bail, and wheel-clamping (wheel-clamping does not require service of a seven-day notice503). According to the Sheriff’s Operations (SEMR), it is ‘ideal’ for the Sheriff to have only one point of contact with a person, because contact is easily lost over the enforcement process due to deliberate evasion by some defaulters and procedural delay.504

5.5.14 The Sheriff’s Operations (SEMR) also pointed out that bailing by the Sheriff is preferable due to demands on police time and the overcrowding of police cells. In some cases, Sheriff’s officers are required to travel some distance in order to locate a police station that can accommodate the person arrested and consider bail.505 This resource-intensive process places further demands on an already under-resourced Sheriff’s Office,506 and is likely to be stressful for the person arrested.

5.5.15 In contrast, Victoria Police considered that it may be preferable for the police to retain sole authority to bail persons arrested for court fine default, because this allows for cross-checking of any outstanding warrants against the person, or investigation if the person is of interest to the police for any other matter. Victoria Police indicated that it would need to consider further any proposed reforms to court fine default arrest procedures.507

The Council’s view

5.5.16 Further consideration should be given to whether it is desirable to harmonise the bail procedures on arrest for court fine default and infringement penalty default. Victoria Police and the Sheriff should be consulted as part of this process.

5.5.17 Allowing the Sheriff to bail a court fine defaulter would enable the more efficient enforcement of fines by reducing the time and resources involved in arresting a person for default. It is also likely to be a less burdensome process for the person arrested, who retains the right to go before a bail justice if the Sheriff refuses to release the person on bail, or if the person objects to the amount fixed for bail or any conditions of bail. However, a significant disadvantage of this reform is that it removes an opportunity for the detection of persons whose arrest is sought under other warrants.

Recommendation 23: Harmonised bail procedures

Further consideration should be given to whether it is desirable to harmonise the bail procedures on arrest for court fine default and infringement penalty default.

503. Infringements Act 2006 (Vic) s 95(1).
504. Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
505. Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
507. Meeting with Victoria Police (18 February 2014).
5.6 Enforcement against corporations

5.6.1 Court fines imposed on corporations are under-enforced. Corporations have substantial rates of fine non-payment, and warrants are very rarely executed against corporations for court fine default.508 Enforcement against corporations is particularly important – a fine will be the only sanction available for corporate offending in many instances, and therefore takes on additional significance in denouncing, deterring, and punishing that offending.

Offence types

5.6.2 In the Magistrates’ Court, the most common offence types for which fines are imposed on corporations include driving unregistered in a toll zone (that is, non-payment of toll fares), failure to comply with Commonwealth taxation laws, and road safety offences. In the County Court, the most common offences for which fines are imposed on corporations concern occupational health and safety.509

Payment rates

5.6.3 The majority of corporations (61.3%) completed payment of fines ordered between 2004–05 and 2012–13 by the Magistrates’ Court. Corporations have a slightly higher rate of completed payment than persons (52.8% of persons completed payment of fines over the same period). However, a substantial proportion of corporations (36.5%) made no payments at all over the same period.510

Warrant execution

5.6.4 The rate of warrant execution is lower against corporations than against persons. Between 2004–05 and 2012–13, of the corporations that failed to make any payments of court fines, none had warrants served or executed against them. Over the same period, only 8.5% of corporations that partially paid court fines had warrants served or executed against them (see Figure 11).511

5.6.5 The Victorian Ombudsman identified several reasons for the high rate of unexecuted warrants, including inadequate resourcing of the Sheriff’s Office and the under-utilisation of available enforcement sanctions, including directors’ personal liability provisions.512 In addition, the Sheriff’s Operations (SEMR) maintained that enforcement against corporations is hindered by director behaviour, including:

- corporations holding few or no assets in order to evade payment (including holding what is effectively corporate property in the names of third parties); and
- corporations engaging in phoenix activity (see [5.6.33]) in order to evade payment.513

5.6.6 The under-enforcement of fines against corporations is an issue in other jurisdictions. In the United States, agencies such as the Department of Justice and the Securities and Exchange
The imposition and enforcement of court fines and infringement penalties in Victoria

Commission typically have collection rates well below 50%. In a rare study of the under-enforcement of fines against corporations in the United States, Pritikin and Ross found that the main causes of low collection rates were agency failures, such as inadequate asset discovery and the under-utilisation of available enforcement measures. In many cases, there were insufficient resources to carry out these tasks properly.

Current enforcement sanctions

5.6.7 With the exception of community work and imprisonment, the enforcement sanctions available against corporations for infringement penalty default are generally the same as those available against persons. The sanctions comprise:
- detention, immobilisation and sale of motor vehicles;
- suspension or non-renewal of a driver licence or vehicle registration;
- seizure and sale of personal property;
- an attachment of earnings order;
- an attachment of debts order; and
- a charge over, or sale of, real property.

5.6.8 Further, directors may be held personally liable for an infringement penalty issued against a corporation in some circumstances, as explained below.

5.6.9 The enforcement sanctions available against corporations for court fine default are more restrictive than the sanctions for infringement penalty default. A court fine against a corporation may only be enforced through property seizure.

5.6.10 Harmonisation of the enforcement sanctions for fine and penalty default will allow a broader range of sanctions to be used against corporations that default on court fines, including vehicle-related sanctions (see Recommendation 21). Further, many of the additional enforcement sanctions and strategies recommended in [5.7] (or recommended for consideration) will have application to corporations, including:
- the collection of unpaid court fines and infringement penalties by the Australian Taxation Office (see [5.7.60]–[5.7.66]); and
- the accreditation of taxi drivers and operators by the Taxi Services Commission being subject to outstanding default warrants (see [5.7.36]–[5.7.57]).

5.6.11 Given the particular forms of payment evasion engaged in by some corporations, consideration has been given to whether additional or modified enforcement sanctions are specifically required for corporations, namely:
- modification of the current directors’ personal liability provisions under the Infringements Act and the extension of these provisions to provide for directors’ liability for unpaid court fines; and
- mechanisms for the recovery of unpaid court fines or infringement penalties from an insolvent corporation.

514. The Securities and Exchange Commission in the United States performs the same functions as the Australian Securities and Investments Commission.
517. See Appendix 1; Infringements Act 2006 (Vic) s 82, pts 7–8, 10–11.
Directors’ personal liability

5.6.12 As a matter of corporate law, directors are normally not personally liable for debts of the corporation. One major exception to this is where a director permits a corporation to trade while it is insolvent (that is, where the corporation cannot pay its debts as and when they fall due).519

5.6.13 In some circumstances, a director of an offending corporation may be made personally liable for payment of the corporation’s court fine or infringement penalty. There are different approaches to directors’ personal liability in respect of court fines and infringement penalties, each of which reflects the insolvency exception.

Court fines

Liability of director when fine imposed

5.6.14 A director of a corporation520 may be declared liable for payment of a fine imposed on the corporation at the time the fine is imposed, if the court is satisfied that:

- the corporation will not be able to pay an ‘appropriate’ fine; and
- immediately before the commission of the offence, there were reasonable grounds to expect that the corporation would not be able to meet its liabilities at that time (that is, there were reasonable grounds to expect that the corporation was insolvent).521

5.6.15 A director must not be made liable for payment of a fine if:

- at the time of the offence, the director had reasonable grounds for believing that the corporation would be able to meet its liabilities at that time; and
- the director had taken all reasonable steps to ensure that the corporation would be able to meet its liabilities as and when they became due.522

5.6.16 In other words, it is a ‘defence’ for the director to prove that he or she had a reasonable belief in the solvency of the corporation at the time of the offence, and that he or she took reasonable steps to ensure the solvency of the corporation.

5.6.17 If a corporation is convicted of an offence under the Crimes Act 1958 (Vic), a fine may be five times greater than the maximum fine available for natural persons convicted of the same offence.523 Accordingly, a director may be personally liable for a fine amount that is considerably greater than if the fine had been imposed on the director in his or her personal capacity.

Liability on default by corporation

5.6.18 If a fine is ordered against a corporation (but a director is not declared liable for payment when the fine is imposed) and the corporation defaults on payment, there is no power to make a director personally liable for payment of the fine, unlike under the Infringements Act.

519. Corporations Act 2001 (Cth) s 588G.
520. The term used in the Sentencing Act 1991 (Vic) is ‘bodies corporate’; however, this term is not defined by the Act (nor by the Interpretation of Legislation Act 1984 (Vic)).
523. Sentencing Act 1991 (Vic) s 113D.
Infringement penalties

5.6.19 An infringements registrar may make a director personally liable for payment of the corporation’s infringement penalty if:

• an infringement warrant has been issued against the corporation; and
• the personal property of the corporation is insufficient to discharge the amount owing. 524

5.6.20 A director must not be declared liable for payment of an infringement penalty and an infringement warrant must not be issued against a director if:

• at the time of the offence, the director had reasonable grounds for believing that the corporation would be able to meet its liabilities at that time; and
• the director had taken all reasonable steps to ensure that the corporation would be able to meet its liabilities as and when they became due. 525

5.6.21 This is identical to the defence available to directors where an application is made for a court fine to be paid personally by a director of an offending corporation. 526 The director can raise this defence either with an infringements registrar or on application to the Magistrates’ Court. 527

5.6.22 If an infringement warrant is issued against a director in these circumstances, he or she is exposed to the following enforcement sanctions unless the infringement penalty is paid:

• seizure of personal property;
• detention, immobilisation, or sale of a motor vehicle;
• suspension of a driver licence or vehicle registration;
• an attachment of earnings order;
• an attachment of debts order;
• a charge over, or sale of, real property;
• community work; or
• imprisonment. 528

5.6.23 Payment orders are not available to directors who are liable for payment of a corporation’s infringement penalty. 529

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524. Infringements Act 2006 (Vic) s 91(1). It must also be established that, on the basis of returns lodged under the Corporations Act 2001 (Cth), the person was a director of the corporation at the time of the offence: Infringements Act 2006 (Vic) s 91(1)(b)(ii). Before making the declaration and issuing an infringement warrant against a director, an infringements registrar must give the director 28 days notice of an intention to make the declaration and issue the warrant: Infringements Act 2006 (Vic) s 91(3).

525. Infringements Act 2006 (Vic) s 91(4).

526. See [5.6.14]–[5.6.15].

527. Infringements Act 2006 (Vic) s 91(4)(c). If the court is satisfied that the director should be made personally liable for payment of the corporation’s infringement penalty, the court can either make the declaration and order the infringements registrar to issue an infringement warrant against the director, or refer the entire matter back to the infringements registrar for the making of a declaration and the issue of an infringement warrant: Infringements Act 2006 (Vic) s 91(7).

528. See Appendix 1.

529. Infringements Act 2006 (Vic) s 76(1).
Policy considerations

5.6.24 There are barriers to the use of the current directors’ liability provisions. The Victorian Ombudsman reported that, until recently, Infringement Management and Enforcement Services (IMES) had not used the provisions in relation to unpaid infringement penalties because:

[IMES’s] legal advice is that a ‘director could easily avoid liability’ because the ‘reasonable steps’ defence available to directors is unclear.

[A]n Infringements Court Registrar would require specialist legal advice in each case to determine director liability, a decision reviewable by the Supreme Court.530

5.6.25 IMES has now used the provisions and is targeting a small number of directors to further test the application of the power.531 Notwithstanding, the burden on IMES to satisfy the current provisions is high and most likely very costly (given that it essentially involves establishing insolvency).

5.6.26 The defence available to directors is less restrictive in other areas of the law, such as Commonwealth taxation law. If a corporation has not paid certain withholding taxes (such as pay as you go (PAYG) taxes) within a certain period after taxes become due, a director is obliged to ensure that:

• the corporation pays the tax;
• the corporation is placed into administration; or
• the corporation begins to be wound up.532

5.6.27 If the director does not discharge this obligation, he or she becomes personally liable for payment of the tax. The director may only avoid personal liability if:

• the director did not take part in the management of the corporation when this obligation applied, and it would have been unreasonable to expect the director to take part in the management of the corporation due to illness or another reason; or
• the director took all reasonable steps to cause the corporation to pay the tax, have the corporation placed into administration, or begin winding up the corporation.533

5.6.28 Accordingly, personal liability may attach to the director regardless of whether the corporation was solvent or insolvent at the time the taxes became payable.

531. Ibid.
532. Taxation Administration Act 1953 (Cth) sch 1, sub-divs 269-A, 269-B.
533. Taxation Administration Act 1953 (Cth) sch 1, sub-divs 269-A, 269-B.
5.6.29 There is ongoing debate about the circumstances in which directors should be held personally liable for corporate debts (if at all). On the one hand, limiting liability to corporate property – and quarantining director and shareholder property from creditors – encourages investment and directorships.\(^{534}\) Any attribution of personal liability to directors should be considered carefully, since it may deter entrepreneurial activity.\(^{535}\) On the other hand, the ‘concession theory’ of the firm posits that:

\[\text{incorporation} \text{ [is] a privilege bestowed by the government, thereby justifying government interference. The granting of limited liability to the owners of a company results in a corresponding responsibility to operate it in the public interest. If this is not done, the corporate veil should be lifted.}\(^{536}\]

5.6.30 For the purpose of this report, four key policy issues have been identified in relation to directors’ liability for payment of corporate fines or penalties.

5.6.31 First, it is common for corporations with very few, or no, assets to incur numerous fines or penalties and avoid payment, because the corporation’s property is insufficient to discharge the debt.\(^ {537}\) The Victorian Ombudsman found that, as at August 2013, there was $48.5 million worth of outstanding infringement warrants against corporations. During the two years from 2011–12 to 2012–13, just over $9 million worth of infringement warrants was written-off because there was insufficient corporate property to seize.\(^ {538}\)

5.6.32 Directors’ personal liability has two advantages in these scenarios. It allows an unpaid fine or penalty to be recovered where a director fails to ensure that the corporation meets its liabilities.\(^ {539}\) It also creates an incentive for a director to ensure that the corporation is able to pay and in fact pays, which may encourage better governance and capitalisation of the corporation in the long term and improved capacity to pay future fines or penalties.\(^ {540}\)

5.6.33 Second, directors’ personal liability provides one means of addressing phoenix activity by corporate offenders. Phoenix activity involves closing down a corporation to avoid creditors and then resuming substantially the same business through a different corporation. This means that any liabilities of the defunct corporation, such as court fines, are extinguished when that corporation is deregistered.\(^ {541}\) According to the Sheriff’s Operations (SEMR), small- to medium-sized corporations commonly engage in phoenix activity\(^ {542}\) in order to avoid payment of fines or penalties, including fines for serious offences such as workplace injury or death. However, if a director is made personally liable for payment of a corporation’s fine or penalty, provision could be made for this liability to survive any deregistration of the corporation. The administrative body would still be able to pursue the director for the debt.


\(^{537}\) Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).

\(^{538}\) Victorian Ombudsman (2013), above n 3, 21.

\(^{539}\) A director is obliged to ensure that all liabilities of the corporation are met: Corporations Act 2001 (Cth) s 588G.

\(^{540}\) Improved capitalisation of the corporation benefits creditors more generally.


\(^{542}\) Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
5.6.34 Third, directors’ personal liability is a ‘last resort’ sanction for wilful default by a corporation. Once options such as property seizure have been exhausted, a corporation cannot be required to perform community work and cannot be imprisoned. Directors’ personal liability targets the ‘guiding mind’ of the corporation, at whose behest the corporation has defaulted.543 Directors are responsible for ensuring that the corporation meets its liabilities, and directors exercise control over whether such payments are made.544 Further, in many of the cases dealt with by Sheriff’s officers there is little distinction, in practice, between the corporation and its directors – many defaulting corporations are small businesses with sole directors and shareholders.545

5.6.35 A corporation may wilfully default for unique reasons. For instance, there may be a competitive advantage in unlawfully avoiding a key cost of doing business and then wilfully defaulting on the resulting fine or penalty. Key examples of this practice may include wilful non-payment of an unpaid fine or penalty for non-compliance with environmental or health and safety regulations, or for driving unregistered in a toll zone (that is, not paying toll fees). If wilful default is not appropriately sanctioned, competitors may be encouraged to evade the law in the same manner.

5.6.36 Fourth, directors’ personal liability means that law-abiding corporations – which comprise approximately 60% of all corporations issued with a fine – are not disproportionately penalised because of the unlawful behaviour of the remaining 40%. An alternative, and less proportionate, measure would be for the government to incorporate a ‘risk premium’ into the fines and penalties issued against corporations. This may involve a broad-based increase in fine or penalty amounts for corporations, particularly in respect of offences with high rates of non-payment (for example, toll offences). This increase would compensate for the risk of non-payment by approximately 40% of all corporations issued with a fine, but would unjustly burden law-abiding corporations.546 In contrast, directors’ personal liability allows the administrative body to target a select group of corporations that have few or no assets and wilfully default.

The Council’s view

5.6.37 Directors’ personal liability strengthens the effectiveness and credibility of fines and penalties by limiting the opportunity for corporations to evade payment at the behest of their directors.

5.6.38 The current defence available to directors is inappropriate from an enforcement perspective. Section 91 of the Infringements Act should be amended and modelled on Schedule 1, subdivision 269-B of the Taxation Administration Act 1953 (Cth). Subject to the proposed defences, a director should be liable if an infringement warrant has been issued and there is insufficient corporate property to discharge the amount owing.

5.6.39 The amended provisions of the Infringements Act should be replicated in the Sentencing Act in relation to the enforcement of court fines. Directors’ liability for fine default is particularly necessary, given that fines are generally imposed for more serious offences than infringement penalties, and should therefore be enforced in an equally robust manner.

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544. Corporations Act 2001 (Cth) s 588G.
545. Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
546. One of the traditional arguments in favour of limited liability for corporations is that potential creditors can assess the creditworthiness of the persons they transact with, and can incorporate a risk premium into the price of goods or services if they consider there is a risk of non-payment. This argument has been challenged on numerous grounds; for example, creditors such as governments lack voluntariness in their dealings with potential debtors, such as taxpayers, and therefore find it difficult to protect themselves against non-payment: see Anderson (2007), above n 536, 103–110.
Recovery of fines and penalties from an insolvent corporation

5.6.40 At present, the Corporations Act 2001 (Cth) provides that:

penalties or fines imposed by a court in respect of an offence against a law are not admissible to proof [that is, recoverable] against an insolvent company. 547

5.6.41 This means that fines imposed on a corporation by a court under the Sentencing Act cannot be recovered from an insolvent corporation. 548 Once an insolvent corporation is deregistered, it ceases to exist and court fines cannot be recovered. 549

5.6.42 The status of infringement penalties is less clear, since they are not imposed by the court, and are instead imposed on an administrative basis under the Infringements Act. The Full Court of the Federal Court held in Victoria v Mansfield that an enforcement order (which is made by a registrar of the Magistrates’ Court following default on an infringement notice, and is deemed to be an order of the court) is a fine or penalty imposed by a court for an offence, and is therefore not recoverable in the bankruptcy of a person (that is, the unpaid penalty survives the bankruptcy). 551 By extension, this suggests that an unpaid infringement penalty, following the making of an enforcement order, is also unrecoverable in corporate insolvency.


548. Corporations Act 2001 (Cth) s 553B.

549. Corporations Act 2001 (Cth) s 601AD(1).

550. Infringements Act 2006 (Vic) s 59(2).

Policy considerations

5.6.43 The key policy reasons for the current law were explained by the Australian Law Reform Commission (ALRC) in its 2002 report on federal civil and administrative penalties. The ALRC referred to a previous report on insolvency, which noted that:

The basic policy underlying this position is that a fine is imposed for a breach of the law and should be paid in full, not simply at the proportionate rate which would apply if it ranked equally with all other debts in an insolvency.\[552\]

5.6.44 While this policy applies fully to personal insolvency (that is, bankruptcy), it has less applicability to corporate insolvency. When individuals emerge from bankruptcy, they are still required to pay outstanding fines in full, whereas corporations do not survive insolvency – the corporation is deregistered and the fine is extinguished.

5.6.45 A second policy reason for the current law is that:

ordinary creditors of the bankrupt [or insolvent corporation] should not be prejudiced in diminution of their dividend by the criminal or quasi-criminal conduct of the bankrupt [or insolvent corporation].\[553\]

5.6.46 In particular, creditors such as employees and the Australian Taxation Office may object to their own claims being diluted by the collection of criminal fines and penalties. Against this, in the case of small corporations, the main creditors of the corporation may be the very people who incurred the fines or penalties in the name of the corporation and benefited from payment evasion.\[554\]

5.6.47 The current law has been long criticised, including by the regulatory agencies and insolvency experts consulted for the ALRC’s 2002 report.\[555\] In that report, the Australian Securities and Investments Commission noted that the current law allows a corporation to ‘completely evade a punitive sanction imposed on behalf of the community by going into liquidation’.\[556\] In contrast, civil penalties (which tend to be imposed for less serious matters than criminal penalties) are generally recoverable from an insolvent corporation.\[557\]

5.6.48 Further, because a court fine cannot be recovered from an insolvent corporation, ‘penal creditors’,\[558\] such as the Victorian Government, cannot initiate liquidation of the corporation and pursue the unpaid debt from available assets.\[559\]

5.6.49 It is beyond the scope of this report to consider in detail how a court fine or infringement penalty might be recoverable against an insolvent corporation. One potential reform would be to allow the administrative body to issue a statutory demand for payment and thereafter apply to have the corporation wound up (that is, deregistered following asset distribution) under the Corporations Act 2001 (Cth) if the debt is not paid.\[560\] For this to occur, the state would need to establish that it is a creditor for the purposes of the Corporations Act 2001.

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555. Ibid [32.136]–[32.175].
556. Ibid [32.138].
557. Ibid [32.37].
558. Ibid [32.156].
559. Corporations Act 2001 (Cth) ss 459A, 459P.
560. Corporations Act 2001 (Cth) ss 459A, 459P.
The imposition and enforcement of court fines and infringement penalties in Victoria

The imposition and enforcement of court fines and infringement penalties in Victoria – the Victorian Ombudsman has already stated that a key initiative of the Fines Reform amendments is ‘provision for issuing a notice declaring an unpaid fine [to be] a debt due and payable to the state, and the ability to recover unpaid fines from companies that are insolvent’. Similar procedures are already applied by the Commonwealth to recover unpaid taxation liabilities and by the New South Wales State Debt Recovery Office to recover unpaid fines.

**The Council’s view**

5.6.50 In principle, the administrative body should have the ability to recover an unpaid court fine or infringement penalty from an insolvent corporation. This should be the case regardless of whether the corporation has entered insolvency on a voluntary basis (including in an attempt to evade payment), or by order of the court following an application by the administrative body for winding up the corporation.

5.6.51 This enforcement strategy is unlikely to be feasible for corporations with very few assets (of which there is a significant number, according to the Sheriff’s Operations (SEMR)). However, this strategy is likely to be successful for corporations with sufficient assets and high value unpaid fines or penalties (the amount of the fine or penalty will need to be sufficiently high before this strategy is feasible, given that the value of the fine or penalty may be diluted by the claims of other creditors, particularly secured creditors). Further, the prospect of the corporation being wound up may compel otherwise evasive directors to make payment.

**Recommendation 25: Recovery of court fines and infringement penalties from insolvent corporations**

In principle, unpaid court fines and infringement penalties should be able to be recovered from insolvent corporations. The administrative body should have the power to issue a statutory demand for payment of unpaid court fines and infringement penalties registered with the administrative body, and apply for a corporation to be wound up under the Corporations Act 2001 (Cth) for non-compliance with a statutory demand. Further consideration should be given to whether this reform can be achieved through the amendment of state legislation.

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563. Taxation Administration Act 1953 (Cth) sch 1 cl 255-5.
565. Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
5.7 Additional enforcement sanctions and strategies

5.7.1 As discussed above, a range of sanctions is already available for the enforcement of infringement penalties and, to a lesser extent, court fines. These sanctions should be harmonised (see Recommendation 21) and could be used more effectively if a compliance model that targets the use of enforcement sanctions to particular types of defaulters is adopted.

5.7.2 A number of other enforcement sanctions and strategies have been employed in other jurisdictions, particularly for offenders who ‘won’t pay’. These sanctions and strategies are:
- information-sharing by taxation and social security agencies for the purpose of tracing defaulters;
- restrictions on international travel for persons subject to outstanding warrants for court fine or infringement penalty default.

5.7.3 Both sanctions rely on interagency and state/Commonwealth cooperation.

5.7.4 Other possible enforcement sanctions, which do not appear to have been implemented in other jurisdictions, include:
- requiring the Taxi Services Commission to take into account any outstanding warrants for court fine or infringement penalty default as part of the taxi driver accreditation process; and
- having the Australian Taxation Office collect outstanding court fines or infringement penalties.

5.7.5 Most of these sanctions and strategies may be particularly, though not exclusively, useful for enforcement against corporations.

Information-sharing by Commonwealth agencies

5.7.6 The enforcement of court fines and infringement penalties may be enhanced by improved information-sharing or ‘data-matching’ by government agencies, including Commonwealth agencies.

5.7.7 Currently, an infringements registrar or the Sheriff may request certain Victorian agencies to provide information that may be used in the enforcement of:
- fines ordered by the Magistrates’ Court;\(^{566}\) or
- orders made and warrants issued under the Infringements Act.\(^{567}\)

5.7.8 Under the Infringements Act, the specified agencies include local councils, Consumer Affairs Victoria, and the Victorian Taxi Directorate.\(^{568}\) Victoria Police is not listed among these agencies, and the operators of CityLink are expressly precluded from requests for information.\(^{569}\)

5.7.9 In Victoria, there is no power to request information from Victorian government agencies generally or from Commonwealth agencies.

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566. Magistrates’ Court Act 1989 (Vic) s 99A.
567. Infringements Act 2006 (Vic) s 164.
568. Infringements (General) Regulations 2006 (Vic) sch 2. The Victorian Taxi Directorate has been replaced by the Taxi Services Commission.
569. Infringements Act 2006 (Vic) s 164; Magistrates’ Court Act 1989 (Vic) s 99A.
Other jurisdictions

5.7.10 New South Wales has broad information-gathering powers for the purpose of fine enforcement. The Commissioner of Fines Administration may request information from the New South Wales police force and government agencies about a person’s criminal record, address, property, date of birth, driver licence number, bank account number, or employer. Data can also be requested from credit reporting agencies.\textsuperscript{570}

5.7.11 Information-gathering powers are also broad in Tasmania, where a state public sector body (as defined) may be required to disclose the current or previous address of a person or ‘any other information that the Director reasonably believes may assist’ in the recovery of a monetary penalty, unless disclosure would endanger a person’s safety.\textsuperscript{571} In addition, the Commissioner of Police may be requested to provide information about a person’s criminal record or assets.\textsuperscript{572}

5.7.12 Broader still, in Queensland, ‘persons’ generally may be required to provide the registrar of the State Penalties Enforcement Registry with information or documents that may be used in the enforcement of fines, unless disclosure would endanger a person’s safety. The commissioner of the Queensland Police Service may provide information about a person’s criminal history, address, and any assets.\textsuperscript{573}

5.7.13 Information-gathering powers are perhaps most restrictive in Western Australia, where the registrar of the Fines Enforcement Registry has access to driver licence and vehicle registration information, and name and address records held by the Electricity Retail Corporation, but does not appear to have a general information-gathering power.\textsuperscript{574}

5.7.14 In some overseas jurisdictions, information-sharing by government agencies is made easier under a unitary system of government, since fine enforcement and other government functions occur at the same level.\textsuperscript{575} For example, extensive tracing programmes operate in New Zealand, allowing the Ministry of Justice to request information about defaulters from the Ministry of Social Development (the equivalent of the Australian Government Department of Human Services), Immigration New Zealand, and the Inland Revenue Department (the equivalent of the Australian Taxation Office).

5.7.15 Despite information-sharing challenges, some non-unitary systems are implementing information-sharing arrangements between fine enforcement bodies and agencies operating at other levels of government. For example, the Scottish Government (which governs Scotland along with the Government of the United Kingdom) is currently negotiating an information-sharing arrangement between the Scottish Court Service and United Kingdom government departments (such as the Department of Work and Pensions) for the purpose of fine enforcement.\textsuperscript{576}

\textsuperscript{570} Fines Act 1996 (NSW) s 117.
\textsuperscript{571} Monetary Penalties Enforcement Act 2005 (Tas) s 116.
\textsuperscript{572} Monetary Penalties Enforcement Act 2005 (Tas) s 115.
\textsuperscript{573} State Penalties Enforcement Act 1999 (Qld) ss 151, 152.
\textsuperscript{574} Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA) s 10.
\textsuperscript{575} A unitary system stands in contrast with a federal system such as Australia’s, where power is divided between a central government and individual states.
Policy considerations

5.7.16 Information-gathering, ‘data-matching’, and the ‘tracing’ of defaulters – particularly those who wilfully default on payment – are integral to effective fine and penalty enforcement, and in turn, the credibility and effectiveness of fines and penalties.\textsuperscript{577}

5.7.17 A major study in England and Wales found that access to up-to-date and reliable contact information was one of the main challenges for fine enforcement, with a significant amount of enforcement officers’ time spent attempting to trace defaulters. Pilot projects were conducted as part of the study, which provided several courts with access to information held by the Department of Work and Pensions (the equivalent of the Australian Government Department of Human Services). The pilot proved to be successful in locating new and accurate information about defaulters, and was extended to all courts.\textsuperscript{578}

5.7.18 The Sheriff’s Operations (SEMR) similarly noted that it can be very difficult and time consuming to gather reliable contact information. In the Sheriff’s experience, the address details held by VicRoads are often commonly out of date (this is likely to be symptomatic of defaulters who reach the warrant stage due to either chaotic lifestyles or deliberate payment evasion, rather than indicative of systemic problems within VicRoads).\textsuperscript{579} The Sheriff’s Operations (SEMR) emphasised that the most up-to-date contact information tends to be held by Commonwealth agencies such as the Australian Taxation Office, Centrelink, Medicare, and the Australian Electoral Commission. It was suggested that additional powers are required to make requests for information for enforcement purposes.\textsuperscript{580}

5.7.19 According to the Victorian Ombudsman, IMES has approached various Victorian government agencies in order to trial data-matching. In addition, the Victorian Attorney-General has sought to gain ‘more assistance from the Commonwealth to help the states access contact information for fine defaulters held by Commonwealth agencies, including Medicare, Centrelink, the Child Support Agency and the Australian Taxation Office’.\textsuperscript{581} Separately, state and territory Attorneys-General have ‘called on the Commonwealth to continue to explore greater data sharing’ to assist jurisdictions in the enforcement of fines’.\textsuperscript{582} The Victorian Ombudsman recommended that:

- negotiations recommence between the Victorian Government and the Commonwealth Government to access data held by Centrelink, Medicare, and the Child Support Agency; and
- data-matching be considered by Victorian government agencies including the Department of Human Services and the State Revenue Office.\textsuperscript{583}


\textsuperscript{578} Mackie et al. (2003), above n 577, 65.

\textsuperscript{579} It is an offence not to advise VicRoads of a change of address within 14 days of the change: Road Safety (Drivers) Regulations 2009 (Vic) r 67.

\textsuperscript{580} Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).

\textsuperscript{581} Victorian Ombudsman (2013), above n 3, 35.

\textsuperscript{582} Ibid.

\textsuperscript{583} Ibid, Ombudsman’s Recommendations 14 and 15.
The Council’s view

5.7.20 Information-sharing by Commonwealth agencies is likely to improve the effectiveness of the court fine and infringement penalty systems.

5.7.21 Victoria has some of the most limited information-gathering powers of all Australian jurisdictions for the purpose of fine and penalty enforcement. However, even if these powers were expanded with respect to Victorian government agencies, this may not result in more effective enforcement. The experience of international jurisdictions suggests that the most efficient and reliable way of tracing defaulters is to be able to access information from social security and taxation agencies, which generally operate at the federal level.

5.7.22 Any information-sharing arrangements should comply with privacy laws and any other relevant Commonwealth or Victorian laws.

Recommendation 26: Consult with the Commonwealth Government to establish information-sharing with Commonwealth agencies

The Victorian Government should make further representations to the Commonwealth Government to establish information-sharing arrangements between Commonwealth Government agencies (such as Centrelink or the Australian Taxation Office) and the Victorian Government, for the purpose of the enforcement of court fines and infringement penalties.

Restrictions on international travel

5.7.23 New Zealand imposes travel restrictions on persons who have accrued large amounts of outstanding fines. At present, no such travel restrictions operate in Australia.

5.7.24 While regulations concerning international travel are the responsibility of the Commonwealth Government, there may be merit in the Victorian Government liaising with the Commonwealth Government about the possibility of travel restrictions for persons with high value and/or high volume unpaid court fines or infringement penalties.

5.7.25 The Sheriff’s Operations (SEMR) stated that some persons with unpaid court fines and infringement penalties use long-term international travel, or repatriation to a home country, as a means of evading payment.

5.7.26 A number of participants at the Council’s roundtable consultations were in favour of the use of travel restrictions, particularly as a means to compel compliance by fine and penalty recipients who have the capacity to pay but ‘won’t pay’.

584. Customs and Excise Act 1996 (NZ) s 280D.
585. Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
New Zealand

5.7.27 In New Zealand, travellers can be ‘stopped leaving or entering’ New Zealand ports and airports if:

- an amount of $1,000 or more is owed in relation to one or more unpaid fines (or any amount of reparation, that is, victim’s compensation);
- a warrant to arrest the person has been issued for non-payment of any part of any fine; and
- the warrant has not been withdrawn or executed.587

5.7.28 Information-sharing arrangements allow for the fines enforcement agency to provide the customs service with information on those persons satisfying the criteria above.

5.7.29 An ‘interception’ alert is generated for fines defaulters where:

- any amount of reparation is owing and a warrant to arrest (which covers part of the reparation outstanding) has been issued; or
- court-imposed fines of $5,000 or more are outstanding and a warrant to arrest (which covers part of the court-imposed fines outstanding) has been issued.

5.7.30 As an individual passes through the border, a customs official scans the individual’s passport into the system. Matches triggering an interception alert are directed to a customs official who notifies New Zealand Police. A police officer conducts an interview with the individual to confirm the individual’s identity and that the individual is the same person as identified in the alert, whether outstanding fines exist, and if a warrant to arrest remains in force.

5.7.31 If the warrant information is verified by a police officer (through communication with the Ministry of Justice), the individual, through a telephone call with a Ministry of Justice official, is given an opportunity to pay the outstanding amount or to enter into an arrangement to pay. If no payment is made, or no arrangement is entered into, New Zealand Police has discretion to execute the arrest warrant, in which case the individual will be stopped from travelling and brought before a court.

5.7.32 Between 2008–09 and 2012–13, 667 people were intercepted, resulting in $519,386 NZD in fines and $703,289 NZD in reparations being paid. A further $1,407,790 NZD in fines and reparations became subject to a payment arrangement over that period as a result of the interception, and $629,282 NZD in fines and reparations was remitted or became the subject of another sentence.588

5.7.33 The implementation of a similar scheme in Australia would be more complex than in New Zealand, because fines enforcement and immigration/customs functions are not carried out at the same level of government. Further, the value of the recovered fines or penalties would need to exceed enforcement costs for the scheme to be viable.

5.7.34 State and territory governments raised the strategy with the Commonwealth Attorney-General in 2012.589 The Victorian Ombudsman recommended that the Victorian Government ‘continue negotiations with the Commonwealth regarding the possibility of restricting air travel for offenders who fail to pay their warrants’.590

587. Customs and Excise Act 1996 (NZ) s 280C.
The imposition and enforcement of court fines and infringement penalties in Victoria

The Council’s view

5.7.35 Restrictions on international travel are an appropriate means of targeting persons who are likely to have the capacity to pay a court fine or infringement penalty (in light of the cost of international travel) but instead wilfully default. This strategy is particularly appropriate for persons with high value amounts outstanding (for example, amounts in excess of $5,000). The Victorian Government should continue to pursue this possibility with the Commonwealth Government, despite the complexities involved in such a scheme.

Recommendation 27: Consult with the Commonwealth Government to restrict international travel for people with outstanding default warrants

The Victorian Government should make further representations to the Commonwealth Government for the establishment of a national scheme that would allow for the interception of a person with an outstanding warrant in relation to unpaid court fines or infringement penalties, when that person attempts to leave from, or arrives at, an international port or airport.

Taxi Services Commission accreditation of applicants subject to outstanding default warrants

5.7.36 Specific measures have been examined in relation to fine and penalty default in the taxi services industry.

5.7.37 The Victorian Taxi Directorate (VTD) highlighted the problem of infringement penalty default in its submission to the Victorian Taxi Industry Inquiry.\(^{591}\) The VTD was responsible for the regulation of the taxi services industry prior to the establishment of the Taxi Services Commission (TSC) in 2013. The VTD stated that:

- non-payment of infringement notices (fines) is particularly high among taxi drivers.

Any person issued with an infringement notice has the right to have the matter contested in court. In the VTD experience, after electing to contest an infringement at a court, it is common for the driver not to attend the court proceedings. The VTD Transport Safety and Compliance Section reports that about 75 per cent of these court hearings are held ex parte. Where fines are unpaid, debtors can be referred to the Victorian Sheriff’s Office. The VTD has a close and co-operative working relationship with the Sheriff’s Office, but the standard Sheriff’s Office strategy of impounding vehicles of debtors is less effective in a taxi-related scenario, where the driver typically does not own the vehicle being driven.

If a driver is only temporarily resident in Australia, it is often the case that they may have returned to their country of origin before the penalties can be enforced. Penalties which can be deferred, postponed or neglected are not ideally suitable for ensuring taxi driver compliance.

Operators of the CityLink and EastLink tollways report a similar experience in pursuing taxi drivers for non-payment of tolls.\(^{592}\)


5.7.38 The data support the VTD’s claims. Taxi drivers are overrepresented in the pool of outstanding infringement warrants. As at August 2013, there were 78,000 warrants outstanding against almost 10,000 drivers.593

5.7.39 The majority of default warrants issued against taxi drivers relate to unpaid penalties for driving unregistered in a toll zone (that is, non-payment of tolls). Other common offences include:

- excessive speeding;
- not obeying a red light;
- parking offences; and
- industry-specific offences (for example, failing to present a vehicle for inspection). 594

5.7.40 The Victorian Taxi Association (VTA) submitted that taxis should be exempted from paying toll fares until taximeter technology is able to incorporate toll fares. At present, drivers are required to manually add toll fares to the taximeter at the conclusion of the trip, which, in the view of the VTA, ‘puts drivers in a potentially difficult position with customers’. 595 The Taxi Industry Inquiry noted that:

> Issues are also reported with the final taximeter fare not including all charges applied to particular trips, such as lifting fees, tolls and other charges – a practice that is confusing for consumers and causes misunderstandings and disputes. 596

5.7.41 The Council understands that some customers dispute the amount owed under a toll fare, as it is not expressed on the taximeter, and refuse to pay. 597

5.7.42 Given the high rate of infringement penalty default among taxi drivers, the Sheriff instituted joint tolling operations with the VTD598 in order to target drivers with multiple warrants. 599

**Policy considerations**

5.7.43 The TSC indicated that, in principle, there was no reason why outstanding warrants for court fine or infringement penalty default should not be considered when assessing whether a person should be accredited as a taxi driver, taxi operator, or provider of network services. However, the TSC indicated that there may be some significant practical hurdles to this approach that would need to be addressed around information sharing and privacy considerations.600

5.7.44 A person must be accredited by the TSC in order to be a taxi driver, taxi operator, or provider of network services. For brevity, this section will focus on the accreditation of taxi drivers.

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593. Unpublished data provided to the Council by IMES for this project.

594. Ibid.

595. Submission 11 (Victorian Taxi Association). This issue is examined in detail in Taxi Industry Inquiry (2012), above n 591.


598. The Victorian Taxi Directorate has been replaced by the Taxi Services Commission.


5.7.45 From 1 August 2013, taxi driver accreditation is issued for a twelve-month period and must then be renewed. If the accreditation expires by more than three months, a new application for accreditation must be submitted.\textsuperscript{601} As part of the accreditation process, the TSC assesses whether a person is suitable for driving a taxi. In making this assessment, the TSC has regard to any offences committed by the applicant, including:

- infringement offences under the \textit{Road Safety Act 1986} (Vic);
- sexual offences; and
- violent offences.\textsuperscript{602}

5.7.46 The TSC must refuse accreditation in some circumstances, including where a person has been found guilty of certain sexual offences.\textsuperscript{603}

5.7.47 In other circumstances, the TSC has a discretion as to whether accreditation is refused. For instance, in having regard to any infringement offences under the \textit{Road Safety Act 1986} (Vic), the TSC considers such matters as the nature and gravity of the offence and the relevance of the offence to the accreditation sought, the age of the applicant at the time of the infringement offence, whether the decision to serve the infringement notice has been subject to internal review under the \textit{Infringements Act}, and the likelihood of the applicant committing the same infringement offence.\textsuperscript{604}

5.7.48 Taxi driver accreditation restrictions would be broadly consistent with the current enforcement regime, which allows driver licences and vehicle registrations to be suspended or not renewed at the warrant stage.\textsuperscript{605} This sanction may be used even if the licence is unrelated to the offence for which the fine or penalty has been issued. For example, a driver licence may be suspended for defaulting on a penalty issued for shop theft. As with driver licence sanctions,\textsuperscript{606} the prospect of the refusal or non-renewal of a commercial licence may provide a trigger for payment.

5.7.49 A significant volume and/or amount of unpaid fines or penalties may indicate a lack of probity (that is, a lack of fitness to hold a licence). In particular, it may suggest that a person or corporation is not fit and proper to be accredited, particularly (but not necessarily) if the fines or penalties relate to the business being carried on. Most especially, a failure of enforcement in respect of driving-related infringement penalties may encourage behaviour that risks the safety of customers and road users, as no punishment will have been imposed.

5.7.50 Further, as discussed in relation to corporations at [5.6.35], a taxi driver with unpaid fines or penalties may be exercising an unfair competitive advantage over law-abiding drivers (for example, by not paying toll fares collected from passengers and then evading the resulting penalties). The original sanction for the offence (that is, the court fine or the infringement penalty), and the sanctions used to enforce payment, should be designed to reduce any financial incentive for non-compliance.\textsuperscript{607}


\textsuperscript{602}. \textit{Transport (Compliance and Miscellaneous) Act 1983} (Vic) s 169.

\textsuperscript{603}. \textit{Transport (Compliance and Miscellaneous) Act 1983} (Vic) s 132D.

\textsuperscript{604}. \textit{Transport (Compliance and Miscellaneous) Act 1983} (Vic) s 169(1B).

\textsuperscript{605}. \textit{Infringements Act 2006} (Vic) pt 8.

\textsuperscript{606}. See [5.4.7]–[5.4.23].

5.7.51 These justifications must be balanced against several factors. The Federation of Community Legal Centres and the Footscray Community Legal Centre reported to the Taxi Industry Inquiry that there is widespread socioeconomic disadvantage among taxi drivers, in particular, low levels of income and poor English language skills. According to the Federation of Community Legal Centres and the Footscray Community Legal Centre, this disadvantage principally arises from inadequate wages and conditions for drivers and artificial restrictions on the supply of taxi licences (leading to inflated licence prices), which precludes many drivers from acquiring licences and independently operating taxi services. The Victorian Government is presently instituting a range of significant reforms that cover these matters; however, it is likely that the impact of these reforms will be felt gradually and that a substantial level of financial disadvantage may persist among taxi drivers for some time yet.

5.7.52 The refusal or non-renewal of accreditation may significantly interrupt business or cause a business to fail. The sanction may therefore produce an outcome that is grossly disproportionate to the amount of the unpaid fine or penalty, and the offence for which the fine or penalty was imposed. Any interruption to, or failure of, a business will affect the driver seeking accreditation and any creditors.

5.7.53 In addition, a barrier to entry arises if taxi driver accreditation is made subject to outstanding default warrants. This may be problematic for low-income applicants (particularly those who are wishing to renew their accreditation) and may further entrench financial disadvantage among taxi drivers. The option of payment by instalments, and the cancellation of the warrant upon entry into an instalment plan, will be important in these circumstances.

The Council’s view

5.7.54 There is merit in making TSC accreditation subject to outstanding warrants for court fine or infringement penalty default. This is particularly justified if there is a link between the offence for which the fine or penalty was imposed (for example, a road safety or other public safety offence), and the fitness of a person to be accredited as a taxi driver, operator, or network service provider.

5.7.55 This reform would involve amending section 169 of the Transport (Compliance and Miscellaneous) Act 1983 (Vic) to require the TSC to take into account any outstanding warrants for court fine or infringement penalty default in assessing whether a person should be accredited. This requirement should be extended to the accreditation of taxi licence owners, taxi licence operators, and network service providers.

5.7.56 Such a sanction would be a useful engagement tool for persons who may otherwise avoid communication with enforcement agencies. However, this restriction on accreditation should not apply to persons who are subject to instalment orders, time to pay orders, or payment orders.

5.7.57 The TSC should be able to exercise a discretion as to whether an outstanding warrant for court fine or infringement penalty default justifies the refusal of accreditation (as is the case for any infringement offences committed by the applicant under the Road Safety Act 1986 (Vic)).

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609. Ibid.
610. The issuing of taxi licences is a separate process to the accreditation of taxi drivers. A taxi licence permits the licence owner/holder to operate a vehicle as a taxi.
611. Victorian Government (2013), above n 607, [1.1]–[1.2], [5.11]–[5.22]. The key reforms in this respect are changes to the employment relationship between taxi operators and drivers and licensing reforms.
Extension to commercial licences and permits generally

5.7.58 If Recommendation 28 is implemented and proves to be successful in the enforcement of fines and penalties, consideration should be given to extending a similar scheme to licences and permits issued for a commercial purpose in Victoria. This would require consultation with regulatory bodies, the business community (especially representatives of small business), and other relevant stakeholders that were not consulted for the purposes of this report. Broad consultation is particularly necessary given that Victoria has approximately 500 licences, permits, and registrations – the largest number of any Australian jurisdiction – though not all of these relate to commercial activities. These licences, permits, and registrations cover a wide range of industries.612

5.7.59 Should the government wish to examine this proposal further, consideration may need to be given to whether:

- a commercial licence should only be refused or not renewed if the warrant for court fine or infringement penalty default relates to the business being carried on by the applicant;
- the amount owed under the warrant(s) should be of a particular value before licence restrictions are considered;
- the licence provider should be able to exercise a discretion as to whether a warrant for court fine or infringement penalty default will result in the refusal or non-renewal of a licence; and
- commercial licence restrictions should only apply in certain industries.

Recommendation 28: Accreditation of applicants by Taxi Services Commission subject to outstanding default warrants

In consultation with relevant stakeholders, the government should consider amending section 169 of the Transport (Compliance and Miscellaneous) Act 1983 (Vic) to require the Taxi Services Commission to take into account any outstanding warrants for court fine or infringement penalty default in assessing whether a person should be accredited as a taxi driver, taxi licence owner, taxi licence operator, or network service provider.

This restriction on accreditation should only apply to persons or corporations with outstanding warrants and not to a person who is subject to an instalment order, time to pay order, or payment order.

The Taxi Services Commission should be able to exercise a discretion as to whether an outstanding warrant for court fine or infringement penalty default justifies the refusal of accreditation.

The administrative body should provide to a person upon his or her application, or to any state agency (with written authorisation from the person), information on whether the person has outstanding warrants relating to unpaid court fines or infringement penalties in Victoria.

612. Freiberg (2010), above n 607, 142.
Collection of unpaid court fines and infringement penalties by the Australian Taxation Office

5.7.60 There are presently no arrangements between the Australian Taxation Office (ATO) and any state or territory government for the collection of unpaid fines or penalties.

5.7.61 The collection of unpaid fines or penalties by the ATO would prioritise the recovery of monetary penalties over substituted forms of payment, such as community work, and thereby enhance the credibility of court fines and infringement penalties. It may also be a more cost-effective and appropriate use of resources than labour-intensive measures such as property seizure.

5.7.62 The proposal requires thorough consultation and analysis in order to ensure that it is of value to all parties. In this respect, it may be necessary to only involve the ATO once unpaid fines or penalties exceed a certain amount and the value of the debt significantly outweighs the costs of collection.

5.7.63 Alternatively, Chapman et al. have proposed that there is value for all parties in the development of a fine payment system similar to the Higher Education Contribution Scheme (as it was then known) administered by the ATO. The authors calculated that such a system would be less costly than the use of the ATO’s general collection systems.613 The principal advantage of this collection system is that the rate of fine repayment would be routinely determined by a person’s income, and may therefore obviate the need for instalment orders and time to pay orders (in respect of court fines) and payment orders (in respect of infringement penalties).

The Council’s view

5.7.64 The collection of unpaid court fines and infringement penalties by the ATO may be a useful tool for dealing with wilful defaulters with high volume and/or high value court fine or infringement penalty debts.

5.7.65 Any power to deduct unpaid fines or penalties from moneys owed by the ATO – or to add unpaid fines or penalties to moneys owed to the ATO – should be reserved for matters that reach the warrant stage. This would restrict the extent to which personal information about fine and penalty defaulters is shared with the ATO, which was a concern expressed about the operation of a ‘day fine’ (i.e. income contingent) monetary penalty system.614

5.7.66 It is acknowledged that any consideration of collection by the ATO would require detailed consultation and analysis from both a legal (particularly a constitutional) and an administrative perspective.

Recommendation 29: Consult with the Commonwealth Government for the collection of unpaid court fines and infringement penalties by the Australian Taxation Office

The Victorian Government should consider making representations to the Commonwealth Government for the implementation of a scheme that would allow unpaid court fines and infringement penalties that are the subject of a default warrant to be collected by the Australian Taxation Office.


614. See Chapter 8.
Chapter 6:
Enforcement by the court
6.1 Introduction

6.1.1 The terms of reference request the Council to examine the enforcement of court fines, and the ‘desirability of harmonising the enforcement mechanisms and procedures for court-imposed fines with those for infringement notices’.

6.1.2 This chapter examines the enforcement of fines and infringement penalties by the court, following the arrest of a person for default. It considers the following issues in particular:

• the harmonisation of powers on court fine and infringement penalty default:
  – at a default hearing;
  – where there is an application for variation of an order;
  – where there is a breach of an order imposed at a default hearing.

• the harmonisation of the imprisonment provisions for court fine and infringement penalty default; and

• whether the value of one day’s imprisonment for court fine and infringement penalty default should be adjusted.

6.2 Harmonisation of court powers

Powers on court fine and infringement penalty default

Court powers at default hearing

6.2.1 Once a warrant to arrest a person in default of a court fine has been issued, the person may be arrested and brought before the court for a fine default hearing under section 62(10) of the Sentencing Act 1991 (‘Sentencing Act’).

6.2.2 In the case of infringement penalty default, the person may only be arrested and brought before the court if the Sheriff cannot seize sufficient personal property to discharge the amount owing, and the option of a community work permit has been exhausted. The person is then dealt with at an infringement warrant enforcement hearing under section 160 of the Infringements Act 2006 (‘Infringements Act’).

6.2.3 Table 10 shows the court’s powers at a fine default hearing compared with the court’s powers at an infringement warrant enforcement hearing. This table reveals the lack of harmonisation between court fines and infringement penalties and among different types of infringement penalty offenders.

6.2.4 Several types of orders are available for court fine default, and the court has a discretion to apply the order it thinks fit. In contrast, imprisonment is the primary sanction available at an infringement warrant enforcement hearing, and the availability of non-custodial orders depends on the circumstances of the infringement offender.

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615. Letter from Attorney-General, the Hon Robert Clark, MP, to Professor Arie Freiberg, Chairperson, Sentencing Advisory Council, 18 December 2012.

616. The enforcement of court fines and infringement penalties by the administrative body is examined in Chapter 5.


618. Infringements Act 2006 (Vic) s 82(1)(c), pt 12 div 2.


620. Infringements Act 2006 (Vic) s 160.
6.2.5 If an infringement offender cannot demonstrate that imprisonment would be ‘excessive, disproportionate, and unduly harsh’,621 or that the person has a mental or an intellectual impairment, disorder, disease or illness,622 or other ‘special circumstances’,623 the only order available to the court is imprisonment. An order for imprisonment may be made subject to an instalment order under the Sentencing Act, as discussed at [6.2.7]–[6.2.13].624

6.2.6 A range of different orders is available to the court if the infringement offender has a mental or an intellectual impairment or other special circumstances, or if imprisonment would be excessive, disproportionate, and unduly harsh. For example, a community work order under the Sentencing Act is available if the court is satisfied that imprisonment would be excessive, disproportionate, and unduly harsh in the particular circumstances of the case, but this type of order is not otherwise available.625

Table 10: Court powers at a court fine default hearing and at an infringement warrant enforcement hearing

<table>
<thead>
<tr>
<th>Court fine default hearing</th>
<th>Infringement warrant enforcement hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>All offenders</td>
<td></td>
</tr>
<tr>
<td>Mental/intellectual impairment or special circumstances</td>
<td>Imprisonment excessive, disproportionate, and unduly harsh</td>
</tr>
<tr>
<td>Adjourn for up to 6 months</td>
<td>Discharge full amount</td>
</tr>
<tr>
<td>Vary any instalment order</td>
<td>Discharge ≤ ( \frac{2}{3} )</td>
</tr>
<tr>
<td>Unpaid community work under Sentencing Act</td>
<td>Discharge ≤ ( \frac{1}{3} ) and order imprisonment for balance (may be subject to instalment order)</td>
</tr>
<tr>
<td>Seizure of property</td>
<td>Adjourn for up to 6 months</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>Imprisonment for up to ( \frac{2}{3} ) less than value of outstanding amount (may be subject to instalment order)</td>
</tr>
</tbody>
</table>

621. Infringements Act 2006 (Vic) s 160(3).
625. Infringements Act 2006 (Vic) s 160(3)(e).
The imposition and enforcement of court fines and infringement penalties in Victoria

**Imprisonment in lieu orders**

6.2.7 If the court makes an order for imprisonment under section 160 of the *Infringements Act*, the court may make that imprisonment order subject to an instalment order under the *Sentencing Act*. This combination of orders is known as an ‘imprisonment in lieu order’, as the person will be imprisoned in lieu of instalment payments.

6.2.8 An imprisonment in lieu order may also be made under the *Sentencing Act* in relation to court fines. Prior to default on a fine, a person may apply to convert a fine into a period of community work (a fine conversion order). Alternatively, if a person defaults on a fine, the court may make a fine default unpaid community work order. If a person contravenes either a fine conversion order or a fine default unpaid community work order, he or she is brought back before the court. The court may then order the person to pay the outstanding fine in instalments, and to be imprisoned if the instalments are not paid.

6.2.9 Between 2009–10 and 2012–13, imprisonment in lieu orders comprised 81.5% (12,668) of the orders made at infringement warrant enforcement hearings. Over the same period, 7,203 imprisonment in lieu orders were made in relation to court fines. Of all cases that received a court fine in 2009–10, 6.8% of cases were given an imprisonment in lieu order. Only 0.4% of cases that received a court fine in 2012–13 were given an imprisonment in lieu order, which most likely reflects the fact that this order is most commonly imposed after a person has contravened a fine conversion order or a fine default unpaid community work order. The lower proportion of imprisonment in lieu orders in more recent cases may be because a fine conversion order or fine default unpaid community work order has not yet been imposed.

6.2.10 Several stakeholders were critical of imprisonment in lieu orders. Of particular concern was the way in which these orders could not, until recently, be amended under the *Infringements Act* to take into account changes in a person’s circumstances. Further, imprisonment in lieu orders can result in the immediate imprisonment of a person if his or her circumstances change, without an opportunity to rectify the missed payment or for a court hearing into the circumstances of non-payment (such as administrative error, financial hardship, illness, or the improper actions of others). In this respect, Victoria Legal Aid provided a case study of one client, ‘Tran’, who had an abusive partner. Tran defaulted on instalment payments after her partner accessed her bank account and did not leave sufficient funds to comply with the instalment order. Tran faced automatic imprisonment despite the circumstances of the missed payment.

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631. Roundtable 2 – Payment and Enforcement (26 August 2013); Meeting with Victorian Legal Aid (13 December 2013); Submission 3 (Youthlaw); Submission 4 (Victoria Legal Aid); Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
632. *The Infringements Act 2006* (Vic) has been amended to allow for the variation of instalment orders: see [6.2.17]–[6.2.18].
633. Submission 4 (Victoria Legal Aid).
634. Submission 4 (Victoria Legal Aid).
6.2.11 Victoria Legal Aid and Youthlaw submitted that the Infringements Act should be amended to require a court hearing before a warrant for imprisonment can be executed on instalment order default. Victoria Legal Aid recommended that the Act should expressly provide that instalment orders made under section 160 operate pursuant to Part 3B of the Sentencing Act. This would provide for a court hearing on breach of an instalment order, and an opportunity for the order to be varied or cancelled.

6.2.12 The shortcomings of imprisonment in lieu orders were highlighted in the case of Victoria Police Toll Enforcement v Taha (‘Taha’). In that case, imprisonment in lieu orders had been made against two vulnerable persons who presented with special circumstances – Mr Taha had an intellectual disability, and Ms Brookes suffered from post-traumatic stress disorder as a result of family violence. Each faced the prospect of immediate imprisonment following non-compliance with instalment orders. The Court of Appeal determined that the court must consider, at every infringement warrant enforcement hearing, the alternative orders available for persons with a mental or an intellectual impairment or other special circumstances, or where imprisonment would be excessive, disproportionate, and unduly harsh. The court has a duty to enquire whether there are any circumstances that may justify the use of these alternative orders. This approach gives effect to parliamentary intent to avoid imprisonment for infringement penalty default as far as possible, and to protect vulnerable persons in the infringements system (see [6.3.18]).

6.2.13 A number of shortcomings identified in Taha have now been addressed through the introduction of provisions in the Infringements Act that allow for a person subject to an instalment order to apply for variation of the order – including where that instalment order forms part of an imprisonment in lieu order (see [6.2.17]–[6.2.18]).

Harmonisation of court powers on infringement penalty default

6.2.14 Over the past two decades, parliament has attempted to make the court powers on infringement penalty default less punitive, and more aligned with the court powers on court fine default. Imprisonment was once the only order available on infringement penalty default, and occurred automatically without any enquiry by the court into the infringement recipient’s circumstances. In 2000, alternatives to imprisonment were introduced specifically for persons with a mental disorder or an intellectual impairment, or ‘exceptional circumstances’, but imprisonment otherwise remained the primary order at an infringement warrant enforcement hearing. The range of powers was made deliberately restrictive, in order to ‘ensure that defaulters are encouraged to go to open court at the outset if they wish to seek alternative sanctions’. The current operation of section 160 – with its restrictions on alternatives to imprisonment – reflects this intent.

635. Submission 3 (Youthlaw); Submission 4 (Victoria Legal Aid).
637. Victorian Toll & Anor v Taha and Anor; State of Victoria v Brookes & Anor [2013] VSCA 37 (4 March 2013) [8]–[9], [37]–[45].
638. Victorian Toll & Anor v Taha and Anor; State of Victoria v Brookes & Anor [2013] VSCA 37 (4 March 2013) [141], [156].
640. Victorian Toll & Anor v Taha and Anor; State of Victoria v Brookes & Anor [2013] VSCA 37 (4 March 2013) [72]–[75], [96].
641. Magistrates’ Court Act 1989 (Vic) sch 7 cl 5 (schedule repealed).
642. Magistrates’ Court Act 1989 (Vic) sch 7 pt 4, amended by Magistrates’ Court (Infringements) Act 2000 (Vic) s 13 (schedule repealed).
643. Victoria, Parliamentary Debates, Legislative Assembly, 26 October 2000, 1209 (Robert Hulls, Attorney-General).
6.2.15 The majority of stakeholders submitted that the orders available on infringement penalty default remain too restrictive, and that the court should have a broad discretion to impose the order it thinks fit.\textsuperscript{644} A similar suggestion was made to the Parliament of Victoria Law Reform Committee in 2005.\textsuperscript{645}

6.2.16 A broad discretion would allow the court to respond to the circumstances of all disadvantaged or vulnerable persons – regardless of whether they fit within the categories presently prescribed by the \textit{Infringements Act} – consistent with the intent of the Act to protect vulnerable persons in the infringements system.\textsuperscript{646} A broad discretion would better harmonise the court’s powers on infringement penalty default and court fine default, and would also assist in restricting the use of imprisonment to people who wilfully default on payment.\textsuperscript{647}

\textbf{Court powers to vary orders made at default hearings}

\textit{Vary instalment order – infringement penalties}

6.2.17 Following the \textit{Taha} decision, the \textit{Infringements Act} was amended to allow for the variation of instalment orders made at an infringement warrant enforcement hearing and a limited right of rehearing.\textsuperscript{648} These amendments have addressed some stakeholder criticisms of imprisonment in lieu orders. In the Second Reading Speech,\textsuperscript{649} the Attorney-General, Mr Robert Clark, stated that:

\begin{quote}
The new rehearing process in the bill will allow the courts to determine whether special circumstances may exist (such as an undisclosed mental illness) or whether there is new or previously undisclosed information that may render imprisonment excessive, disproportionate or harsh. This bill will not affect the Court of Appeal’s finding that the magistrate has a duty when first hearing a case to make enquiries about such circumstances where appropriate.\textsuperscript{650}
\end{quote}

6.2.18 An instalment order made under section 160(4)(b) of the \textit{Infringements Act} may be varied if:

\begin{itemize}
  \item the circumstances of the person have materially altered since the order was made and, as a result, the person is unable to comply with the order; or
  \item the circumstances of the person were wrongly stated or were not accurately presented to the court.\textsuperscript{651}
\end{itemize}

\textsuperscript{644.} Roundtable 2 – Payment and Enforcement (26 August 2013); Submission 4 (Victoria Legal Aid); Submission 5 (Saunders, Lansdell, Eriksson, and Brown).


\textsuperscript{646.} See [6.3.18].

\textsuperscript{647.} See [6.3.30]–[6.3.44].

\textsuperscript{648.} In the \textit{Taha} proceedings, the applicants had initially attempted to institute an appeal to the County Court under the same process that is followed in respect of orders for imprisonment on court fine default; however, the court confirmed that this process was not available in respect of orders for imprisonment on infringement penalty default: see \textit{Victorian Toll & Anor v Taha and Anor; State of Victoria v Brooks & Anor} [2013] VSCA 37 (4 March 2013) [12].

\textsuperscript{649.} \textit{Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013} (Vic).

\textsuperscript{650.} Victoria, Parliamentary Debates, Legislative Assembly, 17 April 2013, 1261 (Robert Clark, Attorney-General).

\textsuperscript{651.} \textit{Infringements Act 2006} (Vic) s 160A.
**Vary instalment order – court fines**

6.2.19 A person who is placed on an instalment order at a court fine default hearing can apply to vary the order under the *Sentencing Act* if:

- the circumstances of the person have materially altered since the order was made and, as a result, the offender is unable to comply with the order;
- the circumstances of the person were wrongly stated or were not accurately presented to the court; or
- the person is no longer willing to comply with the order.\textsuperscript{652}

**Vary fine default unpaid community work order**

6.2.20 Both court fine defaulters and infringement penalty defaulters may be placed on a fine default unpaid community work order under the *Sentencing Act*.\textsuperscript{653} If a person is placed on such an order, he or she may apply for variation of the order, if:

- the circumstances of the offender have materially altered since the order was made and, as a result, the offender will not be able to comply with the order;
- the circumstances of the offender were wrongly stated or were not accurately presented to the court before the order was made; or
- the offender no longer consents to the order.\textsuperscript{654}

6.2.21 On an application for variation, the court may:

- confirm the order or part of the order;
- cancel the order and deal with the offender in any manner in which the court could deal with the offender if it had just found him or her guilty of the offence(s);
- cancel the order and make no further order in respect of the offence(s); or
- vary the order.\textsuperscript{655}

**Application for rehearing of infringement warrant enforcement hearing**

6.2.22 A rehearing may be sought in some circumstances if the court has made an imprisonment order under section 160(1) of the *Infringements Act*, and has not exercised one of the alternative powers available in cases where a person has a mental or an intellectual impairment or other special circumstances, or where imprisonment would be excessive, disproportionate, and unduly harsh.\textsuperscript{656} A rehearing may only be sought if:

- the person had a mental or an intellectual impairment, disorder, disease or illness, or other special circumstances, and this was not taken into account or was not before the court at the time of the hearing; or
- at the time of the hearing, evidence was not taken into account or before the court so as to make the decision to imprison excessive, disproportionate, and unduly harsh.\textsuperscript{657}

\textsuperscript{652.} *Sentencing Act 1991* (Vic) s 61(1); from 1 September 2014, if not before: *Sentencing Act 1991* (Vic) s 63(1) (amended by *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic), provisions not yet in operation).

\textsuperscript{653.} *Sentencing Act 1991* (Vic) s 62(10)(a); from 1 September 2014, if not before: *Sentencing Act 1991* (Vic) s 69H(2)(a) (amended by *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic), provisions not yet in operation); *Infringements Act 2006* (Vic) s 160(3)(e).


\textsuperscript{655.} *Sentencing Act 1991* (Vic) s 63AD; from 1 September 2014, if not before: *Sentencing Act 1991* (Vic) s 69I (amended by *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic), provisions not yet in operation).

\textsuperscript{656.} *Infringements Act 2006* (Vic) ss 160(2)–(3).

\textsuperscript{657.} *Infringements Act 2006* (Vic) s 160B.
Court powers on breach of order made at default hearing

_Breach of community work order_

6.2.23 If a court fine or infringement penalty defaulter who is ordered to complete unpaid community work subsequently breaches the order, the person will be liable to the offence of contravention of a fine default unpaid community work order under the _Sentencing Act_.

6.2.24 The provisions governing contravention have been amended by the _Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013_ (Vic); however, these provisions have not yet commenced.

6.2.25 The amendments will provide that, if a person is found guilty of this offence, in addition to sentencing the person for the offence, the court must:

- confirm the order or part of the order;
- vary the order;
- cancel the order and deal with the offender as if the court had just found him or her guilty of the offence for which the order was made; or
- cancel the order and make no further order in respect of the offence(s); or
- if the court is satisfied that:
  - the circumstances of the offender have materially altered since the fine default unpaid community work order was made, and as a result the offender is unable to comply with the order; or
  - the circumstances of the offender were not accurately stated or presented to the court before the order was made;
  the court may:
  » discharge the outstanding fine in full;
  » discharge up to two-thirds of the outstanding fine;
  » discharge up to two-thirds of the outstanding fine and order imprisonment in respect of the amount outstanding; or
  » adjourn the hearing for up to 6 months.

6.2.26 The orders available under the new provisions are similar to the provisions under section 160 of the _Infringements Act_, where a person has satisfied the court that imprisonment would be excessive, disproportionate, and unduly harsh.

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658. _Sentencing Act 1991_ (Vic) s 63A(2); from 1 September 2014, if not before: _Sentencing Act 1991_ (Vic) s 83ADB (amended by _Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013_ (Vic), provisions not yet in operation).

659. The provisions will commence on 1 September 2014, if not before.

660. From 1 September 2014, if not before: _Sentencing Act 1991_ (Vic) ss 83ADB, 83ASA (amended by _Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013_ (Vic), provisions not yet in operation).

661. _Infringements Act 2006_ (Vic) s 160(3).
6.2.27 Alternatively, if the court considers that none of the above orders is adequate because of:

- the nature of the offence;
- the characteristics of the offender; or
- an offender’s intentional refusal to pay the fine and to perform unpaid community work;

it may impose a term of imprisonment of one day for each penalty unit outstanding, up to a maximum of 24 months. 662

**Breach of instalment order**

6.2.28 In Victoria Legal Aid’s view, breach of an instalment order should be dealt with under the *Sentencing Act*, as an instalment order made under section 160(4)(b) of the *Infringements Act* is made by way of the *Sentencing Act* instalment order provisions. 663

**The Council’s view**

6.2.29 In order to better target the use of imprisonment, maximise the use of penalty recovery mechanisms, and better protect vulnerable persons in the infringements system, the court’s powers on infringement penalty default should be broadly harmonised with the court’s powers on fine default.

6.2.30 Further, the court should have a discretion to impose the sanction that is most appropriate in the circumstances of the case. Alternatives to imprisonment should not be restricted to certain defined circumstances, as is currently the case under section 160 of the *Infringements Act*. The policy history shows that a pragmatic, rather than principled, approach underlies the current operation of section 160. Infringement recipients should not have to elect to go to open court in order to access a wider range of orders. Such an approach incentivises the use of open court, which runs counter to the aim of the infringements system, and tends to disadvantage vulnerable people, who may not access legal services until their matter reaches an advanced stage of enforcement. 664

**Imprisonment in lieu orders**

6.2.31 Despite the criticisms made by some stakeholders, the retention of imprisonment in lieu orders is recommended. Imprisonment in lieu orders should have a limited role in an enforcement regime that has otherwise rejected the automatic imposition of imprisonment on fine or penalty default. However, it is important that imprisonment in lieu orders remain available for persons who have the capacity to pay, but at the same time require the finality of imprisonment to bring any ongoing default to an end.

6.2.32 In light of the recent amendments to the *Infringements Act* and the recommendations in this report, the making of imprisonment in lieu orders will be subject to a number of safeguards. These safeguards are particularly important because the vast majority of orders made at infringement warrant enforcement hearings are imprisonment in lieu orders.


663. Submission 4 (Victoria Legal Aid).

664. Submission 10 (PILCH Homeless Persons’ Legal Clinic).
6.2.33 If a person’s circumstances change and he or she can no longer comply with an instalment order, that person can now apply for variation of the order. In addition, this report recommends that there be:

- an express provision in the Infringements Act specifying that imprisonment is a sanction of last resort (see Recommendation 31);
- a limitation on the use of imprisonment to cases of wilful default – this should ensure that only those who have the capacity to pay an infringement penalty are made subject to an imprisonment in lieu order (see Recommendation 32); and
- a right of rehearing and appeal from any order for imprisonment under section 160 of the Infringements Act, including an imprisonment in lieu order – under the terms of the recommendation, this right will be available to all persons, not only those with special circumstances (see Recommendation 34).

6.2.34 It is also recommended that there be additional options earlier in the enforcement process for persons without the capacity to pay. This should restrain the progression of poor and/or vulnerable persons to court enforcement hearings and the prospect of an imprisonment in lieu order. The major reform in this respect is the introduction of work and development permits (see Recommendation 12).

Court powers on breach of order made at default hearing

6.2.35 In the case of all orders other than unpaid community work orders and instalment orders, on breach of an order made under section 160 of the Infringements Act, an infringement offender should be dealt with at a further infringement warrant enforcement hearing. The powers available to the court at an initial infringement warrant enforcement hearing should be available to the court upon breach.

6.2.36 Community work orders and instalment orders are made under section 160 of the Infringements Act by way of the Sentencing Act. The Infringements Act should be amended to make it clear that the Sentencing Act provisions governing breach of these orders should apply when these orders are made under section 160 of the Infringements Act. This would ensure that there are harmonised provisions on breach, regardless of whether an instalment order or unpaid community work order is made on court fine default or infringement penalty default.

6.2.37 Further, the new provisions regarding the powers of the court on breach of a fine default unpaid community work order in section 83ASA(3) of the Sentencing Act, which import language from the existing section 160 of the Infringements Act, should be amended to adopt the broad discretion available to the court under the section 160 provisions recommended by the Council.

665. Infringements Act 2006 (Vic) s 160A.
666. This section is not yet in operation.
6.2.38 Specifically, the further orders available on breach of a community work order under section 83ASA(3) of the Sentencing Act should provide the court with a broad discretion to:

- discharge the outstanding amount in full or in part;
- discharge the outstanding amount in part and order a term of imprisonment in respect of the balance; or
- adjourn for a period of up to 6 months.

Recommendation 30: Harmonisation of court powers on default

Section 160 of the Infringements Act 2006 (Vic) should be amended to provide the court at an infringement warrant enforcement hearing with a single set of orders that it may impose at its discretion on any person, after considering all the circumstances of the case.

In addition to the power to adjourn for a period of up to 6 months, the court should be empowered to:

- make or vary an instalment order under the Sentencing Act 1991 (Vic);
- discharge the outstanding amount in full or in part;
- make a fine default unpaid community work order under the Sentencing Act 1991 (Vic);
- discharge the outstanding amount in part and order a term of imprisonment in respect of the balance; or
- order a term of imprisonment.

The provisions should continue to allow the court to order imprisonment in default of payment under an instalment order.

The Infringements Act 2006 (Vic) should be amended to make clear that the Sentencing Act 1991 (Vic) provisions governing breach of an instalment order or a fine default unpaid community work order should continue to apply to those orders when made under section 160 of the Infringements Act 2006 (Vic).

The powers of the court under section 83ASA(3) of the Sentencing Act 1991 (Vic) on breach of a community work order should mirror the Council’s recommended amendments to section 160 of the Infringements Act 2006 (Vic).
6.3 Imprisonment

Use of imprisonment for default

6.3.1 A term of imprisonment for court fine or infringement penalty default may be the only term of imprisonment being served by an offender, or it may be being served concurrently with a term of imprisonment for another act or offence. The issue of concurrency and/or cumulation of a term of imprisonment for court fine or infringement penalty default with an existing term of imprisonment is discussed in Chapter 7.

Receptions into prison for fine or penalty default only

6.3.2 Figure 26 presents the number of people received into prison for court fine or infringement penalty default only between 2001–02 and 2012–13. The data do not allow prison receptions for court fine default to be separated from prison receptions for infringement penalty default.

6.3.3 Relative to the prison population as a whole, the number of people imprisoned for fine or penalty default only is very low. For example, in 2011–12, prisoners serving terms of imprisonment for fine or penalty default comprised only 1.9% of the sentenced prison population.

Figure 26: Number of prisoner receptions for court fine or infringement penalty default only, 2001–02 to 2012–13

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667. Figure 26 shows the number of persons who were received into prison in order to serve a term of imprisonment for court fine or infringement penalty default only, and were not subject to any other term of imprisonment.

668. The sentenced prison population (which excludes prisoners on remand) was 3,888 as at 30 June 2012.
Court fine default

6.3.4 The number of people imprisoned for court fine default in any one year will reflect, to some extent, the number of court fines ordered in the same and preceding years. Figure 27 presents the percentage of cases where a fine was imposed and an order for imprisonment was made for court fine default between 2004–05 and 2012–13.

6.3.5 The data include cases where:
• a person was already in custody and sought to convert outstanding court fines into a term of imprisonment;
• a person received an immediate term of imprisonment; or
• a person received an order for imprisonment in lieu (that is, an order for imprisonment along with an instalment order).

6.3.6 It shows that the rate of imprisonment has decreased over time. This is most likely because a person sentenced to a fine in more recent years has had less time in which to default on payment. This largely explains the very low rate of imprisonment for fines imposed in 2012–13. Additionally, magistrates are likely to use alternatives to imprisonment at an initial default hearing, which will result in some lag in the use of imprisonment.

6.3.7 On the basis of these data, it is estimated that an order for imprisonment for court fine default is made in approximately 6.8% of cases where a fine has been imposed (based on figures for 2004–05 to 2012–13).

6.3.8 Given the low number of people received into prison for fine default only, the vast majority of these cases represent people who received an imprisonment in lieu order, or who were already in custody and converted their fines to a term of imprisonment.

Figure 27: Percentage of cases where a fine was imposed and imprisonment was ordered for court fine default, 2004–05 to 2012–13
Infringement penalty default

6.3.9 The Council was not able to obtain separate data on the rate of imprisonment for infringement penalty default.

6.3.10 Figure 28 presents the type of order made by the Magistrates' Court under section 160 of the Infringements Act between 2009–10 and 2012–13. Over this period, an order for imprisonment only (that is, without any discharge of the infringement penalty) was made in the majority of cases. Orders for discharge only (whether in full or in part) were made in a relatively small proportion of cases.

6.3.11 Imprisonment is the most common order under section 160 of the Infringements Act. In light of the data showing a small number of receptions into prison each year for fine or penalty default only, the vast majority of imprisonment orders under section 160 are either imprisonment in lieu orders or orders for conversion of infringement penalties into imprisonment for people already in custody.

Figure 28: Type of order made under section 160 of the Infringements Act 2006 (Vic), Magistrates' Court, 2009–10 to 2012–13
Harmonisation of imprisonment provisions for court fine and infringement penalty default

6.3.12 The Sentencing Act places more restrictions on the use of imprisonment than the Infringements Act. In addition to the general sentencing principles that apply under the Sentencing Act (such as proportionality and parsimony), certain express restrictions apply to the use of imprisonment for court fine default. This section examines whether the imprisonment provisions for infringement penalty default should be harmonised with the imprisonment provisions for court fine default. In particular, it considers whether:

- the Infringements Act should expressly specify that imprisonment is a sanction of last resort;
- imprisonment should only be permitted under the Infringements Act in cases of wilful default;
- the Infringements Act should specify a maximum term of imprisonment for infringement penalty default; and
- there should be a right of rehearing and appeal following the making of an imprisonment order under the Infringements Act.

6.3.13 This examination represents the latest step in a gradual process of harmonisation that has taken place over the past two decades. When the PERIN system was introduced in 1986, imprisonment occurred automatically on infringement penalty default (that is, without the court enquiring into the circumstances of the default). In 2000, the use of imprisonment was made discretionary. By making imprisonment discretionary, parliament sought to enhance the fairness of the infringements enforcement system, increase access to justice for the disadvantaged, and harmonise the imprisonment provisions for infringement penalty and court fine default. Parliament has therefore taken significant steps to better align the imprisonment provisions for fine and penalty default, but some key policy issues remain.

Other jurisdictions

6.3.14 Imprisonment is permitted for court fine and infringement/administrative penalty default in Tasmania and Queensland, and for court fine default only in Western Australia.

6.3.15 Imprisonment is not permitted for fine or penalty default in South Australia or New South Wales. In New South Wales, imprisonment is not permitted for fine or penalty default per se and is only available on breach of a fine default unpaid community work order. This reform was implemented due to the high rate of imprisonment for fine default in that jurisdiction (in one year, fine defaulters represented up to 55% of the New South Wales sentenced prisoner population), and due to the serious injury of a young offender imprisoned for fine default.

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669. Magistrates’ Court Act 1989 (Vic) sch 7 cl 5 (schedule repealed).
670. Magistrates’ Court Act 1989 (Vic) sch 7 pt 4, amended by Magistrates’ Court (Infringements) Act 2000 (Vic) s 13 (schedule repealed).
672. Monetary Penalties Enforcement Act 2005 (Tas) s 103.
673. State Penalties Enforcement Act 1999 (Qld) s 119.
674. Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA) s 55D.
675. Fines Act 1996 (NSW) ss 87, 125.
A sanction of last resort

6.3.16 Imprisonment is the most severe sanction in the Victorian sentencing hierarchy.677 Under the Sentencing Act, imprisonment must not be imposed for any offence unless the court considers that the purpose or purposes of the sentence cannot be achieved by a non-custodial sentence.678 In relation to court fine default in particular, imprisonment must not be imposed unless no other order – such as community work or property seizure – is appropriate.679

6.3.17 The Court of Appeal confirmed in Taha that imprisonment is a sanction of last resort for infringement penalty default, in conformity with the policy of the Infringements Act, which seeks to avoid imprisonment for penalty default so far as possible. Tate JA, citing the Second Reading Speech,680 stated that:

It is plain from a reading of the [Infringements] Act, and the second reading speech, that the Act rejected the automatic imprisonment of infringement offenders and reflected the policy of imprisonment as the last resort. That is, the system intended to be established by the Act was of ‘avoiding people being imprisoned for infringement fine defaults’ unless imprisonment was the final course of action and was ordered by a Magistrate after a hearing in open court in circumstances where the vulnerable, including the mentally ill, had been protected.681

6.3.18 The then Attorney-General, Mr Robert Hulls, elucidated the policy behind the Infringements Act in the Second Reading Speech:

The [Infringements Bill] gives broader options to magistrates in open court hearings which occur after the execution of an enforcement warrant.

By this stage, other enforcement sanctions, instalment payment plans or community work will not have been successful in expiating the fines. These hearings consider whether a person should be imprisoned, and will determine whether the individual has extenuating circumstances.

Currently, magistrates’ powers include being able to discharge the matter if the person has a mental or intellectual disability. If a person has exceptional circumstances, the court can place the person on community work. The term of imprisonment can also be reduced. The bill proposes that magistrates also be able to approve instalment payment plans and that where imprisonment would be ‘excessive, disproportionate or unduly harsh’ the magistrate can discharge the fine in all or part, or reduce the term of imprisonment by two thirds. These changes will ensure that imprisonment is, and will remain, a sanction of last resort for the most serious fine defaulters.682

6.3.19 Although parliament intended for the ‘last resort’ principle to apply to the Infringements Act, the principle is not expressly incorporated into the Act. This creates an anomaly between the imprisonment provisions for court fine default and the imprisonment provisions for infringement penalty default.

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678. Sentencing Act 1991 (Vic) s 5(4). This principle also applies to any other sentence involving confinement of the offender.
681. Victorian Toll & Anor v Taha and Anor; State of Victoria v Brookes & Anor [2013] VSCA 37 (4 March 2013) [96].
Other jurisdictions

6.3.20 Of the other Australian jurisdictions that allow imprisonment for fine and/or default, the majority expressly incorporate the 'last resort' principle into their fines enforcement legislation.

6.3.21 In Queensland, an imprisonment warrant may be issued by the registrar of the State Penalties Enforcement Registry only where:

- after attempting to enforce the fines debt by warrant, the registrar is satisfied that the fine cannot be satisfied in any other way; or
- a person fails to comply with an order issued by the registrar after the registrar attempts to enforce the debt by warrant.683

6.3.22 In addition, the State Penalties Enforcement Registry is required to follow a charter in enforcing fines, one principle of which is to reduce ‘the use of imprisonment for fine default by encouraging the use of other enforcement mechanisms’.684

6.3.23 In Tasmania, a warrant of commitment685 may only be applied for if the Director of the Monetary Penalties Enforcement Service has attempted to enforce the fines debt through civil or administrative measures, and is satisfied that the debt cannot ‘realistically be discharged’ in any other way under fines enforcement legislation.686

6.3.24 Western Australia appears to be the only Australian jurisdiction that does not incorporate the ‘last resort’ principle into its fines enforcement legislation. In that state, the court may issue a warrant of commitment in preference to other enforcement options if the warrant is more likely to result in the payment or recovery of the amount owed than other enforcement options.687

Policy considerations

6.3.25 The principle of imprisonment as a sanction of last resort is well established at common law.688 It is regarded as an important component of an effective and economically efficient system of punishment,689 and particularly necessary for the protection of vulnerable offenders. For example, the Commonwealth Royal Commission into Aboriginal Deaths in Custody recommended that the principle be incorporated into the legislation of all Australian states and territories as one means of reducing the over-imprisonment of Indigenous persons, including for fine default.690

6.3.26 The costliness of imprisonment also means that selective use is made of the sanction. In the context of fine default, the cost of imprisonment nearly always exceeds the amount owing.691

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683. State Penalties Enforcement Act 1999 (Qld) ss 119(1)–(3).
684. State Penalties Enforcement Act 1999 (Qld) s 9.
685. A warrant of commitment results in the imprisonment of a person. In Tasmania, the warrant is issued by a magistrate.
686. Monetary Penalties Enforcement Act 2005 (Tas) s 103; Sentencing Act 1997 (Tas) s 47.
6.3.27 The PILCH Homeless Persons’ Legal Clinic suggested that legislative and procedural reforms in Victoria must ensure that imprisonment is a sanction of last resort for infringement penalty default.692 The Infringements Working Group and Saunders et al. went further than this, submitting that fine or penalty default should never result in imprisonment.693

The Council’s view
6.3.28 The principle of imprisonment as a sanction of last resort should be expressly incorporated into the Infringements Act, in order to give effect to the policy of the Act to avoid imprisonment for infringement penalty default so far as possible. This reform would be consistent with the imprisonment provisions of the Sentencing Act and the fines enforcement legislation of most Australian jurisdictions. Further, given that infringement penalties are generally issued for less serious offending than court fines, it is particularly necessary for this principle to expressly apply to infringement penalty default. The Council recommends that a provision similar to section 62(12) of the Sentencing Act be incorporated into the Infringements Act.

6.3.29 The Council has recommended that a full range of non-custodial orders be available to the court – in relation to all persons – on infringement penalty default (see Recommendation 30). The court should be required to consider these orders before making an order for imprisonment.

**Recommendation 31: Imprisonment for infringement penalty default should be a sanction of last resort**

The Infringements Act 2006 (Vic) should be amended to provide that a court must not make an order for imprisonment unless it is satisfied that no other order is appropriate in all the circumstances of the case, in a manner similar to section 62(12) of the Sentencing Act 1991 (Vic).

Wilful default
6.3.30 Imprisonment is not to be imposed for court fine default if a person does not have the capacity to pay the fine, or has another reasonable excuse for non-payment.694 In addition, the court will be empowered to discharge a person’s fine, under amendments to the Sentencing Act, if the person can no longer pay a fine due to a change in circumstances, or if the circumstances of the person were wrongly stated or not accurately presented when the fine was ordered.695 The policy underlying the Sentencing Act is that imprisonment should only be imposed for wilful default.696 There is no equivalent policy under the Infringements Act.

692. Submission 10 (PILCH Homeless Persons’ Legal Clinic).
693. Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
6.3.31 The policy of limiting imprisonment to wilful default has operated in respect of court fines since the mid 1980s. \(^{697}\) Prior to that time, imprisonment could occur automatically on fine default, without a court hearing into the circumstances of the default. \(^{698}\) The rationale underlying the use of automatic imprisonment was that enforcement against the offender’s person – rather than the offender’s property – should be the main mode of fine enforcement. \(^{699}\) This approach resulted in a high rate of imprisonment for fine default, and the loss of ‘very large amounts of revenue … because it was impossible to enforce fines’. \(^{700}\)

6.3.32 The policy of imprisonment for wilful default only may be one reason for the large decline in imprisonment for fine default in the late 1980s. In 1986, 44% of all prison receptions in Victoria were for fine default, before declining to approximately 25% of all prison receptions by late 1986, early 1987. \(^{701}\)

6.3.33 Limiting the use of imprisonment to wilful default has at least two bases in principle. First, it is analogous with the use of imprisonment for contempt of court. The main purposes of the law of contempt are to preserve an efficient system of justice, and to maintain the integrity of, and public confidence in, the administration of justice. \(^{702}\) These purposes are very similar to the guiding principles for court fine and infringement penalty enforcement discussed in Chapters 2 and 3.

6.3.34 Second, in terms of the five legislated purposes of sentencing, \(^{703}\) the use of imprisonment for wilful default appears to be principally aimed at deterrence and reflects the principle of parsimony.

6.3.35 In relation to offending generally, empirical studies indicate that the threat of imprisonment generates only a small deterrent effect, particularly if the certainty of apprehension and punishment is low. \(^{704}\)

6.3.36 In relation to fine default in particular, the threat of imprisonment may induce payment in some circumstances. In a United States study, Weisburd et al. \(^{705}\) examined 63 participants in a fine enforcement program that sought to increase payment of court-ordered financial obligations among probationers. \(^{706}\) The program involved a series of graduated responses to non-payment, including community service, intensive supervision, and finally imprisonment. Program participants had higher rates of payment, and made larger payment amounts, than those in the ‘regular’ probation stream, but compared with the control group (who faced the threat of imprisonment but did not undergo community service and intensive supervision), the rates and amounts of payment were broadly similar. \(^{707}\) Weisburd et al. suggest that the threat of imprisonment – which was the only punishment in common

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697. Penalties and Sentences Act 1985 (Vic) s 70 (repealed). Victorian Sentencing Committee (1988), above n 696, [7.2.1]–[7.2.5].
698. Penalties and Sentences Act 1981 (Vic) s 10 (repealed).
700. Victorian Sentencing Committee (1988), above n 696, [7.2.5].
704. Ritchie (2011), above n 44.
705. Weisburd, Einat, and Kowalski (2008), above n 691.
706. The probation system in the United States is broadly similar to the community corrections system in Australia.
for both program participants and the control group – was the main cause of compliance with court-ordered financial obligations.\textsuperscript{708} However, the authors also note that the study population was very specific, in that the participants had the ability to work and the means to pay their financial obligations, and were low-risk offenders who were unlikely to reoffend and acquire ‘new criminal justice burdens’.\textsuperscript{709}

6.3.37 The Weisburd et al. study suggests that the targeted use of imprisonment – for those with the capacity to pay – may encourage payment of court fines and infringement penalties, particularly if imprisonment is the final step in a graduated and supervised program of fine or penalty default management.

6.3.38 Conversely, the threat of imprisonment is unlikely to be an effective deterrent for those without the capacity to pay. In order to be deterred by a sanction, a potential offender must (among other things) be willing and able to alter his or her choice to offend in light of the sanction.\textsuperscript{710} In the case of court fines and infringement penalties, the ability to choose between payment and imprisonment will be constrained, or even non-existent, if a person suffers severe financial hardship. The threat of imprisonment is unlikely to be a deterrent in these circumstances. In other words, imprisonment should be an order for those who ‘won’t pay’, rather than those who ‘can’t pay’.

6.3.39 In addition, the imprisonment of persons who lack the capacity to pay a court fine or infringement penalty is likely to compound financial disadvantage. Imprisonment will interrupt any employment and may create or exacerbate difficulties in accessing housing and other services.\textsuperscript{711} As a result, imprisonment may increase the risk of reoffending and the likelihood of further imprisonment, and entrench a cycle of financial disadvantage.\textsuperscript{712}

6.3.40 The PILCH Homeless Persons’ Legal Clinic stated that 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’.\textsuperscript{713} The PILCH Homeless Persons’ Legal Clinic noted that it assists numerous clients facing imprisonment for unpaid infringement penalties, which ‘[i]n addition to the obvious impact for the affected individuals . . . imposes a significant resource burden on legal service providers’.\textsuperscript{714}

6.3.41 In the experience of Victoria Legal Aid, people who are too poor to pay infringement penalties are vulnerable to ‘strong enforcement action’, including the threat of imprisonment.\textsuperscript{715} Victoria Legal Aid submitted that a person’s financial circumstances should be taken into account by the court when considering whether to discharge an infringement penalty in whole or in part under section 160 of the Infringements Act.\textsuperscript{716}

\textsuperscript{708} Weisburd, Einat, and Kowalski (2008), above n 691, 27–30.
\textsuperscript{709} Weisburd, Einat, and Kowalski (2008), above n 691, 30.
\textsuperscript{710} Ritchie (2011), above n 44, 8. Rational choice theory suggests that crime results from a rational calculation of the costs and benefits of criminal activity. Rational choice theory has been criticised for failing to take account of subjective drivers of behaviour, and for presupposing an unrealistic model of objectively rational, calculated behaviour; see Ritchie (2011), above n 44, 8–9.
\textsuperscript{711} See Chapter 7.
\textsuperscript{712} Ibid.
\textsuperscript{713} Submission 10 (PILCH Homeless Persons’ Legal Clinic).
\textsuperscript{714} Ibid.
\textsuperscript{715} Submission 4 (Victoria Legal Aid).
\textsuperscript{716} Submission 4 (Victoria Legal Aid).
The Council’s view

6.3.42 Imprisonment should only be available for infringement penalty default in cases of wilful non-payment. A provision similar to section 62(11) of the Sentencing Act should be incorporated into the Infringements Act.

6.3.43 This policy strikes an appropriate balance between fairness and firmness. Imprisonment for wilful default only would strengthen the credibility of the infringements system by punishing deliberate payment evasion, and providing some measure of deterrence for persons who either ‘might pay’ or ‘won’t pay’. At the same time, a credible infringements system should not punish and exacerbate financial disadvantage by imprisoning people who ‘can’t pay’ and who do not have the capacity to pay. From an efficiency perspective, the prospect of recovering any future monetary penalties is lessened if imprisonment compounds financial disadvantage.

6.3.44 Further consideration should be given to requiring the court to take into account a person’s capacity to pay when making any order under section 160 of the Infringements Act. This may be necessary because, unlike the procedure for court fines, there is no enquiry into a person’s capacity to pay when an infringement penalty is issued.717

Recommendation 32: Imprisonment and the capacity to pay

The Infringements Act 2006 (Vic) should be amended, in a manner similar to section 62(11) of the Sentencing Act 1991 (Vic), to provide that a court must not make an order for imprisonment if the offender satisfies the court that he or she does not have the capacity to pay the infringement penalty or an instalment under an instalment order or has another reasonable excuse for non-payment.

Consideration should be given to amending the Infringements Act 2006 (Vic) in order to require the court to consider a person’s capacity to pay when making any order under section 160 of the Infringements Act 2006 (Vic).

Limitations on the term of imprisonment

6.3.45 Under the Sentencing Act, the maximum term of imprisonment for court fine default is 24 months.718 In contrast, the Infringements Act does not specify a maximum term of imprisonment for infringement penalty default. The only limitations on the term of imprisonment for infringement penalty default are:

- the value of the outstanding infringement penalty – a person may be ordered to serve one day of imprisonment for every penalty unit owed;719 and
- the reduced term of imprisonment available to the court where imprisonment would otherwise be excessive, disproportionate, and unduly harsh – in these circumstances, a person may be imprisoned for a period up to two-thirds less than one day in relation to each penalty unit owed.720

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717. Sentencing Act 1991 (Vic) s 50(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 52 (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
718. Sentencing Act 1991 (Vic) s 63(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69N (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
719. Infringements Act 2006 (Vic) s 160(1).
720. Infringements Act 2006 (Vic) s 160(3).
Other jurisdictions

Of the other Australian jurisdictions that allow imprisonment for fine and/or penalty default, the majority set a maximum term of imprisonment. In Tasmania, the maximum term of imprisonment for non-payment of a monetary penalty is 12 months. In Queensland, the maximum term of imprisonment for fine default is two years. In Western Australia, the term of imprisonment for fine default is to be the shorter of:

- the term of imprisonment determined by dividing the amount owed by the amount prescribed and rounding the result down to the nearest whole number of days; and
- the maximum term of imprisonment (if any) to which the person could have been sentenced for the offence concerned.

Policy considerations

As a matter of sentencing policy, there are four commonly accepted purposes of maximum penalties. A maximum penalty should:

- provide a clear, legally defined upper limit on the sentencing court’s power to punish, deter, and rehabilitate an offender, denounce the offender’s conduct, deter others, and protect the community from the offender;
- clearly and accessibly set out the maximum consequence that a person will face if he or she engages in the conduct prohibited by the relevant offence;
- indicate the views of parliament (and thereby the community) and provide guidance to the judiciary about the relative seriousness of the offence compared with other criminal offences; and
- establish the outer or upper limits of the punishment that is proportionate to the offence, providing adequate ‘space’ for sentencing the worst example of the offence by the worst offender.

While some of these purposes apply specifically to sentencing (for example, by providing guidance around proportionality in sentencing), the central tenet of these purposes is the rule of law, which applies equally to the imposition of imprisonment under the Infringements Act. As the Council previously stated:

A key principle that stems from this [the rule of law] is that the power of the state (including the judiciary) must be exercised in accordance with laws that are clear, accessible and prospective and are enforced consistently with due process.

In Victoria, maximum terms are specified for all offences punishable by imprisonment. These maxima are generally based on the penalty scale in the Sentencing Act.

Maximum penalties (including maximum terms of imprisonment) are specified for several acts that are broadly comparable with infringement penalty default, insofar as the acts involve non-compliance with an administrative sanction or a court order. The Infringements Act specifies maximum terms of imprisonment for non-compliance with certain enforcement sanctions. For instance, a maximum of six months’ imprisonment may be imposed for...

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721. Sentencing Act 1997 (Tas) s 48. This applies to both court-imposed fines and infringement penalties.
722. State Penalties Enforcement Act 1999 (Qld) s 52A(3). This applies to both court-imposed fines and infringement penalties.
725. Sentencing Advisory Council (2010), above n 724, [3.12].
interfering with or disposing of property seized under an infringement warrant,\textsuperscript{727} or for non-compliance with an attachment of debts or earnings order.\textsuperscript{728} As another example, the Sentencing Act specifies a maximum term of three months’ imprisonment for contravention of a community correction order.\textsuperscript{729} However, for the common law offence of contempt of court, there is no statutory maximum penalty.

6.3.51 Victoria Legal Aid stated that the Infringements Act should specify a maximum term of three months’ imprisonment for infringement penalty default, submitting that:

For matters with higher ‘moral culpability’ or otherwise supporting a more substantial penalty, enforcement agencies could elect to prosecute these matters summarily [rather than using the infringements system] and secure a higher penalty. This approach is consistent with the intention of the Act.\textsuperscript{730}

The Council’s view

6.3.52 Consistent with section 63(1) of the Sentencing Act, a maximum term of imprisonment for infringement penalty default should be specified in the Infringements Act. This would correct a longstanding anomaly between the imprisonment provisions for infringement penalty default and the imprisonment provisions for court fine default. For the most part, maximum terms are already specified under Victorian law for acts and offences that are broadly comparable with infringement penalty default. In relation to other jurisdictions, Victoria is an outlier in not specifying a maximum term for infringement penalty default.

6.3.53 The maximum term of imprisonment for infringement penalty default should be set at 24 months, consistent with the maximum term of imprisonment for court fine default. While acknowledging the rationale for a lower maximum term of imprisonment for penalty default compared with fine default (on the basis that the underlying infringement offending is likely to be less serious than the offending for which a court fine is imposed), the imprisonment provisions seek to punish the act of default, not the underlying offending. There is no apparent distinction between the act of fine default and the act of penalty default that would justify a shorter maximum term for penalty default.

6.3.54 Further, provided Recommendations 31, 32, and 34 are accepted, additional safeguards will apply to the imposition of imprisonment for infringement penalty default. Imprisonment will only be available as a sanction of last resort and in cases of wilful default, and a right of rehearing and appeal will lie from orders for imprisonment under the Infringements Act.

**Recommendation 33: Maximum term of imprisonment for infringement penalty default should be 24 months**

The Infringements Act 2006 (Vic) should be amended to specify a maximum term of imprisonment of 24 months for infringement penalty default, consistent with section 63(1) of the Sentencing Act 1991 (Vic).

\textsuperscript{727} Infringements Act 2006 (Vic) s 87(2).
\textsuperscript{728} Infringements Act 2006 (Vic) ss 127(1), 133(1).
\textsuperscript{729} Sentencing Act 1991 (Vic) s 83AD(1).
\textsuperscript{730} Submission 4 (Victoria Legal Aid).
Right of rehearing and appeal

6.3.55 There is a right of rehearing by the County Court when imprisonment is imposed for court fine default under the Sentencing Act.\(^{731}\) In contrast, there is no right of rehearing by the County Court when imprisonment is imposed under the Infringements Act. However, a limited right of rehearing by the Magistrates’ Court was recently introduced under amendments to the Infringements Act.

6.3.56 A rehearing may be sought if the court has imposed imprisonment under section 160(1) of the Infringements Act, and has not exercised one of the alternative powers available in cases where a person has a mental or an intellectual impairment or other special circumstances, or where imprisonment would be excessive, disproportionate, and unduly harsh.\(^{732}\) A rehearing may only be sought if:

- the person had a mental or an intellectual impairment, disorder, disease, or illness or other special circumstances, and this was not taken into account or was not before the court at the time of the hearing; or
- at the time of the hearing, evidence was not taken into account or put before the court so as to make the decision to imprison excessive, disproportionate, and unduly harsh.\(^{733}\)

6.3.57 Because the right of rehearing is only available for orders for imprisonment made under section 160(1) of the Infringements Act, a rehearing cannot be sought if an order (including an imprisonment order) was made under sections 160(2) or (3) of the Act.

6.3.58 On rehearing a matter under section 160(1) of the Infringements Act, the court may cancel the order for imprisonment and exercise any power available to the court under section 160.\(^{734}\)

6.3.59 Judicial review by the Supreme Court is also available where it is alleged that the magistrate has erred in law in imposing imprisonment for infringement penalty default.\(^{735}\)

Purpose of appeals

6.3.60 As a matter of sentencing policy, there is a broad right of appeal against sentences imposed by magistrates. Appeals against sentence from the Magistrates’ Court are heard de novo by the County Court (that is, the matter is heard afresh), whereas appeals against sentence from the County or Supreme Courts are not heard de novo, and are only concerned with whether there has been an error in the original sentencing decision. There are more expansive appeal rights in respect of magistrates’ orders because, unlike the hearing of matters on indictment in the County and Supreme Courts, in the Magistrates’ Court:

- criminal charges can be resolved in the absence of the defendant and it is more common for the sentencer to make use of orders not involving the formal recording of a conviction.\(^{736}\)

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732. *Infringements Act 2006* (Vic) ss 160(2), (3).

733. *Infringements Act 2006* (Vic) s 160B.

734. *Infringements Act 2006* (Vic) s 160C.

735. In the *Taha* case, the applicants relied on judicial review in order to challenge the order for imprisonment under section 160 of the *Infringements Act 2006* (Vic): see *Victorian Toll & Anor v Taha and Anor, State of Victoria v Brookes & Anor* [2013] VSCA 37 (4 March 2013) [121]–[135].

6.3.61 Appeals against sentence serve several purposes. They:

- correct error and protect against miscarriages of justice;
- promote consistency in the application of the law; and
- allow questions of law to be settled. 737

6.3.62 By performing these functions, appeals provide legitimacy to the criminal justice system as a whole. In a comparative review of the right of criminal appeal, Marshall observed that:

> Public confidence in the administration of justice increases when miscarriages do not occur
> and when courts dispense criminal justice consistently and fairly. More basically, appeals are the
> primary way in which judges, as public officials subject to oversight, are held accountable for their
> performance. 738

6.3.63 These purposes take on additional significance when an order for imprisonment is made, given that imprisonment is the most severe sanction in the Victorian sentencing hierarchy. 739 Orders for imprisonment under section 160 of the *Infringements Act* may require particular oversight, given that, as Nettle JA stated in *Taha*, a ‘sentencing hearing is very different to a

[section] 160 hearing in fundamental respects’. Nettle JA went on to explain that:

> The sentencing process is part of an adversarial contest in which the Crown is pitted against
> the subject but yet the Crown has an overriding obligation to put before the judge everything
> subject to some exceptions, which is known to be relevant. A [section] 160 hearing is more
> in the nature of an administrative or investigative inquiry. There is no prosecutor as such … It
> falls to the Magistrate to determine an appropriate order without the benefit of prosecutorial
> assistance. And so, in effect, the Magistrate is the subject’s only protection against the risk of
> inappropriate imprisonment. 740

6.3.64 Victoria Legal Aid submitted that, following an exercise of power under section 160 of the *Infringements Act*, there should be a general right of rehearing *de novo* by the County Court. 741 Victoria Legal Aid stated that, although the new rehearing right under the Act 742 is a ‘step in the right direction’, the new provisions are not likely to provide relief for all

persons. In particular:

> there are … circumstances where a matter may need to be considered by a higher court.

For example, where a magistrate does not accept evidence and imposes an imprisonment in lieu

order or, when exercising the new re-hearing right, a magistrate does not vary [an] order and a

client continues to face imprisonment. 743

6.3.65 Similarly, the Infringements Working Group and the PILCH Homeless Persons’ Legal Clinic submitted that the right of rehearing is too limited, and that the *Infringements Act* should provide the same rehearing rights that apply to orders made by magistrates under the *Sentencing Act*. 744 Each of these stakeholders noted that the amendments to the *Infringements

Act* do not provide a right of rehearing when a person is given a partial discharge and a

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739. Infringements Act 2006 (Vic) s 160B.
740. Submission 4 (Victoria Legal Aid).
741. Infringements Act 2006 (Vic) s 160B.
742. Submission 4 (Victoria Legal Aid).
743. Submission 4 (Victoria Legal Aid).
744. The appeal rights lie pursuant to section 254 of the *Criminal Procedure Act 2009* (Vic).
period of imprisonment in the event of default on payment. The Infringements Working Group stated that:

This gap in the rehearing right is likely to have a particularly negative impact on people who do not have legal representation at the hearing where the imprisonment in lieu order is made. This is because a client's special circumstances or vulnerabilities may be apparent to the Court upon reasonable inquiry and the Court may reduce the amount payable, but in the absence of legal representation, it’s less likely that the Court will be satisfied that the amounts should be discharged in full.

The Council’s view

6.3.66 Any order for imprisonment under section 160 of the Infringements Act – including an imprisonment in lieu order – should be subject to a right of rehearing and appeal. This would be consistent with the right of appeal de novo against orders for imprisonment for court fine default under the Sentencing Act.747 The harmonisation of appeal and rehearing rights is particularly necessary given that, unlike court fines, imprisonment is ordered for infringement penalty default without any court enquiry into the guilt of the person for the infringement offending, and this offending is likely to be of a relatively minor nature. More generally, the severity of imprisonment means that the decision to imprison should be subject to oversight, and should be as consistent as possible as a result of this oversight.

6.3.67 A right of rehearing and appeal should not be restricted to particular circumstances, such as those under section 160B(3) of the Infringements Act, and should allow for the correction of any errors in the initial decision to imprison.

6.3.68 The recommended right of rehearing and appeal should operate alongside the new rehearing right under section 160B of the Infringements Act in respect of people with a mental or an intellectual impairment or other special circumstances.

Recommendation 34: Person ordered to serve a term of imprisonment at an infringement warrant enforcement hearing should have a right of appeal to the County Court

Section 254 of the Criminal Procedure Act 2009 (Vic) should be amended to provide that a person ordered to serve a term of imprisonment for infringement penalty default under the Infringements Act 2006 (Vic) should have a right of appeal to the County Court.

Consistent with the approach to court fines, section 254 of the Criminal Procedure Act 2009 (Vic) should be amended to provide that, on an appeal against an order to imprison under the Infringements Act 2006 (Vic), the County Court:

- must set aside the order of the magistrate; and
- may impose any order that the County Court considers appropriate and that the Magistrates’ Court imposed or could have imposed; and
- may exercise any power that the Magistrates’ Court exercised or could have exercised.

745. Submission 10 (PILCH Homeless Persons’ Legal Clinic).
746. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
747. Criminal Procedure Act 2009 (Vic) s 254.
Value of one day’s imprisonment

6.3.69 The terms of reference request the Council to consider whether:

The complexity and disparity of current legislative and operational requirements for the imposition, management and enforcement of fines contribute to non-compliance, reducing public confidence in the system and reducing the effectiveness and efficiency of the use of fines as a sentencing option.748

6.3.70 In responding to this request, consideration has been given to whether the value of one day’s imprisonment for court fine and infringement penalty default requires adjustment. An insufficient or inappropriate value has the potential to undermine the credibility of court fines and infringement penalties.

6.3.71 A term of imprisonment for court fine or infringement penalty default is calculated at the rate of one day’s imprisonment for each penalty unit or part of a penalty unit owing.749 At the time of publication, 1 penalty unit was equal to $144.36. For example, a person with $5,000 owing may be ordered to serve 35 days’ imprisonment.

Other jurisdictions

6.3.72 The term of imprisonment for fine or penalty default is calculated in various ways in those other jurisdictions that allow imprisonment for fine or penalty default.

6.3.73 In Western Australia, the term of imprisonment is calculated by dividing the amount owed by the ‘amount prescribed’ and rounding the result down to the nearest whole number of days.750 The ‘amount prescribed’ is currently $250 per day.751 This means that a fine debt in Western Australia will be discharged at a faster rate than a court fine or infringement penalty debt in Victoria. A $5,000 fine debt in Western Australia equates to 20 days’ imprisonment.

6.3.74 In Tasmania, the term of imprisonment is calculated at the rate of one day’s imprisonment for each ‘prescribed unit’ or part unit owing.752 A ‘prescribed unit’ is currently $120.753 A $5,000 debt in Tasmania therefore equates to 42 days’ imprisonment.

6.3.75 In Queensland, the term of imprisonment is calculated by dividing the amount owed (less any enforcement or administrative fees) by the relevant ‘cut-out’ rate for a court order or infringement notice, rounded down to the nearest whole number and expressed as a number of days.754 For infringement notices, the cut-out rate is the amount prescribed under regulations, or $110 in lieu of a prescribed amount.755 Assuming the $110 cut-out rate applies, a person owing $5,000 may be imprisoned in Queensland for 45 days.

748. Letter from Attorney-General, Hon Robert Clark, MP, to Professor Arie Freiberg, Chairperson, Sentencing Advisory Council, 18 December 2012.

749. Infringements Act 2006 (Vic) ss 160(1), 161A(1A); Sentencing Act 1991 (Vic) ss 16A(2), 63(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69N (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).


751. Fines, Penalties and Infringement Notices Enforcement Regulations 1994 (WA) r 6BAA.

752. Sentencing Act 1997 (Tas) s 48.

753. Sentencing Regulations 2008 (Tas) r 6.

754. State Penalties Enforcement Act 1999 (Qld) s 52A.

755. State Penalties Enforcement Act 1999 (Qld) sch 2.
Determining the value of imprisonment

6.3.76 The value of one day’s imprisonment for court fine default has steadily increased since the 1980s, as shown in Table 11.

6.3.77 Prior to the enactment of the *Infringements Act*, the term of imprisonment for infringement penalty default was calculated on the basis of one day’s imprisonment for every $100 (or part of $100) owed.\(^{756}\) For example, this meant that in 2004–05, when a penalty unit equated to $102.25, one day’s imprisonment would have discharged almost 1 penalty unit. The value of one day’s imprisonment for infringement penalty default has remained broadly the same since that time (one day’s imprisonment now equates to 1 penalty unit).\(^{757}\)

6.3.78 Despite some increases in the value of imprisonment, particularly for court fine default, the current value of imprisonment may not adequately reflect the costs of imprisonment to the offender.

6.3.79 First, imprisonment has a unique punitive cost. Notwithstanding improvements in the material conditions of prisons in recent decades, empirical studies have found that imprisonment leads to particular forms of suffering, such as the deprivation of a person’s liberty, the reported misuse of staff authority, the threatening or abusive conduct of other prisoners, separation from family and friends, and ‘unremitting loneliness’.\(^{758}\)

### Table 11: Value of imprisonment under the *Sentencing Act 1991* (Vic) and former sentencing legislation on court fine default

<table>
<thead>
<tr>
<th>Term of Imprisonment</th>
<th>Equivalents of Penalty Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 1 week</td>
<td>1 penalty unit</td>
</tr>
<tr>
<td>Not more than 1 month</td>
<td>2–5 penalty units</td>
</tr>
<tr>
<td>Not more than 6 months</td>
<td>6–25 penalty units</td>
</tr>
<tr>
<td>Not more than 1 year</td>
<td>26–50 penalty units</td>
</tr>
<tr>
<td>Not more than 2 years</td>
<td>More than 50 penalty units</td>
</tr>
</tbody>
</table>

\(^a\) Under the *Sentencing Act 1991* (Vic) as it was first enacted, the term of imprisonment for court fine default was calculated on the basis of one day for every $100 unpaid, but the Act was amended in 2004 to provide a penalty unit formula.

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757. *Infringements Act 2006* (Vic) ss 160(1), 161A(1A).

6.3.80 Under the Victorian sentencing hierarchy, imprisonment is considered a more severe and burdensome sentence than community work, yet community work discharges a fine or penalty at a faster rate than imprisonment. One hour of community work equates to 0.2 of a penalty unit. This means that 1 penalty unit is discharged by five hours of community work, or 24 hours of imprisonment. VACRO submitted that the value of imprisonment should, at the very least, be equal to the value of community work, given the ‘human rights implications of imprisonment’.

6.3.81 Second, imprisonment has a number of opportunity costs, since the offender will be made to forgo his or her normal income (whether this is derived from employment or social welfare), and will lose occupational skills while imprisoned. A person earning an average full-time adult income of $1,437 per week will forgo $18,681 over a nominal three-month term of imprisonment, while a person on a Newstart allowance of $552.40 per fortnight will forgo approximately $3,314.40 over the same period.

The Council’s view

6.3.82 Although steps have been taken over the past three decades to increase the value of imprisonment, the rate requires further adjustment in respect of both court fine and infringement penalty default. One day’s imprisonment should equate to four penalty units rather than 1 penalty unit, in order to reflect the severity of imprisonment and the continuous nature of the punishment. This rate is broadly consistent with the value of community work, with some reduction built in: 24 hours of imprisonment, at a rate of 0.2 of a penalty unit per hour (as applies for community work), equates to 4.8 penalty units per day.

Recommendation 35: One day of imprisonment should equate to 4 penalty units
The value of one day of imprisonment should be increased from 1 penalty unit to 4 penalty units for both court fine default and infringement penalty default.
Chapter 7: Conversion of fines and penalties into imprisonment
7.1 Introduction

7.1.1 A court fine or infringement penalty may be converted to a term of imprisonment when:
- a person is already in custody; and
- a warrant for court fine or infringement penalty default has been issued.

7.1.2 In this report, this is referred to as the ‘conversion’ of a court fine or infringement penalty into imprisonment. It is also known as ‘calling in’ a warrant for default.

7.1.3 The Council was requested to consider the issues arising from the conversion of a court fine or infringement penalty into a term of imprisonment, particularly when the term of imprisonment is served concurrently with another term of imprisonment.765

7.1.4 There are three key questions arising from the conversion of fines or penalties into imprisonment:
- Should conversion be available for court fine or infringement penalty default when a person is already in custody?
- Upon conversion, should a term of imprisonment for court fine or infringement penalty default be served concurrently or cumulatively with the existing term of imprisonment?
- Upon conversion, should a term of imprisonment for court fine or infringement penalty default be backdated to the date of entry into custody, rather than to the date on which the application for conversion is made to the Sheriff (as is currently the case)?

7.2 Court fines

7.2.1 A person who is already in custody may apply for a court fine to be converted into a term of imprisonment. This application can only be made if a warrant has been issued for court fine default.766 A person cannot apply to convert a court fine into imprisonment at any other time.

7.2.2 The conversion application may be made whether the person is in custody for previous court fine default or another act or offence.767 An application for conversion is made to the court by the Sheriff, at the request of the person in custody.768

7.2.3 Conversion was made available for court fine default in 2009.769 At that time, conversion was already available for infringement penalty default. Conversion was introduced for court fine default in order to provide consistency between the Sentencing Act 1991 (Vic) (‘Sentencing Act’) and the Infringements Act 2006 (Vic) (‘Infringements Act’), and to allow warrants for infringement penalty and court fine default to be called in at the same time.770

765. Letter from Attorney-General, Hon Robert Clark, MP, to Professor Arie Freiberg, Chairperson, Sentencing Advisory Council, 18 December 2012.
767. Sentencing Act 1991 (Vic) ss 16(2), 16A(1).
768. Sentencing Act 1991 (Vic) s 16A(1).
770. Victoria, Parliamentary Debates, Legislative Assembly, 15 October 2009, 3691 (Bob Cameron, Minister for Police and Emergency Services).
7.3 **Infringement penalties**

7.3.1 A person who is already in custody may apply for an infringement penalty, as with a court fine, to be converted into a term of imprisonment. Again, this application can only be made if a warrant has been issued for infringement penalty default. A person cannot apply to convert an infringement penalty into imprisonment at any other time.\(^771\)

7.3.2 The conversion application may be made whether the person is in custody for previous infringement penalty default or another act or offence.\(^772\) An application for conversion is made to the court by the Sheriff, at the request of the person in custody.\(^773\)

7.3.3 Conversion was made available for infringement penalty default under the *Infringements Act*.\(^774\) Conversion is consistent with one of the principal purposes of the *Infringements Act*, which is to ‘improve the community’s rights and options in the [infringements] process’.\(^775\) When the *Infringements Act* was introduced, parliament sought to broaden the options for discharge or expiation of an infringement penalty.\(^776\)

7.4 **Use of conversion**

7.4.1 Exact data could not be obtained on the total number of cases where fines or penalties were converted into terms of imprisonment.\(^777\) In respect of court fines, conversion was ordered in a minimum of 10,374 cases where fines were imposed by the Magistrates’ Court between 2004–05 and 2012–13. Data on conversion of infringement penalties was only available for the period 2009–10 to 2012–13. During that period, a minimum of 7,954 cases for infringement penalty default were known to be converted to imprisonment.

7.4.2 For the year 2009–10, a minimum of 3,357 cases (1,438 court fine cases and 1,919 infringement penalty matters) were converted to an existing sentence.

7.4.3 It would be beneficial for Corrections Victoria to collect data on such matters as:

- the extent to which court fines and infringement penalties are converted into terms of imprisonment;
- fine and penalty amounts upon conversion;
- lengths of terms of imprisonment upon conversion; and
- whether the terms of imprisonment are served cumulatively upon the existing sentence, or concurrently with the existing sentence.

\(^{771}\) Infringements Act 2006 (Vic) s 161A(1).

\(^{772}\) Infringements Act 2006 (Vic) ss 161A(1), 161A(3)–(4).

\(^{773}\) Infringements Act 2006 (Vic) s 161A(1).

\(^{774}\) Infringements (Consequential and Other Amendments) Act 2006 (Vic) s 49.

\(^{775}\) Victoria, Parliamentary Debates, Legislative Assembly, 4 May 2006, 1295 (Robert Hulls, Attorney-General).

\(^{776}\) Victoria, Parliamentary Debates, Legislative Assembly, 16 November 2005, 2188–2190 (Robert Hulls, Attorney-General).

7.5 Other jurisdictions

7.5.1 Aside from Victoria, conversion is available in Western Australia and Queensland.

7.5.2 Western Australia has the most extensive conversion provisions. In Western Australia, a person may apply to convert a fine into imprisonment even if he or she is not already in custody. A person may apply for conversion if he or she does not have the capacity to pay, does not have sufficient assets to discharge the fine, is physically or mentally incapable of completing a work and development order, or is already in custody (whether the person is on remand or sentenced to imprisonment).

7.5.3 Conversion is only available in limited circumstances in Queensland. In order to be eligible for conversion, the person must be already in custody and must have a full time release date; that is, the person must not have a parole release date or a parole eligibility date.

7.5.4 Conversion is not available for persons already in custody in Tasmania; however, imprisonment may be ordered by the court for fine default.

7.5.5 Conversion was abolished in New South Wales in 1996 along with imprisonment for fine default per se (imprisonment remains available for breach of a fine default community work order).

7.6 Availability of conversion

7.6.1 There are two key policy rationales for conversion:

- conversion enhances the effectiveness and credibility of fines and penalties by allowing for just punishment for non-compliance, and aids reintegration and rehabilitation by reducing indebtedness; and
- conversion enhances the efficiency of fines and penalties by removing people from the management process who are unlikely to pay, or who may require onerous and prolonged administrative intervention in order to complete payment.

7.6.2 Each of these rationales is examined below.

Effective and credible fines and penalties

Just punishment

7.6.3 A term of imprisonment is the most onerous way of expiating a fine or penalty and imposes immediate and future burdens on the person imprisoned, as discussed at [6.3.79]–[6.3.81]. Conversion may result in just punishment, particularly where a person has accumulated...
Chapter 7: Conversion of fines and penalties into imprisonment

7.6.4 On the other hand, conversion may be criticised as an excessive or unequitable way of expiating a fine or penalty in some circumstances. A term of imprisonment upon conversion may be disproportionate to the offence for which the fine or penalty was issued. Conversion may also contradict the policy of imprisonment for wilful default only, which applies in cases of court fine default and has been recommended in relation to infringement penalty default (see Recommendation 32). Given the prevalence of financial disadvantage and indebtedness among the Australian prison population, it is likely that conversion is largely being used by persons experiencing considerable financial hardship, rather than being used by persons with the capacity to pay.

7.6.5 Conversion may also be criticised for prioritising enforcement against the offender’s person – rather than the offender’s property – in contradiction of policy changes over the past three decades. Conversion fails to recover the amount owed, and allows an offender to avoid the ‘financial pain’ that is intended when a fine or penalty is imposed. It was partly for this reason that the New South Wales Sentencing Council opposed the reintroduction of conversion in its 2006 interim report on the effectiveness of fines as a sentence.

Debt, financial disadvantage, and reoffending

7.6.6 Conversion may aid reintegration and lessen the risk of reoffending by reducing indebtedness and financial disadvantage.

7.6.7 The indebtedness of Australian prisoners has been documented in several studies. In a study by Martire et al. of 156 New South Wales prisoners with a history of problematic substance abuse, almost all participants (97%) reported a debt of some form; however, fine debt was the most common form of debt (95% of participants), ranking ahead of Centrelink, child support, public housing, and credit provider debts. While the level of indebtedness among this particular population may be partly due to histories of substance abuse and prior imprisonment, other studies have found that the majority of prisoners have fine debts or debts of some form (particularly government debts, such as Centrelink debts).

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785. See [7.6.7]–[7.6.9].

786. See Chapter 6.


7.6.8 As well as indebtedness (particularly in relation to fine and government debts) there are more general indicators of financial disadvantage among the Australian prison population. In an extensive 2012 study, the Australian Institute of Health and Welfare found that 48% of prison entrants were unemployed. The vast majority (88%) of persons discharged from prison expected to receive a Centrelink payment upon release. In relation to housing, 35% of prison entrants were homeless prior to entry. On discharge, the rate of homelessness increased to 43%. Female prison entrants were almost equally likely to be in their own accommodation prior to entry (48%) as in short-term or emergency accommodation (45%).

7.6.9 Although data could not be obtained on the average amounts of the fine or penalty debts among prisoners who apply for conversion in Victoria, two studies suggest that these debts may be substantial. In the study by Martire et al., participants owed a median debt of $7,425 per person. In another study of New South Wales prisoners, fine debt ranged from $175 to $15,000 per person. The capacity to discharge such debts is limited because the majority of prisoners are reliant on social security income upon release. As at 20 March 2014, the fortnightly payment rate under a Newstart allowance is $552.40 for a single person with one or more dependent children.

7.6.10 Without conversion, an ongoing court fine or infringement penalty debt—combined with more general financial disadvantage among the prison population—may increase the risk of reoffending. Indebtedness and financial stress may lead to mental and physical health problems, unstable housing, and unemployment. In turn, these factors make reintegration more difficult and increase the risk of reoffending. The effect of debt on reintegration is particularly acute if ex-prisoners have histories of substance abuse, mental illness, low levels of education, and/or employment problems. In one study of Victorian and New South Wales ex-prisoners, persons with debt more commonly returned to prison (50%) than those without debt (30%).

7.6.11 Moreover, ongoing debts may lead directly to reoffending. In a study of 121 Queensland prisoners, 35% of participants with non-drug related debt had committed a crime in order to repay a debt. In the study by Martire et al., 13% of participants cited debt as a motive for their last non-drug related acquisitive crime, with approximately half of those participants citing fine debt as a motive.

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791. Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2012* (2013) 27. The study collected data from 794 prison entrants and 387 prison discharges. Of the female entrants, 69% were unemployed compared with 46% of men, while 57% of Indigenous entrants were unemployed compared with 43% of non-Indigenous entrants (p. 23).

792. Martire et al. (2011), above n 676, 266.


794. The social security income of a prisoner upon release may be higher if a person is eligible for other payments and allowances, such as a one-off crisis payment, parenting payments, and rent assistance.


796. Martire et al. (2011), above n 676, 268.

797. Baldry et al. (2006), above n 790, 27.

798. Stringer (1999), above n 790, 40.

799. In general terms ‘acquisitive crimes’ are those offences in which an offender acquires or takes items from another person, such as the offences of robbery or theft.

800. Martire et al. (2011), above n 676, 264.
7.6.12 The Victorian Association for the Care and Resettlement of Offenders (VACRO) submitted that:

outstanding debt for people released from prison is an impediment to their rehabilitation and an obstacle to successful reintegration. Outstanding debt can impact on a person’s ability to gain employment, housing and access to essential services.

VACRO agrees that a ‘clean slate’ approach should be taken to people in prison with outstanding fines, and there should be no change to limit the current ability for people to pay off court or infringement fines concurrently, while serving a sentence of imprisonment for another matter.

Most of VACRO’s clients call in their outstanding fines while in prison. That term of imprisonment is usually served concurrently, but sometimes further imprisonment is added to an existing sentence.801

7.6.13 There is ongoing debate in New South Wales about the removal of conversion.802 Because of the prevalence of substantial and long-lasting fine debt among the prisoners in the study by Martire et al., and the negative impact of that debt on reintegration, the authors concluded that:

steps such as … [an] evaluation of the costs and benefits associated with restricting cut out practices must be taken to ensure that criminal justice needs for retribution are balanced against the benefits of having ex-inmates re/join and contribute to a safe and law-abiding society.803

7.6.14 Conversion could further reduce the likelihood of reoffending if programs are available in prison that seek to address certain causes of default. In one study of Queensland prisoners, people imprisoned for fine default expressed a desire for financial counselling above all other options.804 Likewise, when asked to suggest methods to improve fine debt repayment rates, the majority of prisoners in the study by Martire et al. suggested methods that were already available through the State Debt Recovery Office, such as Centrepay deductions, time to pay arrangements, and reinstatement of licences. This indicated that ‘participants were not well-informed regarding the procedures and mechanisms surrounding the management of their debts’.805

7.6.15 There was some support among stakeholders for the availability of work and development permits in prison, particularly for offenders serving short sentences. One roundtable participant suggested that an in-prison work and development permit could involve educative programs for offenders with driving-related infringement penalties, for example.806

Efficient fines and penalties

7.6.16 Given the number of cases where conversion is used,807 the removal of conversion would likely reduce the efficiency of fines and penalties by imposing a new management burden on the administrative body. In light of the socioeconomic characteristics of the

801. Submission 1 (Victorian Association for the Care and Resettlement of Offenders (VACRO)).
802. Martire et al. (2011), above n 676, 267–268. Conversion was removed under the Fines Act 1996 (NSW).
803. Martire et al. (2011), above n 676, 268; see also Grunseit, Forell, and McCarron (2008), above n 790, 7.
804. Stringer (1999), above n 790, 41.
805. Martire et al. (2011), above n 676, 265–266.
806. Roundtable 2 – Payment and Enforcement (26 August 2013).
807. See [74.1]–[74.2].
prison population,\(^808\) the payment of a fine or penalty post-release may require intensive management over a number of years, if it is paid at all. A payment or instalment order\(^809\) may not be viable due to the reliance of most ex-prisoners on social security payments or very low employment-derived income,\(^810\) the housing and other costs associated with re-entry, and the prioritisation of fee- or interest-bearing debts over fine or penalty debts.\(^811\) In this respect, VACRO stated that:

> A number of our clients accumulate fines after release. Often these fines are not a high priority for our clients given their challenging circumstances, and more pressing demands for such things as housing, employment and access to social services.\(^812\)

**The Council’s view**

7.6.17 Where a person is already in custody for another act or offence, conversion is generally an appropriate way of expiating a fine or penalty, subject to the court’s discretion to refuse conversion and make another order (for example, granting time to pay commencing upon the person’s release from custody).

7.6.18 Conversion removes a substantial number of persons from the enforcement process who, due to financial hardship, are unlikely to be able to pay promptly, or at all, upon release from prison. This strengthens the credibility of fines and penalties, and allows the administrative body to focus on the management of other fine and penalty recipients, particularly those who ‘might pay’ or ‘won’t pay’.

7.6.19 It is likely that some applicants for conversion have the capacity to pay a fine or penalty and have instead evaded payment throughout the enforcement process. It would be preferable, in these circumstances, to continue to enforce the fine or penalty and recover the amount owing upon the person’s release (at the court’s discretion). However, given that a substantial proportion of the prison population faces acute financial hardship upon release (including homelessness and unemployment), it would be disproportionate to alter the current conversion policy in order to accommodate a select class of prisoners.

7.6.20 There are likely to be cases where a term of imprisonment upon conversion is disproportionate to the original offending, or, in particular, imposed in circumstances of financial hardship (the imprisonment of a person due to an inability to pay is otherwise objected to in this report).\(^813\) On balance, however, the use of conversion in these cases is warranted, since the defaulter is already in custody and will, in any case, undergo this form of punishment, and since some measure of debt relief will aid reintegration and reduce the chance of reoffending.

7.6.21 Conversion is a relatively new measure in Victoria, having been made available for infringement penalty default in 2006, and court fine default in 2009. The use of conversion in future years will reveal further insights about its operation and effects, particularly if appropriate data are collected.

\(^808\) See [7.6.7]–[7.6.9].
\(^809\) Infringements Act 2006 (Vic) pt 5; Sentencing Act 1991 (Vic) ss 53, 55(1).
\(^810\) Matthew Willis, Ex-Prisoners, SAAP, Housing and Homelessness in Australia, Final Report to the National SAAP Coordination and Development Committee (Australian Institute of Criminology, 2004) 27; Australian Institute of Health and Welfare (2013), above n 791, 24–25.
\(^811\) Stringer (1999), above n 790, 40–41.
\(^812\) Submission 1 (Victorian Association for the Care and Resettlement of Offenders (VACRO)).
\(^813\) See [6.3.42]–[6.3.44].
Chapter 7: Conversion of fines and penalties into imprisonment

7.7 Concurrent or cumulative terms of imprisonment

7.7.1 The Sentencing Act and the Infringements Act contain different provisions on the order in which terms of imprisonment are to be served upon conversion of a court fine or infringement penalty. Consideration has been given to whether these provisions should be harmonised.

Court fines

7.7.2 A term of imprisonment for court fine default must, unless otherwise directed by the court, be served:

- cumulatively on any other term of imprisonment for court fine default; but
- concurrently with any other term of imprisonment imposed on the person.814

7.7.3 Despite these presumptions, the court retains a discretion as to the order in which terms of imprisonment are served (due to the inclusion of the words ‘unless otherwise directed by the court’).

7.7.4 These provisions apply whether imprisonment is imposed upon conversion of a court fine, or if imprisonment is imposed at a fine default hearing.815 Further, these provisions apply whether the other term of imprisonment was imposed before, or at the same time as, the term of imprisonment for court fine default.816 Accordingly, the issue of ordering arises not only in the context of conversion.

7.7.5 These provisions were introduced in 1991 under the Sentencing Act. Prior to then, the sentencing legislation prescribed that multiple terms of imprisonment for court fine default were to be served concurrently. The court did not have any discretion in this respect.817

Infringement penalties

7.7.6 Upon conversion of an infringement penalty into imprisonment, the term of imprisonment must be served:

- cumulatively on any term of imprisonment for infringement penalty, court fine, or instalment order default;818 but
- concurrently with any sentence(s) of imprisonment imposed on the person before the conversion order was made.819

7.7.7 The court does not retain any discretion as to the order in which terms of imprisonment are to be served, which creates an inconsistency between the Sentencing Act and the Infringements Act.820

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814. Sentencing Act 1991 (Vic) s 16(2). If a term of imprisonment for court fine default is concurrent with an existing term of imprisonment to which a non-parole period applies, that non-parole period is effectively postponed until the term of imprisonment for court fine default is completed. The person must first serve the term of imprisonment for court fine default, then the non-parole period of the existing term, then the balance of the existing term after the end of the non-parole period (unless and until parole is granted: Sentencing Act 1991 (Vic) s 15.

815. Sentencing Act 1991 (Vic) s 16(2).

816. Sentencing Act 1991 (Vic) s 16(2).

817. Penalties and Sentences Act 1985 (Vic) s 15(3).

818. Infringements Act 2006 (Vic) s 161A(3).

819. Infringements Act 2006 (Vic) s 161A(4). If the term of imprisonment upon conversion exceeds the term of imprisonment imposed before the conversion order is made, the balance of the term must be served cumulatively on that sentence: Infringements Act 2006 (Vic) s 161A(4).

820. This inconsistency exists despite the operation of section 16(2A) of the Sentencing Act 1991 (Vic), which seeks to apply that Act’s provisions on the order of service of terms of imprisonment to the Infringements Act 2006 (Vic).
Other jurisdictions

7.7.8 There are different approaches to the ordering of terms of imprisonment among jurisdictions that permit imprisonment for fine or penalty default, or conversion of a fine or penalty into a term of imprisonment.

7.7.9 In Queensland and Tasmania, a term of imprisonment for fine default must be served cumulatively on any other term of imprisonment being served by the offender.821

7.7.10 In contrast, in Western Australia, a term of imprisonment for fine or penalty default must be served concurrently with any other term of imprisonment being served by the offender, consistent with the presumption of concurrency under Western Australian sentencing law.822 In some limited circumstances, however, a presumption of cumulative terms applies in respect of fine enforcement in Western Australia. In that state, when a fine is ordered, a person may be imprisoned until the fine is paid if he or she has received a fine for an indictable offence that is punishable by imprisonment, or if the court is satisfied that the offender is about to leave the state and that the absence of the offender from the state would defeat or materially prejudice enforcement of the fine.823 Further, when a superior court orders a fine, it may impose a term of imprisonment in the event of default, regardless of the nature of the offence.824 In either of these circumstances, the period of imprisonment is to be served cumulatively on any other term of imprisonment unless the court orders otherwise.825

Policy considerations

Presumption of concurrency

7.7.11 The Victorian fine and penalty provisions partly reflect the presumption of concurrency under the Sentencing Act and at common law.827 A term of imprisonment for fine or penalty default, including upon conversion, is to be served concurrently with any other term of imprisonment, other than another term of imprisonment for fine or penalty default.

7.7.12 The presumption of concurrency is central to the exercise of totality and proportionality in sentencing. Proportionality requires that the sentence ‘should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime’.828 Totality requires that where an offender is to serve multiple terms of imprisonment, the total sentence should be ‘just and appropriate’ in light of the whole of the offending.829 This principle applies whether multiple terms of imprisonment are imposed at the same time or on separate occasions, as the Court of Appeal confirmed in R v Mangelen.830

7.7.13 The principle of totality may provide a basis for displacing the presumption of concurrency and ordering cumulative, or partially cumulative, terms of imprisonment.831

821. State Penalties Enforcement Act 1999 (Qld) s 119(7); Sentencing Act 1997 (Tas) ss 15(2), 46(6).
825. Sentencing Act 1995 (WA) s 59(1). The court may order an offender who does not pay the fine before a specified date to be imprisoned until the offender has discharged the fine through payment of the fine in full, has served the entire period of imprisonment specified by the court, or has completed a combination of payment and part service of the term of imprisonment.
826. Sentencing Act 1995 (WA) ss 58(4), 59(8).
7.7.14 Under both the Sentencing Act and the Infringements Act, the presumption of concurrency is displaced when a person receives multiple terms of imprisonment for fine or penalty default, including upon conversion. The court instead begins from the presumption that only cumulative terms of imprisonment will adequately reflect the gravity of the conduct.

7.7.15 Regardless of whether a presumption of concurrency or cumulation operates, the courts have repeatedly held, as a matter of sentencing law, that judicial discretion is, and should be, preserved in relation to the order of service of terms of imprisonment.832 To achieve a just and proportionate sentence, the court may need to deviate from the presumption of concurrency and make terms of imprisonment cumulative or partially cumulative. Alternatively, the court may need to deviate from any presumption of cumulation and make terms of imprisonment concurrent.833 The court has a broad discretion in either of these situations, as the Supreme Court of Victoria stated in R v Mantini:

Sometimes the decision to displace a prima facie rule about concurrency or cumulation is readily made. It may be self-evident, for example, that the principle of totality or the need to avoid a crushing sentence requires a measure of concurrency or, as in O’Rourke, that justice requires a measure of cumulation. On other occasions the decision is more difficult. The prima facie rules leave the sentencing judge at large, except where the legislature has used the formula ‘unless otherwise directed by the court because of the existence of exceptional circumstances’. As Gillard J said, the widest discretion is conferred. Of course it must be exercised judicially and in conformity with the other provisions of the Sentencing Act and the common law.834

7.7.16 The Court of Appeal has affirmed the importance of judicial discretion where a presumption of cumulation operates, such as for serious offenders under section 6E of the Sentencing Act. Winneke P stated that, in such cases, ‘sufficient discretion remains with the sentencing judge … to enable [imposition of] sentences which do not offend the fundamental principle of proportionality’.835

Benefits of concurrency in this context

7.7.17 From a broader policy perspective, concurrent terms of imprisonment have particular benefits in the context of fine or penalty default.

7.7.18 A substantial number of people already receive terms of imprisonment upon conversion (conversion was used in at least 18,328 cases from 2004–05 to 2012–13). If all these terms of imprisonment were served cumulatively on existing sentences, rather than concurrently, a significant burden would be placed on the corrections system. Further, the costs of a cumulative term of imprisonment may well exceed the amount owing under a default warrant. For this reason (among others), the New South Wales Sentencing Council opposed the reintroduction of conversion in that state.836

7.7.19 In relation to reoffending and reintegration, concurrent terms of imprisonment – provided these are just and appropriate in light of the whole of the offending – reduce the scope for financial disadvantage to worsen while in prison. Imprisonment tends to aggravate financial

hardship and thereby compound the risk of reoffending, for the reasons at [7.6.10]. For example, imprisonment may negatively affect employment prospects and income by eroding skills and networks, and by stigmatising the person imprisoned.837

7.7.20 Some debts may only arise over a term of imprisonment; for example, significant fees and interest may accumulate to unpaid creditors.838 This is exemplified by a 2013 Victorian study of the civil and family law needs of Indigenous people. Approximately one-third of participants in that study had legal issues in relation to debt, including fines and penalty debt.839 The authors stated that ‘[i]n cases where people enter prison with debt, the issue often becomes further compounded by the time the sentence expires’.840 An Indigenous community worker reported that:

[Things] like driving fines and defaults are escalating to the point where people were looking at prison time and then also going to prison. The process is not there to hand over bills, credit cards, existing financial commitments so by the time people get out of prison, even if it was only a couple of months later, those had escalated to the point where they had even further issues facing them when they came out … Financial issues were actually compounding while they were in prison, and reducing the likelihood of them reintegrating back into society effectively at the end of that cycle.841

7.7.21 Stakeholders broadly supported the availability of concurrency where the person in custody is serving a term of imprisonment for something other than court fine or infringement penalty default.842 One roundtable participant stated that:

I can imagine circumstances where an offender has been sentenced for disqualified driving, for example, and they have an outstanding fine for disqualified driving where you might argue [that] it should be cumulative. But I think in the interest of fairness, it’s ‘get the fines out of the way, have them extinguished’ so the person comes out of prison with a clean slate. Because if you look at the average offender, they’re under 30, they will go into jail three times before they’re 40 for short periods of time, and then they’ll have this hanging over their head continuously. I don’t think it’s in the interests of fairness.843

7.7.22 Youthlaw went further than this and submitted that the presumption of cumulative terms of imprisonment (for multiple instances of court fine or infringement penalty default) should be removed from section 16(2)(a) of the Sentencing Act and section 161A(3) of the Infringements Act, respectively. Youthlaw agreed with the proposition that there should be no limitation on the ability of an imprisoned offender to request that they serve a concurrent term of imprisonment in lieu of payment of an outstanding infringement penalty or court fine, and stated that ‘it should be as straightforward as possible for people to address their infringements and exit prison with a clean slate’.844

837. Willis (2004), above n 810, 145. However, other research suggests that imprisonment may increase total household income due to (among other things) an increase in labour by other household members during the period of imprisonment, and the maintenance of this increase in labour after the person is released from prison: Malathi Velamuri and Steven Stillman, ‘Longitudinal Evidence on the Impact of Incarceration on Labour Market Outcomes and General Well-Being’ (Paper presented at the HILDA (Household, Income and Labour Dynamics in Australia) Survey Research Conference, Melbourne, 19–20 July 2007) 13.


841. Ibid 133–134.

842. Roundtable 2 – Payment and Enforcement (26 August 2013); Submission 1 (Victorian Association for the Care and Resettlement of Offenders (VACRO)).

843. Roundtable 2 – Payment and Enforcement (26 August 2013).

844. Submission 3 (Youthlaw).
Concerns about concurrency in this context

7.7.23 The determination of concurrency or cumulation is somewhat ambiguous as a matter of general sentencing practice. Bagaric and Alexander suggest that the 'logical reasoning process by which the totality computation is achieved remains obscure – verging on the arbitrary'.845 This is largely an outcome of an individualised approach to sentencing, with any assessment of totality and proportionality dependent on the nature of the particular offending and the particular offender.846

7.7.24 While recognising the individualised nature of sentencing in this area (and more generally), several scenarios may exemplify why a concurrent term of imprisonment may not be just and appropriate in the circumstances of the case.

7.7.25 First, the nature of the offending for which a court fine was imposed may be so serious that the existing term of imprisonment does not reflect the gravity of the total offending. For example, in the area of family violence, a person may be imprisoned for making a threat to kill,847 and sentenced to a fine at a later date for contravention of a family violence intervention order. In these circumstances, a concurrent term of imprisonment upon conversion may not adequately capture the seriousness of the total offending.

7.7.26 Second, it may be proportionate for the offender to serve a cumulative term of imprisonment if the existing term of imprisonment is relatively short, as one roundtable participant suggested:

It would depend on how long the person has been sentenced for. If they have been imprisoned for a month, and their fines only equate to another week’s worth of imprisonment, it would not seem fair to be able to clear the fine by just serving the pre-existing sentence.848

7.7.27 Further, if a person has the capacity to pay a fine or penalty and has accumulated a substantial volume and/or amount of debt, a concurrent term of imprisonment may not necessarily capture the seriousness of the default.

7.7.28 Judicial discretion allows the court to accommodate each of these scenarios and depart from a presumption of concurrency where necessary (judicial discretion is currently preserved in respect of court fine conversion, but not infringement penalty conversion). An alternative approach is to remove judicial discretion and have parliament prescribe the sequence of multiple terms of imprisonment in cases of fine or penalty default. This would remove flexibility and individualisation in decision-making, but provide consistency of approach. This option has been followed in Queensland and Tasmania, where a cumulative term of imprisonment must be imposed on fine or penalty default.849 Cumulation must also be ordered in Western Australia if imprisonment is imposed as a form of fine enforcement at the time a fine is ordered.850

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848. Roundtable 2 – Payment and Enforcement (26 August 2013).
849. See [7.7.9].
850. See [7.7.10].
The Council's view

7.7.29 A full discretion provides the court with sufficient flexibility to order either cumulative, partly cumulative or concurrent terms of imprisonment, as appropriate. The policy discussion shows that flexibility is required in order to achieve a just and proportionate term of imprisonment in the circumstances of the case. This would be consistent with section 16(2) of the Sentencing Act and the well-established case law in support of the preservation of judicial discretion in this area.

7.7.30 A concurrent term of imprisonment may maximise a person's chances of reintegration and rehabilitation upon release, by limiting the opportunity for financial disadvantage to worsen while in prison, and enabling a person to exit prison with a 'clean slate', at least in relation to court fine and infringement penalty debts.

7.7.31 A prescriptive approach to the order of service of terms of imprisonment – whether this involves automatically concurrent or cumulative terms of imprisonment – is less able to do justice to the full range of offending. Further, any introduction of automatically cumulative terms of imprisonment for fine or penalty default would most likely impose an additional burden on the corrections system, given the number of cases where conversion is used.

7.7.32 While preserving the power of the court to refuse to make an order for conversion in any event, section 161A of the Infringements Act should be amended to confirm that the court's discretion is retained in relation to the order of service of terms of imprisonment. The presumptions of concurrency and cumulation, as applicable, should otherwise be preserved.

Recommendation 36: Court should have the discretion to order either cumulation or concurrency

The Infringements Act 2006 (Vic) should be amended to provide that the court should determine whether the term of imprisonment for infringement penalty default is to be served concurrently, cumulatively, or partly cumulatively with an existing term of imprisonment, consistent with the Sentencing Act 1991 (Vic).

7.8 Backdating conversion

7.8.1 An application for conversion is made through the Sheriff. If a conversion order is made and the term is ordered to be concurrent with an existing term of imprisonment, the court may backdate the term of imprisonment to the date of request to the Sheriff and count this as time already served. This applies to both court fines and infringement penalties.

7.8.2 The Sheriff's Operations (SEMR) reported a lack of awareness among particular prisoner groups, such as Koori prisoners, about the right to apply for conversion. Similarly, Youthlaw stated that:

Anecdotally many people who are serving time aren't given the opportunity to call in fines for some reason or other.

The processes for identifying whether a person has outstanding fines and infringements needs to be clearer and more rigorously implemented, so that all prisoners have the opportunity to ‘call in’ their infringement warrants and address them as part of their existing sentence.

851. Sentencing Act 1991 (Vic) s 16A(1); Infringements Act 2006 (Vic) s 161A(1).
852. Sentencing Act 1991 (Vic) s 16A(3); Infringements Act 2006 (Vic) s 161A(1B).
853. Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).
854. Submission 3 (Youthlaw).
7.8.3 VACRO stated that most of its clients ‘call in’ their outstanding fines or penalties while in prison. However, VACRO submitted that ‘[t]here are some issues with the time at which applications for conversion can be made, so that clients can serve their fines while in prison’.855

7.8.4 Consistent with stakeholder submissions, knowledge of conversion was limited among a group of 121 Queensland prisoners surveyed in one study.856 The study recommended that all prisoners be informed of their right to ‘call in’ outstanding warrants, as this would:

- eliminate one cause of the ‘revolving door’ syndrome by preventing the re-arrest of a recently released prisoner on outstanding warrants. Providing certainty about the solidity of release will encourage the prisoner to make positive plans for their future, thus improving their chances of successful rehabilitation.

- At present, prisoners who are familiar with the criminal justice system are aware of their right to and the advantages of calling in all their outstanding warrants and extending their sentence to clear them. Less knowledgeable prisoners are disadvantaged if they are not informed of this right.857

7.8.5 Several other studies have found that, although legal information services are available in many prisons, there are barriers to service uptake, including a lack of communication about the existence of legal information services, delays in receiving legal information, and literacy or cognitive problems among offenders.858

**The Council’s view**

7.8.6 There appears to be uneven knowledge of conversion among the prison population. This may result in already disadvantaged groups of prisoners (for example, Koori prisoners and prisoners with low literacy levels) not receiving information about conversion until well into a term of imprisonment, if at all.

7.8.7 Accordingly, upon conversion of a court fine or infringement penalty into a term of imprisonment, the court should have a discretion to backdate the term of imprisonment to the date of the applicant’s entry into custody, rather than the date on which the application for conversion is made to the Sheriff. This is consistent with the principle of equality before the law, and allows all prisoners, regardless of their education level or knowledge of the criminal justice system, to discharge a court fine or infringement penalty on the same terms.

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855. Submission 1 (Victorian Association for the Care and Resettlement of Offenders (VACRO)).
856. Stringer (1999), above n 790, 32.
Chapter 8: Infringement matters heard in open court, proportionality, and internal review
8.1 Issues arising from the number of infringement matters heard in court

8.1.1 The terms of reference require the Council to consider ‘issues arising from the number of infringement matters subsequently heard in open court’.  

8.1.2 An integral part of the infringements system is the right of recipients of infringement notices to elect to have the matter heard in court: in the Magistrates’ Court if the recipient is an adult (or a corporation) and in the Children’s Court if the recipient is a child. There are a number of pathways to open court and many reasons why cases end up there rather than being resolved by other means.

8.1.3 A common theme among organisations that made submissions to, or met with, the Council was that, while court is an important safeguard of the infringements system, many of the infringement matters taken to court are there due to problems elsewhere in the system. This imposes a significant financial strain on the resources of courts, enforcement agencies, Victoria Legal Aid, and other legal services. For example, representatives of the Infringements Court said that:

“The Magistrates’ Court is under intense resourcing pressure. What seems like a small proportion of infringement cases [going to court] is a significant proportion of their caseload … There is a need to make changes to the front of the system.”

8.1.4 This chapter addresses some of the factors that are driving infringement matters into court. It presents recommendations aimed at reducing the number of infringements taken to court by providing or strengthening other safeguards in the system, such as the need for infringement penalties to be proportionate and to have an equal effect on recipients (to the extent that is possible in a high volume, automated system) and the right to seek internal review. These recommendations are aimed at resolving cases earlier and reducing the burden on the Magistrates’ Court and on those tasked with prosecuting infringements or assisting infringement notice recipients.

Pathways to court

8.1.5 It is not possible to give a precise number of infringement matters that proceed to open court. The Council estimates that between 45,715 (10.9%) and 115,903 (27.6%) of the 419,423 charges heard in the Magistrates’ Court in 2012–13 originated from the infringements system. The most likely figure is closer to 18% (74,470 charges), although this may be an underestimation. Estimates with respect to the Children’s Court are not sufficiently reliable to examine in a similar fashion.

8.1.6 There are a number of ways in which an infringement matter may be heard in court.
Election by recipient

8.1.7 An infringement notice recipient may elect to have the matter heard and determined in court.\textsuperscript{867}

8.1.8 Reasons a person might elect to take the matter to open court include:

\begin{itemize}
  \item having a defence to the infringement notice (that is, pleading not guilty to the offence);
  \item having mitigating circumstances (such as financial hardship) (that is, seeking a lower penalty);
  \item perceiving the penalty to be disproportionately high in light of the circumstances of the offence and/or personal circumstances (that is, seeking a lower penalty); and
  \item having accumulated multiple offences (that is, seeking a lower penalty for the case as a whole).\textsuperscript{868}
\end{itemize}

8.1.9 Payment of an infringement penalty does not constitute a finding of guilt, which means that, with some exceptions,\textsuperscript{869} the infringement recipient does not receive a criminal record. By electing to have the infringement matter heard in court, however, the person is exposed to the risk of the court finding the person guilty and, as a result, the person receiving an accessible criminal record.\textsuperscript{870}

8.1.10 Unpublished Infringement Management and Enforcement Services (IMES) data for 2012–13 indicate that recipients elected to take the matter to court in relation to 60,641 infringement notices. These include both Type 1 and Type 2 infringements.\textsuperscript{871}

Election by enforcement agency

8.1.11 Prior to the infringement penalty being paid, the enforcement agency may decide to cancel the notice and take the matter to court.\textsuperscript{872} Data on election by the enforcement agency were only available in regard to Type 1 infringements. During 2012–13, 246 Type 1 infringements were referred to the Magistrates’ Court by the enforcement agency at this stage.\textsuperscript{873} Given that these data exclude the Department of Transport, Planning and Local Infrastructure and local government agencies, the overall number is likely to be higher.

Following an unsuccessful application for internal review

8.1.12 One of the options for an enforcement agency after conducting an internal review is to withdraw the infringement notice and refer the matter to court.\textsuperscript{874}

\textsuperscript{867} Infringements Act 2006 (Vic) s 16.

\textsuperscript{868} Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Submission 2 (Anonymous); Submission 3 (Youthlaw), endorsing Submission 7; Submission 6 (North Melbourne Legal Service Inc.), endorsing Submission 7; Submission 7 (Infringements Working Group); Submission 8 (Brimbank Melton Community Legal Centre), endorsing Submission 7; Submission 10 (PILCH Homeless Persons’ Legal Clinic), endorsing Submission 7.

\textsuperscript{869} See [3.9.1]–[3.9.2].

\textsuperscript{870} The current Victoria Police information release policy provides that ‘Victoria Police release criminal history information on the basis of findings of guilt, and may also release details of matters currently under investigation or awaiting court hearing. It is important to note that a finding of guilt without conviction is still a finding of guilt and will be released according to the information release policy’. See Victoria Police, Information Release Policy: National Police Certificates, Information Sheet (Victoria Police, 2013) <http://www.police.vic.gov.au/retrievemedia.asp?Media_ID=38447> at 4 December 2013.

\textsuperscript{871} Type 1 refers to agencies that register infringement notices with IMES from the time of issue (for example, Victoria Police, the Traffic Camera Office, Victoria Police Toll Enforcement Office, VicRoads, the Taxi Services Commission, and the Department of Environment and Primary Industries). Type 2 refers to agencies that lodge infringement notices to be enforced by the Infringements Court at the default stage (for example, local government enforcement agencies and the Department of Transport, Planning and Local Infrastructure). See Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ <www.sentencingcouncil.vic.gov.au>.

\textsuperscript{872} Infringements Act 2006 (Vic) s 17.

\textsuperscript{873} Unpublished IMES data provided to the Council for this project. See above n 871 for an explanation of Type 1 and Type 2 infringements.

\textsuperscript{874} Infringements Act 2006 (Vic) s 25(1)(d).
8.1.13 Where the application for internal review is based on special circumstances and the 
 enforcement agency confirms the decision to issue the infringement notice, the enforcement 
 agency must refer the matter to court.875

8.1.14 Unpublished IMES data for 2012–13 indicate that 2,866 infringement notices were referred 
 to court by the enforcement agency following an unsuccessful application for internal review 
 based on special circumstances. A further 485 infringement notices were referred to court 
 by the enforcement agency following an unsuccessful internal review based on a ground 
 other than special circumstances.876

Following a successful application for revocation

General

8.1.15 Following a successful application by the infringement recipient for revocation of an 
 enforcement order,877 the Infringements Court registrar must refer the matter to open 
 court for a hearing before a magistrate if the enforcement agency does not file a request for 
 non-prosecution within 21 days.878

8.1.16 In 2012–13, there were 36,203 successful applications for revocation, including:

- 26,108 revocations made on the ground of special circumstances, which would 
  be eligible to be heard in the Magistrates’ Court Special Circumstances List (see 
  below); and
- 10,095 revocations made on grounds other than special circumstances.879

On the Special Circumstances List

8.1.17 Where the application for revocation is based on special circumstances, and the 
 enforcement agency has not filed a request for non-prosecution within 21 days, the matter 
 may be heard as part of the Enforcement Review Program in the Special Circumstances List 
 of the Magistrates’ Court.880 This is the main pathway to the Special Circumstances List, and 
 accounts for most charges heard in the list. However:

there are occasions where Magistrates or Judicial Registrars will refer an open court matter 
 (charge and summons/appeal against Registrars’ refusal to revoke into the Special Circumstances 
 List) where they believe it is appropriate. This usually occurs when an applicant has a pending 
 Special Circumstances application and also has open court matters e.g. Traffic Camera 
 Office charges.881

8.1.18 While no data were available on the number of requests for non-prosecution following a 
 successful application for revocation, the similar numbers of matters revoked and heard in 

875. Infringements Act 2006 (Vic) s 25(3). See [5.2.22]–[5.2.26] for a discussion of special circumstances, including the definition and 
 [8.5.98]–[8.5.107] for further discussion of mandatory referral to court.
876. Unpublished IMES data provided to the Council for this project.
877. See [5.2.3]–[5.2.9] and Appendix 1 for an explanation of the revocation process.
878. Infringements Act 2006 (Vic) s 69(1).
879. Unpublished IMES data provided to the Council for this project.
880. See Infringements Act 2006 (Vic) s 69(1); Magistrates’ Court of Victoria, Enforcement Review Program (ERP) (Magistrates’ Court of 
 review-program-erp> at 26 February 2014; Appendix 1.
881. Email from the Magistrates’ Court of Victoria to the Sentencing Advisory Council, 25 March 2014.
Chapter 8: Infringement matters heard in open court, proportionality, and internal review

the Special Circumstances List each year suggest that few, if any, matters revoked on the ground of special circumstances have a request for non-prosecution filed. For example:

- in 2010–11, there were 29,330 enforcement orders revoked due to special circumstances, and in the same year, the Special Circumstances List of the Magistrates’ Court heard 31,031 infringement-originating charges;
- in 2012–13, there were 26,108 enforcement orders revoked due to special circumstances, and in the same year, the Special Circumstances List of the Magistrates’ Court heard 28,438 infringement-originating charges.

8.1.19 Of the infringement-originating charges listed in the Special Circumstances List in 2012–13, 2,260 charges (7.9%) were ultimately not proven (including charges that were withdrawn and struck out). Of these, 19.4% were recorded as being struck out as a result of the enforcement agency failing to appear at the hearing. This is almost double the proportion (10.2%) that were not proven for this reason in the previous three years (from 2009–10 to 2011–12). A further 73.5% of not proven charges in the Special Circumstances List were withdrawn and struck out without a reason being recorded.

8.1.20 Issues in relation to the non-prosecution of infringement matters found to have special circumstances on revocation are explored elsewhere in this report. If Recommendation 18 is implemented, in the future the enforcement agency will have to opt in (rather than opt out) to prosecute infringement-originating charges following a successful application for enforcement review, including applications based on special circumstances. The number of matters heard in the Special Circumstances List may decrease substantially once this reform comes into effect.

Following an unsuccessful application for revocation

8.1.21 If the infringements registrar refuses to make an order for revocation, the infringement penalty will continue to be enforced. One of the options available to the person at this point is to lodge a written objection to the refusal within 28 days of the refusal notice (in which case the objection to the refusal of revocation must be referred by the infringements registrar for hearing in the Magistrates’ Court). This occurred for 23,823 infringements in 2012–13.

8.1.22 Upon hearing an objection to a refusal of revocation, the court may:

- accept the person’s objection to the refusal to revoke, revoke the enforcement order, and proceed to hear the matter (15,708 infringements in 2012–13); or
- refuse the objection to the refusal to revoke and return the matter to the Infringements Court to continue enforcement (8,115 infringements in 2012–13).

8.1.23 If Recommendation 20 is implemented, objection to a refusal to revoke will no longer be an avenue to court; therefore, this is not addressed in this chapter.

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883. Magistrates’ Court unpublished data.
884. Unpublished IMES data provided to the Council for this project.
885. Magistrates’ Court unpublished data.
886. See [8.2.18].
887. For discussion of the issues around revocation and enforcement review see [5.2.31]–[5.2.35].
888. Infringements Act 2006 (Vic) s 68(1)–(3): if the application is made more than 28 days but less than 3 months after a refusal to revoke, the infringements registrar may still refer the matter to court; however, an application for objection cannot be made more than 3 months after the refusal to revoke.
889. Infringements Act 2006 (Vic) ss 72(1)(a)–(b). The court may proceed to hear the matter in the absence of the infringement offender: Criminal Procedure Act 2009 (Vic) ss 85(1)–(2).
890. Infringements Act 2006 (Vic) s 72(2).
Enforcement hearings

8.1.24 Another avenue to court for infringement cases (not discussed in this chapter) is towards the end of the enforcement process, at an infringement warrant enforcement hearing (discussed in Chapter 6).\footnote{Infringements Act 2006 (Vic) s 160.}

Why do infringement cases go to open court?

8.1.25 Infringement recipients do not fall neatly into one category. Chapter 4 outlines a typology of fine recipients and explains why different approaches are required to address each cohort.\footnote{See [4.2.1]–[4.2.17].} Drawing on this typology, those who have their infringement matter heard in court are likely to be:

- people who fall into the category of ‘shouldn’t pay’, for example, a person who has a defence to the infringement notice, meets the test for special circumstances,\footnote{See [8.1.17].} or has mitigating circumstances that justify a lower penalty;
- people who are unable to pay (‘can’t pay’), for example, a person who has accumulated an unmanageable number of infringement notices, has mitigating circumstances, and/or is experiencing financial hardship;
- people who have neglected to pay (‘might pay’) or who have refused to pay (‘won’t pay’);
- corporations that fall into the categories of ‘shouldn’t pay’ or ‘can’t pay’, for example, because they wish to raise a defence to the infringement notice, have mitigating circumstances, or are in financial difficulty; and
- corporations that have the means to pay but have not yet done so (‘might pay’) or are unwilling to pay (‘won’t pay’).

8.1.26 The range of infringement recipients according to this typology is shown in Figure 29, which also shows the types of recipients that would be expected in open court.

8.1.27 While both corporations and natural persons can fall into the ‘shouldn’t pay’/‘can’t pay’/‘won’t pay’ categories, the majority of known infringement-originating cases taken to court relate to natural persons (around 85% each year),\footnote{For example, in 2012–13, 13% (714 cases) of infringement-originating cases involved corporations, while 87% involved natural persons (4,577 cases).} as shown in Figure 30. Similarly, an even higher proportion of infringement-originating charges in the Magistrates’ Court involved natural persons than involved corporations.\footnote{In 2012–13, there were 40,569 infringement-originating charges against natural persons, compared with 5,146 infringement-originating charges against corporations in the same year. Therefore, 89% of infringement-originating charges related to natural persons compared with 11% that related to corporations. In the same year, 48% of infringement-originating cases involving natural persons had more than one charge in the case, while 33% of infringement-originating cases involving corporations had more than one charge.}

8.1.28 While some of the reforms outlined in this chapter apply to both corporations and natural persons, the primary focus in this chapter is natural persons. Recommendations specific to corporations are set out in Chapter 5.

8.1.29 There was general agreement among those consulted by the Council that court is an important safeguard of the infringements system, particularly for low-income and vulnerable people.\footnote{Roundtable 1 – Warnings, Review, and Open Court (19 August 2013).} In its recent review of penalty notices, the New South Wales Law Reform Commission made similar observations, including that ‘(s)ervice providers representing vulnerable groups … reported that, in many cases, court election results in a better outcome for the client’.\footnote{New South Wales Law Reform Commission (2012), above n 366, 154.}
The Commission referred to comments from an organisation called Shopfront that assists many young people to court-elect on penalty notices or seek annulment of enforcement orders. It is almost always the case that our clients receive a better result in court, especially in the Children’s Court (where it is common for magistrates to caution the young person). In our view, this reflects proper sentencing practice and indicates that magistrates are taking into account the important principles of proportionality and capacity to pay when considering a financial penalty.899

There was also a view among some stakeholders that some people were recalcitrant non-compliers and tried to ‘play the system’, treating court as a ‘discount shop’ for multiple infringements.900 The tension between those who ‘can’t pay’ and those who ‘won’t pay’ was a recurring theme in this project.

Figure 30: Number of cases by whether infringement-originating matter or not and by whether natural person or corporation901
8.2 Outcomes for infringement-originating matters

Overview

8.2.1 This section examines Magistrates’ Court outcomes of known infringement-originating charges902 heard in the general list and those heard in the Special Circumstances List. The number of charges per case and the proportion of charges proven and not proven are examined for all known infringement-originating cases heard in the Magistrates’ Court from 2009–10 to 2012–13. In addition, for 14 ‘reference offences’ (which comprised almost 94% of known infringement-originating matters heard in the Magistrates’ Court from 2009–10 to 2012–13), sentencing outcomes are compared with the original infringement penalty. Analysis of these data revealed the following.

Cases heard in the Special Circumstances List were far more likely to have multiple charges than cases heard in the general list.

A much higher proportion of charges heard in the general list were not proven than charges heard in the Special Circumstances List, although the bulk of not proven charges on both lists were charges that were withdrawn and struck out (as opposed to the person being found ‘not guilty’ after a contested hearing).

A higher proportion of not proven matters in the Special Circumstances List were recorded as being struck out because the enforcement agency failed to appear.

For proven charges, the overwhelming majority of charges heard in both lists received sentences that were less severe than the original infringement penalty.

Sentences lower than the original infringement penalty are likely to reflect a range of factors including:

• the presence of mitigating factors (including financial hardship);
• the presence of special circumstances (for cases heard in the Special Circumstances List);
• the relative seriousness of the offence; and
• the presence of multiple charges in the case, requiring an overall sentence that is proportionate to the total offending.

8.2.2 The finding that infringement-originating charges routinely receive sentencing outcomes that are less severe than the original infringement penalty is not surprising. It is reasonable to expect that most (although not all) people who have committed an infringement offence, and are not experiencing financial hardship and have no mitigating circumstances or reasons why the penalty should be reduced, are unlikely to risk a potentially higher penalty (and potentially an accessible criminal record) by taking the matter to court.

Bearing these findings in mind, this chapter examines how strengthening other safeguards in the infringements system could reduce the need for those people experiencing financial hardship, and seeking mitigation, to have their matter heard in court.

902. For some offences heard in the Magistrates’ Court, such as drink driving, it was not possible to identify whether or not the matter originated as an infringement notice. See Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ <www.sentencingcouncil.vic.gov.au>.
Multiple charges

8.2.3 For the known infringement-originating matters sentenced in 2012–13, the mean number of charges per case varied from 16.6 for driving unregistered in a toll zone to one for shop theft (although the total number of charges for that offence was small).903

8.2.4 Figure 31 shows that the mean number of charges for cases in the Special Circumstances List was significantly higher when compared with infringement-originating charges heard in the general list and cases that did not start as an infringement notice.

8.2.5 Figure 31 also shows that the mean number of charges per case for infringement-originating cases in the general list more than doubled from 2009–10 to 2012–13: from 2.1 charges per case in 2009–10 to 4.9 charges per case in 2012–13. This is likely to reflect a similar pattern in the average number of offences of driving unregistered in a toll zone over the same period. For infringement-originating cases in the general list, the mean number of toll-zone offences per case increased from 5.3 charges per case in 2009–10 to 13.1 charges per case in 2012–13.

8.2.6 In contrast, the mean number of charges per case remained relatively stable from 2009–10 to 2012–13 in cases that did not originate as infringements and in infringement-originating cases in the Special Circumstances List.

8.2.7 In order to assess what happens to the infringement-originating charges that are taken to court, Figure 32 (page 224) examines the average number of charges that are proven, not proven, or diverted, according to whether or not charges originated as infringements and whether or not infringement-originating charges were heard in the Special Circumstances List.

Figure 31: Mean number of charges (regardless of outcome) per case, by whether infringement-originating or not904

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903. Unpublished Magistrates’ Court data.
904. Unpublished Magistrates’ Court data.
8.2.8 In the most recent year (2012–13), the average case in the Special Circumstances List had 14.7 proven charges and 1.3 unproven charges. In comparison, the average infringement-originating case heard in the general list had 3.8 proven charges and 1.2 unproven charges. Non-infringement-originating cases had the lowest number of charges: an average of 2.3 proven charges and 1.5 unproven charges per case.

8.2.9 The average number of proven charges per case on the Special Circumstances List has increased over time, from 7.9 proven charges in 2009–10 to a high of 15.6 proven charges in 2011–12. Thus, for matters in the Special Circumstances List, while the number of charges per case has remained relatively stable, there has been a 97.4% increase in the proportion of charges that are proven.

8.2.10 The principle of totality requires that the overall effect of the sentence in a case with multiple charges must be just, proportionate, and appropriate to the overall criminality of the total offending behaviour. The practical result of this principle is that, while the individual sentence for each charge may be lower than the original infringement penalty, the overall sentence may well be higher (although it is unlikely to be as high as the total value of all of the original infringement penalties).

8.2.11 In sentencing a person for more than one offence, the court may impose an aggregate fine, that is, a single fine for multiple offences, provided that those offences ‘are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character’. The court does not have to specify the portion of the aggregate fine that was imposed for each single offence. If an aggregate fine is imposed, the amount of that fine must reflect the

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905. Freiberg (2014), above n 40, [3.10]. See [8.3.1]–[8.3.4].
906. Sentencing Act 1991 (Vic) ss 51(1)–(3).
principle of totality.\footnote{See \[8.2.28\]–[8.2.32] (aggregate fines) and \[2.2.53\]–[2.2.54] (totality).} In examining the aggregate fine imposed in relation to a charge, it must be remembered that the aggregate fine amount reflects the totality of all the charges for which it was imposed.

8.2.12 The outcomes for offences that commonly had more than one charge should be analysed in this light.

**Proven versus not proven**

8.2.13 For the known infringement-originating matters heard in the Magistrates’ Court from 2009–10 to 2012–13, 33,189 (29.5%) infringement-originating charges heard in the Special Circumstances List were not proven while 28,103 (43.0%) infringement-originating charges heard in the general list of the Magistrates’ Court were not proven.

8.2.14 Charges were marked as ‘not proven’ where the charge was finalised or resolved without a finding of guilt. This included charges withdrawn because the prosecution failed to appear; charges withdrawn and struck out with no detailed reason recorded, and charges where the defendant was found not guilty.

8.2.15 The majority of not proven charges in both the general list and the Special Circumstances List were recorded as ‘struck out–withdrawn’, with no further detail available in the data. As prosecutors are not required to give the court a reason for withdrawing a charge, the lack of details in the data as to the reason is unsurprising. Likely reasons that infringement-originating charges may have been withdrawn by the enforcement agency/prosecution include that:

- the recipient agreed to immediately pay the original infringement penalty rather than having the matter heard in court;
- the matter was listed at court following an application for revocation and the infringement recipient agreed to pay the enforcement agency’s costs if the matter was withdrawn;
- the enforcement agency/prosecution determined that there was insufficient evidence to establish the charge and withdrew it on that basis; or
- the enforcement agency/prosecution decided not to proceed with the charge for other reasons.

**Not proven charges in the general list**

8.2.16 A high proportion (43.0%, or 28,103) of infringement-originating charges in the general list were not proven. Of those not proven charges:

- 80.2% were recorded as ‘struck out–withdrawn’ with no details provided as to the reason. This group is likely to include matters where the charge was withdrawn by the enforcement agency on the condition that the recipient pay the original infringement penalty.
- 1.7% were dismissed due to the merits of the case or insufficient evidence (this could be higher if charges recorded as ‘not proven’ with no further details fall into this category).
- 1.3% were struck out due to the prosecution or informant failing to appear (this could be higher if charges recorded as ‘not proven’ with no further details fall into this category).
- 16.5% were not proven for other or unspecified reasons.
8.2.17 Consistent with the overall trend, the proportion of not proven infringement-originating charges in the general list was fairly high for a number of the offences listed in Table 12 (page 228): exceeding the speed limit (50.8%), driving unregistered in a toll zone (41.2%), driving an unregistered vehicle (48.2%), failing to stop at a red light (44.3%), and various parking offences (39.9%). For these offences, the proportion of charges not proven due to the non-appearance of the prosecution or informant was highest for parking infringements (4%). Less than 1% of charges of exceeding the speed limit or driving unregistered in a toll zone in the general list were recorded as being not proven due to the non-appearance of the prosecution or informant. As these matters are prosecuted by Victoria Police, which has police prosecutors who are based in court, this is not surprising.

Not proven charges in the Special Circumstances List

8.2.18 Of 33,189 (29.5%) not proven infringement-originating charges heard in the Special Circumstances List from 2009–10 to 2012–13:

- 85.4% were recorded as ‘struck out–withdrawn’, with no details as to why the charge was withdrawn. This group is likely to include matters where the charge was withdrawn on the condition that the recipient pay the original infringement penalty.
- 10.8% were struck out because the prosecution or informant failed to appear. This finding supported what stakeholders said about prosecutors failing to appear in the Special Circumstances List, despite the fact that enforcement agencies have the power to request non-prosecution prior to the matter being listed. In the most recent year (2012–13), 19.4% of the not proven charges heard on the list were struck out as a result of the enforcement agency failing to appear at the hearing.
- 3.4% were found to be not proven for other or unspecified reasons.

Criminal Justice Diversion Program

8.2.19 Infringement-originating offences were rarely dealt with under the Criminal Justice Diversion Program, which:

- provides mainly first time offenders with the opportunity to avoid a criminal record by undertaking conditions that benefit the offender, victim [if the charge involves a victim] and community as a whole.

8.2.20 To be eligible for a diversion, the person must acknowledge responsibility for the offence and the prosecution must consent.

8.2.21 The Criminal Justice Diversion Program is complementary to the infringements system in that both allow people who have committed relatively minor offences (and in the case of diversion, usually have no prior offences) to address their behaviour without receiving a criminal record. However, of the infringement-originating matters in the general list from 2009–10 to 2012–13, only 17 charges overall were dealt with by way of a diversion. In the Special Circumstances List, no charges from 2009–10 to 2012–13 ultimately received a diversion.

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908. See [5.2.32].
909. This issue is discussed at [5.2.31]–[5.2.42].
911. Magistrates’ Court of Victoria (2013), above n 910.
912. Prior convictions do not disqualify a person from the diversion program but the court will take prior convictions into account in deciding whether the diversion program is appropriate: Magistrates’ Court of Victoria (2013), above n 910.
913. Unpublished Magistrates’ Court data.
8.2.22 While diversion requires the person to accept responsibility for the offence, and therefore may not be appropriate for an infringement recipient who is contesting a charge, for those who attend court to seek a lower penalty in light of financial hardship or mitigating circumstances, diversion may well be an appropriate outcome.

Comparison between sentences and original infringement penalty

Reference offences

8.2.23 The 10 most common infringement-originating offences (or groups of offences, such as parking offences) heard in the Magistrates’ Court from 2009–10 to 2012–13 comprised 92.1% of known infringement-originating matters that were heard in the Magistrates’ Court in that period (Table 12, page 228). A further four offences that fell just outside the 10 most common known infringement-originating offences heard in the Magistrates’ Court were also examined as they were the subject of considerable comment from stakeholders (Table 13, page 229).

8.2.24 These 14 reference offences accounted for 93.7% of known infringement-originating offences heard in the Magistrates’ Court from 2009–10 to 2012–13, which made them a useful group to study in helping to identify some of the outcomes and drivers of infringement matters into open court.

8.2.25 The 14 reference offences were analysed across two categories:

- Infringement-originating charges heard in the general list of the Magistrates’ Court – matters that commenced with an infringement notice but were subsequently heard in the Magistrates’ Court (including cases where the infringement recipient or enforcement agency elected to take the matter to court). This category does not include infringement matters heard in the Special Circumstances List of the Magistrates’ Court.
- Infringement-originating charges heard in the Special Circumstances List of the Magistrates’ Court – predominantly matters that commenced with an infringement notice but were subsequently heard in the Special Circumstances List of the Magistrates’ Court following a successful application for revocation of an enforcement order based on special circumstances.

8.2.26 Sentencing outcomes for reference offences that were known to have originated with an infringement notice were compared with the original infringement penalty. The overwhelming majority of charges of the reference offences received sentences that were less severe than the original infringement penalty amount. As would be expected, this was particularly so in the Special Circumstances List.

Outcomes in the Special Circumstances List

8.2.27 Of the 79,379 proven infringement-originating charges sentenced in the Special Circumstances List from 2009–10 to 2012–13:

- 12.4% (9,833) received an aggregate fine for the particular infringement-originating charge (and at least one other charge in the case).
- 87.6% (69,546) received a sentence other than an aggregate fine.

914. For further discussion of the Special Circumstances List, see [8.5.151]–[8.5.169] and Appendix 1.
915. See Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ (<www.sentencingcouncil.vic.gov.au>) for how this was calculated, particularly where offences had multiple infringement penalties.
916. See [8.2.28]–[8.2.32] (in relation to aggregate fines).
### Table 12: The 10 most common infringement-originating offences heard in the Magistrates’ Court, 2009–10 to 2012–13

<table>
<thead>
<tr>
<th>Rank</th>
<th>Offence name</th>
<th>Number of charges (people)</th>
<th>Number of cases (people)</th>
<th>Charges per case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Drive unregistered in toll zone (CityLink and EastLink)</td>
<td>95,804</td>
<td>26,471</td>
<td>7,761</td>
</tr>
<tr>
<td>2</td>
<td>Exceed speed limit</td>
<td>20,719</td>
<td>5,076</td>
<td>6,780</td>
</tr>
<tr>
<td>3</td>
<td>Parking infringement (comprises park longer than indicated, fail to purchase/obey parking ticket)</td>
<td>15,116</td>
<td>2,974</td>
<td>6,213</td>
</tr>
<tr>
<td>4</td>
<td>Public transport ticket offence (comprises all offences involving public transport tickets—including fail to carry ticket and concession offences)</td>
<td>12,947</td>
<td>3,340</td>
<td>3,121</td>
</tr>
<tr>
<td>5</td>
<td>Stop vehicle where not permitted (comprises disobey no stopping sign, stop in a loading zone, stop in disability parking, and stop where clearway sign applies)</td>
<td>6,866</td>
<td>1,362</td>
<td>4,629</td>
</tr>
<tr>
<td>6</td>
<td>Use/own unregistered motor vehicle</td>
<td>5,058</td>
<td>1,073</td>
<td>2,401</td>
</tr>
<tr>
<td>7</td>
<td>Fail to stop at red traffic lights</td>
<td>2,872</td>
<td>769</td>
<td>2,006</td>
</tr>
<tr>
<td>8</td>
<td>Stop in a permit zone</td>
<td>1,864</td>
<td>421</td>
<td>1,156</td>
</tr>
<tr>
<td>9</td>
<td>Fail to give information as to identity of driver</td>
<td>1,418</td>
<td>350</td>
<td>609</td>
</tr>
<tr>
<td>10</td>
<td>Unlicensed driving</td>
<td>1,198</td>
<td>262</td>
<td>705</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>163,862</td>
<td>42,098</td>
<td>24,937</td>
</tr>
<tr>
<td></td>
<td>10 most common offences (1–10)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>All matters known to have originated as infringements in Magistrates’ Court</strong></td>
<td><strong>177,952</strong></td>
<td><strong>45,715</strong></td>
<td><strong>28,086</strong></td>
</tr>
</tbody>
</table>

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a. This excludes a number of offences for which it was not possible to identify whether or not the offence originated as an infringement notice (see Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ <www.sentencingcouncil.vic.gov.au>) and does not include infringement penalties that were the subject of default hearings under section 160 of the Infringements Act 2006 (Vic).

917. Statutory references for the offences in Table 12 are contained in Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ <www.sentencingcouncil.vic.gov.au>. The total number of cases for the 10 most common offences will not match the sum of the number of cases in each individual offence category. This is because the same case may contain more than one of the offences listed in the table (for example, if a case contains both unlicensed driving and exceed speed limit, it will only be counted once on the ‘10 most common offences’ row).
Table 13: Additional infringement-originating offences heard in the Magistrates’ Court, 2009–10 to 2012–13

<table>
<thead>
<tr>
<th>Rank</th>
<th>Offence name</th>
<th>Number of charges</th>
<th>Number of cases (people)</th>
<th>Charges per case</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Place feet on seats/furniture</td>
<td>1,084</td>
<td>342</td>
<td>667</td>
</tr>
<tr>
<td>12</td>
<td>Drink/possess open liquor on public transport</td>
<td>970</td>
<td>273</td>
<td>469</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14a</td>
<td>Drunk in a public place</td>
<td>745</td>
<td>317</td>
<td>328</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unranked</td>
<td>Shop theft</td>
<td>87</td>
<td>34</td>
<td>85</td>
</tr>
</tbody>
</table>

a. The offence at rank number 13 (use handheld phone while driving) has not been included in this analysis.

**Aggregate fines**

8.2.28 A comparison between aggregate fine amounts and the original infringement penalty amount must be treated with caution, given that the fine amount would reflect other charges in the case in addition to the particular reference offence. Bearing this in mind, of the aggregate fines imposed for the infringement-originating reference offences in the Special Circumstances List:

- over 90% of aggregate fines were higher than the original infringement penalty for the offences of stopping in a permit zone (100%), driving/owning unregistered vehicles (99.5%), parking infringements (98.5%), exceeding the speed limit (97.0%), stopping vehicles where not permitted (92.5%);
- between 80% and 90% of aggregate fines were higher than the original infringement penalty for the public transport ticket offences (86.8%), placing feet on seats (84.8%), driving unregistered in a toll zone (83.3%), drinking/possessing liquor on public transport (82.4%);
- 61.7% of the aggregate fines for unlicensed driving and 59.7% of the aggregate fines for failing to stop at a red light were higher than the infringement penalty;
- aggregate fines were imposed in relation to 38 charges of being drunk in a public place, all of which were lower than the infringement penalty;
- there were only 3 charges of shop theft to receive an aggregate fine, 1 of these received an amount lower than the infringement penalty, while 2 received a higher amount; and
- no charges of failing to provide information on identity of the driver received an aggregate fine in the Special Circumstances List in this period.

**Sentences (other than aggregate fines)**

8.2.29 Most (non-aggregate fine) sentences imposed in relation to infringement-originating charges for the 14 reference offences were less severe than the original infringement penalty, in that they were:

- lower on the sentencing hierarchy (for example, adjourned undertakings, dismissals, or convicted and discharged); or
- a fine of an amount lower than the infringement penalty amount.

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918. Statutory references for the offences in Table 13 are contained in Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ <www.sentencingcouncil.vic.gov.au>.
8.2.30 Of the sentences (other than aggregate fines) imposed for the infringement-originating reference offences in the Special Circumstances List:

- all sentences (100%) imposed for drive unregistered in a toll zone, placing feet on seats, parking offences, public transport ticket infringements, stopping a vehicle where not permitted, unlicensed driving, drinking/possessing liquor on public transport, shop theft, and being drunk in a public place were lower than the infringement penalty relating to that charge. There were only 3 proven charges of failing to provide information to identify driver in the Special Circumstances List, all of which received a sentence that was lower than the original infringement penalty.
- almost all of the sentences for exceeding the speed limit (99.9%) and drive/own an unregistered vehicle (99.7%) were lower than the lowest\(^{919}\) infringement penalty relating to that charge.
- almost all proven charges of failing to stop at a red light (99.8%) and stopping in a permit zone (99.6%) received a sentence that was lower than the original infringement penalty.

Outcomes in the general list

8.2.31 Of the 37,264 proven infringement-originating charges that were sentenced in the general list from 2009–10 to 2012–13:

- 40.7% (15,160) received an aggregate fine for the particular infringement-originating charge (and at least one other charge in the case);\(^{920}\) and
- 59.3% (22,104) received a sentence other than an aggregate fine.

Aggregate fines

8.2.32 Most of the aggregate fines imposed for the infringement-originating reference offences in the general list were higher than the original infringement penalty:

- Over 90% of aggregate fines were higher than the original infringement penalty for the offences of placing feet on seats (100%), possessing liquor on public transport (100%), parking infringements (94.8%), and stopping in a permit zone (90.1%).
- All of the aggregate fines for driving/owning an unregistered vehicle (100%) and most of the aggregate fines for exceeding the speed limit (96.2%) and unlicensed driving (90.9%) were higher than the lowest\(^{921}\) infringement penalty relating to that charge.
- Between 80% and 90% of aggregate fines were higher than the original infringement penalty for the public transport ticketing offences (87.7%), driving unregistered in a toll zone (84.4%), stopping vehicles where not permitted (83.7%), and failing to stop at a red light (81.7%).
- 60.1% of aggregate fines for failing to provide information on the identity of the driver were higher than the infringement penalty.
- There were no infringement-originating charges of drinking liquor on public transport, drunk in public, or shop theft given an aggregate fine on the general list.

\(^{919}\) As these offences have a number of different infringement penalties (depending on particular factors relating to the offence), but the data could not be disaggregated, the lowest infringement penalty was used for comparison. See Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ [<www.sentencingcouncil.vic.gov.au>].

\(^{920}\) See [8.2.28]–[8.2.32] (in relation to aggregate fines).

\(^{921}\) As these offences have a number of different infringement penalties (depending on particular factors relating to the offence), but the data could not be disaggregated, the lowest infringement penalty was used for comparison. See Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ [<www.sentencingcouncil.vic.gov.au>].
Sentences (other than aggregate fines)

8.2.33 Consistent with the findings in relation to sentences in the Special Circumstances List, between 70% and 100% of sentences in the general list for infringement-originating charges for the 14 reference offences were less severe than the original infringement penalty:

- All, or close to all, sentences imposed for infringement-originating offences sentenced in the general list were lower than the original infringement penalty for the offences of being drunk in a public place (100%), failing to provide information to identify driver (100%), drive unregistered in a toll zone (98.3%), failing to stop at a red light (97.9%), drinking/possessing liquor on public transport (97.8%), placing feet on seats (94.0%), and public transport ticketing infringements (91.4%). Four infringement-originating charges of shop theft were sentenced in the general list, all of which also received a sentence below the original infringement penalty amount.

- Between 80% and 90% of sentences were lower than the infringement penalty for parking infringements (89.6%), stopping a vehicle where not permitted (88.7%), and stopping in a permit zone (87.8%).

- Most sentences for exceeding the speed limit (87.8%), unlicensed driving (92.2%) and driving/owning an unregistered vehicle (73.8%) were lower than the lowest infringement penalty for that offence.922

Conclusion

8.2.34 The proportion of infringement-originating charges that are withdrawn at court and the lower sentencing outcomes for infringement matters heard in court suggest that some of the pressure could be removed from the Magistrates’ Court by strengthening other safety nets in the system. The remainder of this chapter presents recommendations designed to address some of the reasons that infringement matters are heard in open court. The focus of the analysis has been to identify opportunities for reform earlier in the infringement process to reduce pressure on the courts.

8.2.35 Consultation, research, and data analysis revealed that, while going to court is an essential safeguard of a credible infringements system, cases are ending up in open court that could be resolved earlier in the system through:

- ensuring that infringement penalty amounts are set at levels that are:
  - proportionate to the range of offending captured by the infringement offence;
  - a significantly lesser proportion of the maximum penalty; and
  - an amount lower than a person might expect to receive were the matter to go to court;
- introducing measures to better ensure that infringement penalties apply equally to infringement recipients, particularly to those experiencing financial hardship and to children; and
- improving the process for review of infringement penalties, particularly in cases raising special circumstances.

8.2.36 These matters are addressed in the remainder of this chapter.

8.2.37 Other recommendations in this report that are likely to contribute to decreasing the burden on the Magistrates’ Court include Recommendation 20 (removing the right to object to an unsuccessful enforcement review) and Recommendation 18 (requiring enforcement agencies to opt in — rather than opt out — of prosecution, if a person successfully applies for enforcement review).

922. As these offences have a number of different infringement penalties (depending on particular factors relating to the offence), but the data could not be disaggregated, the lowest infringement penalty was used for comparison. See Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ <www.sentencingcouncil.vic.gov.au>.
8.3 Proportionate infringement penalties

Fairness and proportionality

8.3.1 The infringements system is a part of the broader criminal justice system and criminal justice principles apply (albeit with some limitations due to the size and level of automation within the infringements system). Indeed, a number of criminal justice principles are encapsulated in the Attorney-General’s Guidelines to the Infringements Act 2006 (‘Attorney-General’s Guidelines’), including the need for fairness.923

8.3.2 A key element of fairness is that punishment meted out must ‘fit the crime’, that is, it must be proportionate to the offence that has been committed. In its purest form, the principle of proportionality dictates that:

the purpose of punishment in sentencing is to censure offenders in proportion to their blameworthiness. The more serious the offence, the more blameworthy is the offender, and thus the greater the deserved punishment. Seriousness involves the harm caused, risked or threatened by the offence, as well as the offender’s culpability in committing the offence.924

8.3.3 This is reflected in the policy on infringement offences in the Attorney-General’s Guidelines, which stipulates that:

Maintenance of proportionality between the relatively minor, clear-cut nature of infringement offences and the penalty they attract reinforces a sense of fairness in the system.925

8.3.4 In the context of the infringements system, the principle of proportionality requires that the infringement penalty amount for the offence must be:

- proportionate to the seriousness of the offence in its infringement form;
- a significantly lesser proportion of the maximum penalty (because infringements are targeted towards the least serious examples of the offence); and
- lower than a person might expect to receive were the matter to go to court.926

Perception that infringement penalties are disproportionate

8.3.5 One of the key themes to emerge from consultation is the concern that infringement penalty amounts are disproportionate, which has consequences across the whole system.927 Stakeholders submitted that there is disproportion:

- among different infringement offences (for example, taking into account their relative seriousness);
- among different offences when looking at the proportion of the maximum penalty that each infringement penalty amount represents; and
- between infringement penalty amounts and sentences for the same offence as well as sentences imposed across the criminal justice system.928

926. These considerations are included in the Policy on Infringement Offences in Department of Justice (2006), above n 145, 10–11, 14. See also [2.2.39]–[2.2.43] (principle of proportionality) and [3.2.16] (principles of the infringements system).
927. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), and Submission 8 (Brimbank Melton Community Legal Centre).
8.3.6 Proportionate infringement penalties are crucial to maintaining the fairness of the infringements system, which in turn is important to the system’s credibility. The perception that an infringement penalty for an offence is disproportionately high has a number of implications for the system.

8.3.7 First, by undermining perceptions that the infringements system is fair and credible, disproportionate penalties are likely to affect the degree to which people engage and comply with the system. This concern was voiced in many of the submissions received by the Council, for example:

For most members of society, contact with the infringements system will be their ‘main exposure’ to the criminal justice system. In order to enhance the system’s credibility and maximize compliance it is imperative that the system is perceived as fair. However, perceptions of fairness and legitimacy may be damaged if certain fine amounts are in excess of amounts applied to offences that may be perceived as more serious (for example, being fined a greater amount for a frequently non-life-threatening offence, such as being drunk in a public place, than for more dangerous behaviour, such as driving through a red light).

8.3.8 Secondly, the perception that the infringement penalties for some offences are disproportionately high is likely to encourage infringement recipients to take the matter to court in the hope of receiving a sentence that is just and proportionate in light of the circumstances of the offence.

8.3.9 In addition to raising issues of fairness, infringement penalties that are more severe than the current sentencing practices for an offence undermine the basic premise of the infringements system – to provide a person with a certain and discounted penalty in return for forgoing the right to a trial. Infringement penalties that exceed court-imposed sentences for an offence are likely to result in infringement recipients electing to take the matter to court to raise mitigating factors and to seek a proportionate punishment. As well as undermining the credibility of the infringements system, this can have an effect on the credibility of the criminal justice system more broadly; for example, a common theme in consultations was the perception that, for many infringement offences, court is seen as a ‘discount shop’ in terms of the ultimate penalty imposed.

8.3.10 An examination of infringement penalty amounts, maximum penalties, and sentencing practices for a number of common infringement offences supported stakeholder views that infringement penalties for some of these offences may be disproportionate and that this disproportion may contribute to the flow of infringement matters into court.

928. Meeting with Victoria Legal Aid (14 August 2013); Submission 3 (Youthlaw), endorsing Submission 7; Submission 6 (North Melbourne Legal Service Inc.), endorsing Submission 7; Submission 7 (Infringements Working Group); Submission 8 (Brimbank Melton Community Legal Centre), endorsing Submission 7.

929. Submission 5 (Saunders, Lansdell, Eriksson, and Brown).

930. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Submission 2 (Anonymous); Submission 3 (Youthlaw), endorsing Submission 7; Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 6 (North Melbourne Legal Service Inc.), endorsing Submission 7; Submission 7 (Infringements Working Group); Submission 8 (Brimbank Melton Community Legal Centre), endorsing Submission 7; Submission 10 (PILCH Homeless Persons’ Legal Clinic).

931. Roundtable 2 – Payment and Enforcement (26 August 2013).
Are some infringement penalties disproportionate?

8.3.11 One aspect of proportionality is the degree to which infringement penalty amounts are proportionate across the range of infringement offences. Related to this is how the infringement penalty amount compares with the maximum penalty. The significance of this is highlighted in the Attorney-General’s Guidelines, which provide that:

The level of the infringement penalty must be set as a significantly lesser proportion of the maximum penalty to maintain the ‘bargain’ in the infringements system and the incentive inherent in that bargain. As a general rule, the infringement penalty should be no more than approximately 25% of the maximum penalty for the offence. However, a proportion of up to 50% can be considered where there are strong and justifiable public interest grounds.932

8.3.12 Among other requirements, the Attorney-General’s Guidelines provide that, from 1 July 2006, any department or enforcement agency wishing to propose new offences to be dealt with by way of infringement must consult with the Infringements System Oversight Unit in the Department of Justice.933 Further, new offences must satisfy the requirements set out in the Attorney-General’s Guidelines.934

8.3.13 Despite the Infringements System Oversight Unit’s supervisory role, consideration of new penalty amounts on an offence-by-offence basis is unlikely to provide the scope necessary to consider the relativities and proportionality between infringement penalty amounts across the infringements system as a whole. Furthermore, the infringement penalties for many, if not most, of the thousands of infringement offences were set prior to the Attorney-General’s Guidelines taking effect.

8.3.14 Victoria Legal Aid submitted that, despite the existence of the Attorney-General’s Guidelines:

there are a number of infringement offences on the statute book that depart from this framework. … VLA is concerned that some infringement penalties are not proportionate to the severity of the conduct. In addition, there are some substantial inconsistencies in the nature and seriousness of offences enforceable by infringement notice … VLA supports close examination of the current infringement offences in the Victorian statute book. This should include an examination of penalty levels and also of the suitability of certain conduct for infringement offences.935

8.3.15 Table 14 (page 236) presents the 14 reference offences936 in order of infringement penalty amount (from highest to lowest). These offences – which account for 93.7% of identifiable infringement-originating charges taken to court – were examined to see whether there was any support for the view that some penalties are disproportionate and, if so, how this could be remedied.

The maximum penalty and relative offence seriousness

8.3.16 The infringement penalty amounts for the offences set out in Table 14 range from 10% of the maximum penalty for the offence (for example, a second or subsequent offence of unregistered driving) to 50% of the maximum penalty (for example, being drunk in a public place). A number of stakeholders argued that some infringement penalties, including for several of the offences in Table 14, are disproportionate in light of the relative seriousness of the offence and its maximum penalty.

933. Ibid 3.
934. Ibid 10.
935. Submission 4 (Victoria Legal Aid).
936. See [8.2.23]–[8.2.24].
Drunk/drunk and disorderly in a public place

8.3.17 The offence of being drunk in a public place and a second or subsequent offence of being drunk and disorderly in a public place have penalties that are 50% of the maximum penalty. Some stakeholders argued that these penalties were disproportionately high, particularly given that people who live in the public space (for example, homeless people) may be particularly vulnerable to receiving infringement penalties for these offences. On this view, it may be difficult to understand why there were ‘strong and justifiable public interest grounds’ for setting these penalties at 50% of the maximum penalty, given, for example, that the infringement penalty for the offence of exceeding the speed limit by 45 km per hour or more is 25% of the maximum penalty.

8.3.18 Another view is that the penalties for these offences have been deliberately set at their current level in the public interest, as part of a number of measures to combat alcohol fuelled violence. When the infringement penalties for these two offences were increased in August 2011, the Premier announced that the increased penalties were part of a suite of measures to ‘help police and licensees tackle alcohol-related offences’ and that the penalties were intended to ‘send a strong message to the community that drunkenness and anti-social behaviour will not be tolerated’.

8.3.19 A number of stakeholders compared the current infringement penalty amount for being drunk and disorderly in a public place (5 penalty units for a first offence or infringement ($721.80) and 10 penalty units for a second offence or infringement ($1,443.60)) with various driving offences. For example, the penalty for a second or subsequent offence of being drunk and disorderly in a public place is:

- double that for the offence where the driver of a non-heavy vehicle exceeds the speed limit by 45 km per hour or more (5 penalty units); and
- four times that for failing to stop at a red traffic light (2.5 penalty units).

8.3.20 Given the degree of harm risked by excessive speeding and failing to stop at a red light, some stakeholders argued that the penalties for being drunk/drunk and disorderly in a public place are disproportionately high. For example, Dr Bernadette Saunders, Associate Professor Gaye Lansdell, Dr Anna Eriksson, and Ms Meredith Brown expressed the view that:

Fine amounts are not always proportionate to the seriousness of the offence. For example, people who are found drunk in a public place receive a fine in excess of $500, but those fined for driving through a red light (a $305 infringement) or speeding 10–24 km/h over the limit (a $244 infringement) receive a lighter penalty.

937. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).

938. See [8.3.11].


940. Ibid.

941. Summary Offences Act 1966 (Vic) ss 13, 14, 60AB(4), 60AB(5)(a)–(b).

942. Road Safety Road Rules 2009 (Vic) r 20; Road Safety (General) Regulations 2009 (Vic) sch 7, item 17.

943. For example, Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Submission 5 (Saunders, Lansdell, Eriksson, and Brown).

944. Submission 5 (Saunders, Lansdell, Eriksson, and Brown).
Table 14: Infringement value and maximum penalties for various offences including the reference offences

<table>
<thead>
<tr>
<th>Offence</th>
<th>Infringement penalty</th>
<th>Maximum penalty</th>
<th>Infringement value 2013–14*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drunk and disorderly in a public place (second or subsequent offence)</td>
<td>10 penalty units</td>
<td>20 penalty units/1 month's imprisonment</td>
<td>$1,443.60</td>
</tr>
<tr>
<td>Use/own unregistered vehicle Ranges from 1–9 penalty units depending on number of axles</td>
<td>Natural persons: 25 penalty units (first offence), 50 penalty units (second or subsequent offence). Corporations: 125 penalty units (first offence), 250 penalty units (second or subsequent offences)</td>
<td>$144.36–$1299.24</td>
<td></td>
</tr>
<tr>
<td>Fail to give information on identity of driver</td>
<td>6 penalty units</td>
<td>20 penalty units or 4 months' imprisonment or both if the information relates to an accident involving death or serious injury, otherwise 10 penalty units or 2 months' imprisonment or both</td>
<td>$866.16</td>
</tr>
<tr>
<td>Unregistered driving</td>
<td>5 penalty units</td>
<td>25 penalty units (first offence), 50 penalty units (second or subsequent offence)</td>
<td>$721.80</td>
</tr>
<tr>
<td>Unlicensed driving</td>
<td>5 penalty units</td>
<td>25 penalty units/3 months' imprisonment</td>
<td>$721.80</td>
</tr>
<tr>
<td>Drunk and disorderly in a public place (first offence)</td>
<td>5 penalty units</td>
<td>20 penalty units/3 days' imprisonment</td>
<td>$721.80</td>
</tr>
<tr>
<td>Exceed speed limit (driver of non-heavy vehicle) by 45 km per hour or more</td>
<td>5 penalty units</td>
<td>20 penalty units</td>
<td>$721.80</td>
</tr>
<tr>
<td>Exceed speed limit (driver of non-heavy vehicle) by ≥ 40 km per hour but &lt; 45 km per hour</td>
<td>4.25 penalty units</td>
<td>15 penalty units</td>
<td>$613.53</td>
</tr>
<tr>
<td>Drunk in a public place</td>
<td>4 penalty units</td>
<td>8 penalty units</td>
<td>$577.44</td>
</tr>
<tr>
<td>Exceed speed limit (driver of non-heavy vehicle) by ≥ 35 km per hour but &lt; 40 km per hour</td>
<td>3.75 penalty units</td>
<td>15 penalty units</td>
<td>$541.35</td>
</tr>
<tr>
<td>Exceed speed limit (driver of non-heavy vehicle) by ≥ 30 km per hour but &lt; 35 km per hour</td>
<td>3.25 penalty units</td>
<td>10 penalty units</td>
<td>$469.17</td>
</tr>
<tr>
<td>Exceed speed limit (driver of non-heavy vehicle) by ≥ 25 km per hour but &lt; 30 km per hour</td>
<td>2.75 penalty units</td>
<td>10 penalty units</td>
<td>$396.99</td>
</tr>
<tr>
<td>Fail to stop at red traffic light</td>
<td>2.5 penalty units</td>
<td>10 penalty units</td>
<td>$360.90</td>
</tr>
</tbody>
</table>
Drink liquor on public transport vehicle/premises 2.45 penalty units (adult), 0.5 (child) 5 penalty units $353.68 (adult), $72.18 (child)

Exceed speed limit (driver of non-heavy vehicle) by ≥ 10 km per hour but < 25 km per hour 2 penalty units 10 penalty units $288.72

Shop theft 2 penalty units 10 years’ imprisonment $288.72

Public transport ticket offence (adult) 1.47 penalty units 5 penalty units $212.00

Place feet on seats/furniture (adult) 1.47 penalty units 5 penalty units $212.00

Possess liquor on public transport vehicle/premises 1.47 penalty units (adult), 0.5 (child) 5 penalty units $212.00 (adult), $72.18 (child)

Exceed speed limit (driver of non-heavy vehicle) by less than 10 km per hour 1.25 penalty units 10 penalty units $180.45

Drive unregistered vehicle in a toll zone 1 penalty unit 10 penalty units $144.36

Fail to obey no stopping sign/stop where ‘clearway’ sign applies 1 penalty unit 3 penalty units $144.36

Stop in loading zone/stop in disability parking area where not entitled 1 penalty unit 2 penalty units $144.36

Stop in a permit zone 0.6 of a penalty unit 2 penalty units $144.36

Fail to purchase parking ticket/park longer than indicated 0.2 to 0.5 of a penalty unitb 2 penalty units $28.87–$72.18

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b. Road Safety Road Rules 2009 (Vic) r 207. Although the Road Safety Road Rules 2009 (Vic) prescribe a penalty of 0.2 penalty units, section 87(4) of the Road Safety Act 1986 (Vic) allows local councils to vary the penalty for parking offences from 0.2 to 0.5 of a penalty unit: a municipal council may ‘fix a penalty for a parking infringement in contravention of a regulation under this Act … if the penalty to be fixed is not more than 0.5 penalty unit and is not more than the penalty prescribed by the regulations’. It is likely that most, if not all, councils have applied this provision to all infringements that fall within the scope of this provision and have been set in Schedule 6 at 0.2 of a penalty unit.

8.3.21 Another view is that, when comparing infringement penalties for non-driving offences with those for driving offences such as speeding, it is important to remember that for many driving offences, the infringement penalty is not the only sanction. Driving offences such as speeding are likely to attract ancillary sanctions such as licence suspension, licence cancellation, and disqualification from driving and/or loss of demerit points.945

945. Sentencing Act 1991 (Vic) pt 4 div 3; In sentencing, sanctions such as disqualification from driving are recognised as part of the sentence for an offence: R v Roe (Unreported, Supreme Court of Victoria, Court of Criminal Appeal, Young CJ, Crockett and Brooking JJ, 7 November 1984) 4 (Young CJ).
Failing to purchase a ticket/pass and offences on public transport

8.3.22 A range of public transport offences were also raised as examples of disproportionate penalty amounts. A number of stakeholders submitted that the penalties for some public transport offences were disproportionately high, having regard to the relative seriousness of the offence. For example, Dr Bernadette Saunders, Associate Professor Gaye Lansdell, Dr Anna Eriksson, and Ms Meredith Brown expressed the view that:

fine amounts for failure to travel without a valid ticket ($212) and feet on seats are also disproportionate to the seriousness of the offence. The dual implication of this is an inability for people to pay these amounts, coupled with a diminished respect for the infringements system.946

8.3.23 In its review of penalty notices, the New South Wales Law Reform Commission made similar findings in relation to inconsistent penalty notice amounts:

Some penalty notice amounts do not seem to be proportional to the nature and seriousness of the offence. For example, a minor public transport offence, such as offensive language or spitting on a railway platform attracts a penalty of $400 whereas the public safety offence of driving through a red light or tailgating attracts the lower amount of $353.947

8.3.24 Referring to the above New South Wales example, Saunders et al. wrote:

The proportionality principle, which is based on the premise that the punishment must fit the crime, is commonly accepted … The clear discrepancy here is that the former ‘offence’ may not endanger life yet incurs a higher penalty than the latter offence which frequently does. Therefore, the fine amounts incurred for failing to obey traffic signals seem manifestly inadequate when compared with the fines incurred for the often harmless and victimless minor public order offences.948

8.3.25 A further point raised in relation to failing to have a ticket type offences is that a range of offences covers similar conduct but the offences have quite different penalties. For example, in 2013–14:

- the infringement penalty for failing to purchase a parking ticket was $72.18;
- the infringement penalty for driving in a toll zone without paying the toll (driving unregistered in a toll zone) was $144.36; and
- the infringement penalty for failing to have a ticket on public transport was $212.

Importance of proportionate penalties

8.3.26 The Attorney-General’s Guidelines make it clear that ensuring that infringement penalties are set in proportion to the relative seriousness of the offence ‘reinforces a sense of fairness in the system’.949 In turn, this is crucial to the credibility of the system, particularly in light of the fixed nature of the penalties and the high level of automation within the system. As the New South Wales Law Reform Commission cautioned:

Discrimination can … potentially arise from the strict liability nature of most penalty notice offences, which do not allow tailoring of penalties to the objective seriousness of the particular offence and to the personal circumstances of the penalty notice recipient, including his or her

946. Submission 5 (Saunders, Lansdell, Eriksson, and Brown).
8.3.27 A perception that penalties are unfairly set may affect the willingness of infringement recipients to comply and may increase the chance that recipients will seek to have the matter heard in open court.

**Lower penalty than might be expected from court**

**Part of the incentive underpinning the system**

8.3.28 The set amount of an infringement penalty is also intended to be significantly lower than the actual sentence a person might face if the matter were heard in court.

8.3.29 This ‘discounted’ penalty is intended to motivate people to pay the infringement penalty instead of exercising their right to take the matter to court where they may incur a higher fine. This is reflected in the Attorney-General’s Guidelines, which provide that infringement penalties should be ‘demonstrated to be lower than the average of any related fines previously imposed by the Courts’. The Attorney-General’s Guidelines emphasise that:

> Part of the incentive underpinning the system is that the level of penalty is set at an amount lower than a person might expect to receive were the matter to go to court.

8.3.30 This is a measure of whether an infringement penalty is proportionately placed within the criminal justice system. For offences that can be dealt with through the issuing of an infringement notice, it is likely that the least serious examples of the offence are prosecuted through the infringements system, while the more serious examples of the offence are dealt with through filing a charge and bringing the defendant before a court. Therefore, a reasonable test as to whether an infringement penalty amount is proportionate is whether it is lower than the majority of sentences for cases prosecuted in court by a charge, as envisaged by the Attorney-General’s Guidelines.

8.3.31 The following is an examination of sentencing outcomes for matters that originated in the Magistrates’ Court through the person being charged (rather than issued with an infringement penalty notice). This examination tests whether the infringement penalties for a number of the reference offences could be ‘demonstrated to be lower than the average of any related fines previously imposed by the Courts’.

8.3.32 A matter to bear in mind is that because many, if not most, infringement penalties were set before the Attorney-General’s Guidelines were applicable, the policy framework in the Attorney-General’s Guidelines is unlikely to have informed the level at which some of these infringement penalty amounts have been set.

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953. Ibid 14.
956. The policy applies to all legislative and regulatory proposals for infringement offences from 1 July 2006: ibid 10.
Comparison between sentences and infringement penalties

8.3.33 Figure 33 presents sentencing outcomes for matters that originated in the Magistrates’ Court through the person being charged rather than issued with an infringement penalty notice. These outcomes are compared with the relevant infringement penalty, to test whether the infringement penalties for these offences are demonstrably lower than sentences previously imposed by the courts.

8.3.34 As three of the offences in Figure 33 (marked with an asterisk) have a number of different infringement penalties (depending on particular factors relating to the offence), but the data could not be disaggregated, sentencing outcomes were compared with the lowest and the highest infringement penalties for the offence (reflected in the two bars for each of these offences). The true proportion of sentenced charges above the infringement penalty for these offences will sit between the two extremes indicated on the graph. While the variation in the proportion for exceed speed limit is extremely broad (between 4.1% and 55.4% of sentenced charges received a sentence that was more severe than the infringement penalty), the variation for the offences of unlicensed driving and driving/owning an unregistered vehicle is less extreme. For driving/owning an unregistered vehicle, between 30.9% and 63.2% of sentenced charges received a sentence that was more severe than the infringement penalty for the offence. Between 73.1% and 82.9% of sentenced charges for the offence of unlicensed driving received sentences that were more severe than the infringement penalty for the offence.

8.3.35 As Figure 33 shows, there was substantial variation in the proportion of sentenced charges for each offence that received a sentence below or above the infringement penalty amount. While each offence is likely to have a different dynamic, the proportion of charges that received sentences below the infringement penalty amount for some offences, and the variation between offences, lend support for stakeholder views that there are problems with the infringement penalty levels in at least some cases.

8.3.36 For example, the infringement penalty amount was higher than at least 75% of sentencing outcomes for the offences of driving unregistered in a toll zone, failing to stop at a red light, parking offences, public transport ticketing offences, placing feet on seats (of public transport), and being drunk in a public place. Although other factors would have also influenced sentencing outcomes in these cases (such as the number of charges in a case and the presence of mitigating factors) and these findings are not enough to unequivocally conclude that the infringement penalties are disproportionately high, these findings suggest that a review of infringement penalties may be warranted.

A review of infringement penalties?

8.3.37 Infringement penalties should be set at levels that are proportionate to the seriousness of the type of offending behaviour for which it is appropriate to issue an infringement notice, and should be lower than the sentence the person might expect to receive if he or she were to be sentenced in court for the offence. These objectives are stated clearly in the Attorney-General’s Guidelines. When individual infringement penalties are set at levels disproportionate to other infringement offences and to sentencing for the offence as a whole, it creates a strong incentive for the infringement recipient to elect to take the matter to court.

958. See Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ <www.sentencingcouncil.vic.gov.au> for an explanation of how this analysis was done.
Figure 33: Proportion of reference offences diverted or sentenced above or below the infringement penalty amount, 2009–10 to 2012–13 (charge-originating)
8.3.38 While the examination of sentences imposed for the offences in Figure 33 covers a small fraction of the total infringement offences, these offences represent 87.4% of identifiable infringement-originating matters heard in court. They are therefore significant as indicators of some of the pressures driving infringement matters to open court.

8.3.39 A number of those the Council consulted submitted that there should be a review of infringement penalties. For example, Submission 4 (Victoria Legal Aid). Advocates of a system-wide review suggested that one of the reasons that certain penalties are out of alignment is the continuous ad hoc expansion of the infringements system to include new offences, without taking stock of the system as a whole.

8.3.40 Reviewing infringement penalties to more closely align them to sentencing practices is likely to reduce the number of people who seek to have their matter heard in open court. Ensuring that infringement penalties are fair and proportionate is also essential to maintaining the credibility of the infringements system.

8.3.41 A broad review of infringement penalties is necessary to ensure that they are proportionate and reflect the relative seriousness of the relevant infringement offence. A review of infringement penalties should incorporate consultation with key stakeholders, including the administrative body, enforcement agencies, and organisations that provide assistance to infringement recipients.

8.3.42 In light of the broad reform of fine and infringement penalty management and enforcement currently underway, infringement penalty amounts should be reviewed to ensure that they are proportionate to the seriousness of the relevant infringement offences.

Recommendation 38: Review of infringement penalties
The Department of Justice should review infringement penalty amounts to ensure that amounts are proportionate, taking into account matters including:

- the purposes of the infringements system;
- the Attorney-General’s Guidelines to the Infringements Act 2006;
- the principles set out in this report;
- the maximum penalties for the offences;
- the nature and seriousness of the offences including the nature and seriousness of the form of the offences appropriate for the issuing of an infringement notice;
- the need to ensure that infringement penalty amounts are consistent for comparable infringement penalty offences;
- the need to ensure that infringement penalties are set at an amount lower than a person might expect to receive if the matter were to go to court;
- sentencing principles;
- community safety issues;
- marginal deterrence;
- issues in relation to children;
- issues in relation to corporations;
- the way payment of the infringement penalty is managed;
- ancillary sanctions (for example, overnight detention and driver licence sanctions); and
- the credibility of the infringements system.

959. For example, Submission 4 (Victoria Legal Aid).
960. For example, the expansion of the infringements system to include public order offences.
8.4 **Equal effect of infringement penalties**

**Relevance of financial capacity**

8.4.1 If a court decides to impose a fine on a person, it must take into account the person’s financial circumstances in deciding how much the fine should be and how it should be paid. This reflects the balancing of the principles of proportionality and equal impact, which in combination require the system to:

- strive to avoid imposing sanctions that produce grossly unequal effects on offenders with differing resources. Accordingly, it has been a long-established principle of sentencing that a fine lower than might otherwise be appropriate to the offence can be imposed on an offender who is clearly unable to pay the larger amount.

8.4.2 In contrast, the infringements system – by virtue of the comparatively minor offending it is intended to address and the large volume of matters it involves – is based on fixed penalties. The infringements system does not currently provide avenues for mitigation of infringement penalties to take into account a person’s financial circumstances, although it provides other hardship measures such as payment plans and payment orders. A common theme among those who made submissions or attended Council meetings is that this inability to ensure the equal effect of penalties in cases of financial hardship is contributing to the flow of infringement matters into open court.

8.4.3 Adapting an infringements system to better accommodate the principle of equal impact is complicated and challenging. Many jurisdictions have grappled, or are grappling, with this dilemma. Proposals to allow for adjustment of infringement penalty amounts for those experiencing financial hardship have been raised in a number of jurisdictions but have not been widely implemented.

8.4.4 Most stakeholders who raised this issue with the Council supported amendments to allow infringement penalties to be adjusted to lessen the inequality of fixed penalties for infringement recipients who accept responsibility for the offence and want to pay but are experiencing financial hardship.

8.4.5 In the Victorian context, there are two main policy reasons for the adjustment of infringement penalties according to a person’s financial capacity.

8.4.6 First, it is consistent with the approach taken to court fines under Victorian sentencing law. More closely harmonising the approaches to financial hardship in sentencing and in the infringements system may reduce the number of infringement matters taken to open court. Providing a penalty adjustment for financial hardship strikes a better balance between the principles of proportionality and equality before the law than the current approach, which heavily favours proportionality.

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961. Sentencing Act 1991 (Vic) s 50(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 52(1) (Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).


963. See Appendix 1.


966. Submission 7 (Infringements Working Group); Submission 10 (PILCH Homeless Persons’ Legal Clinic).
8.4.7 Second, it is likely to enhance the effectiveness and efficiency of infringement penalties by shifting at least some people from the category of 'can’t pay' into the category of 'will pay', particularly people who have a small number of infringement penalties. By providing an early exit from the system for people who ‘can’t pay’, enforcement resources and the resources of the court can be better directed to those who ‘won’t pay’. Infringement penalties may be more likely to achieve deterrence and just punishment for persons in financial hardship by:

- striking an appropriate balance between providing ways for financially disadvantaged infringement recipients to exit the system while still providing a financial consequence for their offending; and
- making the punitive aspect of the infringement penalty more effective and meaningful if payment is achievable and ultimately is achieved.

Harmonisation with approach to financial hardship in court fines

Financial hardship and court fine amounts

8.4.8 Once a court has decided to fine an offender, it must determine the fine amount having regard to myriad factors, including the offender’s financial circumstances. In the Western Australian context, Malcolm CJ explained this task:

The purpose of a fine is primarily to punish the offender. Consequently, the amount of the fine must be such as will constitute an appropriate punishment having regard to the offender’s capacity to pay. Thus, the amount and method of payment of the fine will need to take into account, as far as practicable, the financial resources and income of the offender and the nature of the burden that its payment will impose.

8.4.9 Under the Sentencing Act 1991 (‘Sentencing Act’), a court must have regard to the offender’s financial circumstances when determining the fine amount and the method of payment, although the court is not prevented from imposing a fine if it is unable to ascertain the offender's financial circumstances, for example, where the matter is heard ex parte.

8.4.10 Imposing a fine that is ‘beyond the offender’s reasonable capacity to pay’ is ‘never just or rational’. Fines that are imposed but cannot be paid undermine the credibility of the criminal justice system:

It is of no avail for a criminal court to impose fines upon defendants … unless it has ascertained that the means are available to those defendants to pay the fines ordered … Courts must not act in vain. Orders must not be made which are in effect empty.

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967. Sentencing Act 1991 (Vic) ss 5(2), 50(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 52(1) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).


969. Sentencing Act 1991 (Vic) s 50(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 52(1) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

970. Sentencing Act 1991 (Vic) s 50(1); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 52(1) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).


8.4.11 Thus, two competing principles must be balanced in setting a fine amount:

- the principle of ‘just deserts’ or ‘proportionality’, which provides that the degree of punishment (including the fine amount) should be chiefly determined by reference to the seriousness of the offence; and
- the principle of equal effect (reflected in section 50(1) of the Sentencing Act, which requires that the offender’s financial circumstances must be considered).

8.4.12 In some cases, the circumstances of the offender may warrant a reduction in the sentence that is otherwise proportionate to the offence seriousness:

once a determination has been made that a fine should be imposed the correct procedure in assessing the appropriate amount of the fine is to determine it by reference to the gravity of the offence for which it is imposed. If the court is satisfied that the offender would be unable to pay the amount determined it may reduce it to take account of the offender’s means and impecuniosity.\(^\text{973}\)

Financial hardship and infringement penalty amounts

8.4.13 In comparison, one of the criticisms of the overall ‘fairness’ of the infringements system is that the system favours proportionality over equal effect, with the result that uniform infringement penalties may have an unequal effect on a particular person in light of his or her personal or financial circumstances. This is particularly so for infringement recipients who are children or who are experiencing significant financial hardship. A penalty that may be an inconvenience to a person on a middle or high income can be devastating to a person on a low income.\(^\text{974}\) For those in financial hardship, ‘equal’ penalties may create significant inequality. A number of stakeholders who made submissions raised this issue.\(^\text{975}\)

8.4.14 Because courts must, and do, consider both proportionality and equal effect (including the person’s capacity to pay) in sentencing infringement-originating matters heard in court, there is a strong incentive for those who lack the capacity to pay an infringement penalty to have the matter heard in court. This creates an obvious tension between the infringements system and the court system and is likely to explain a substantial proportion of infringement cases heard in court.

8.4.15 This is not the first time this issue has been raised in Victoria. In its 2005 review of warrants in the infringements system, the Victorian Parliament Law Reform Committee observed:

A common complaint about the infringement system in respect of individuals who accept that they have committed an offence and should consequently pay a penalty is that it fails to take into account people’s financial circumstances. Because penalties are set at flat rates, a millionaire who commits an infringement offence pays the same penalty as someone with negligible assets or income. Infringement penalties therefore have an unequal objective impact on individuals.

It is a fundamental principle of the rule of law that everyone should be treated equally. Indeed, it is a philosophical basis for having fixed penalties. However, the variation in the effects of

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975. For example, Submission 4 (Victoria Legal Aid); Submission 5 (Saunders, Lansdell, Eriksson, and Brown).
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the penalty means that equal treatment results in unequal impacts. … this is one of the most significant contributors to perceptions of unfairness about the infringement system. It also has a practical impact on the efficiency of the infringement system.976

8.4.16 Similar observations were made by the New South Wales Law Reform Commission in its review of penalty notices:

The impact of penalty notices on vulnerable people has been considered repeatedly in previous reviews. These reviews have highlighted a number of problems that vulnerable people have with the penalty notice system.

The first of these problems derives from poverty, the disproportionate impact of financial sanctions on people on low incomes, and the inability of some people to pay the amounts owing. Penalty notices impose only one type of penalty, a fixed monetary amount. They differ from court-imposed fines, where the court must take into account the defendant’s means to pay. They may be unwelcome and inconvenient for people with a reasonable income but for people who live in poverty, for various reasons, penalties have a disproportionate impact.977

8.4.17 The Commission added:

Financial penalties imposed by courts can be determined by reference to the income levels of those who are fined, whereas a penalty notice involves a fixed financial penalty. Fixed penalties are efficient and cost effective to administer. On a superficial level they appear fair; since everyone pays the same amount for the same offence. However, this ‘fairness’ is one-dimensional because a fixed penalty will have a much greater impact upon low-income earners than others.978

8.4.18 In the Victorian context, the infringement penalty amount for an adult travelling without a valid ticket on public transport in 2013–14 is $212. As a proportion of a person’s weekly income, this penalty is approximately:

• 15% of the weekly income of an adult in full-time work earning the average weekly earnings of a Victorian;979
• 56% of the weekly income of a person receiving the maximum rate of the disability support pension;980 and
• 83% of the maximum weekly payment rate for a single person with no dependent children in receipt of the Newstart allowance.981

8.4.19 Thus an infringement penalty notice for travelling without a valid ticket ‘may be very onerous for someone on a low income but [has] less impact on a person earning an average income’.982

8.4.20 A person who cannot pay an infringement penalty due to financial hardship currently has limited avenues for having his or her overall punishment adjusted in light of personal circumstances, particularly in situations where a person has accrued multiple infringement

976. Law Reform Committee (2005), above n 645, 412–413.
978. Ibid [11.4].
979. The average weekly earnings of a full-time adult in Victoria was $1,389.10 per week (as at November 2013): Australian Bureau of Statistics, Average Weekly Earnings, Australia, November 2013, cat. no. 6302.0 (2013) Table 2.
981. The maximum weekly payment rate for a single person with no dependent children in receipt of Newstart allowance is $255.25. The amount varies slightly for recipients in different circumstances, for example with dependent children: Department of Human Services (Cth) (2014), above n 764.
notices. Internal review983 is a blunt tool, in that the infringement notice can be withdrawn but not reduced. While someone facing financial hardship and homelessness may apply for internal review based on special circumstances, and if successful the infringement notice can be withdrawn, someone who is not homeless but is in equally dire financial circumstances has little scope to reduce the infringement penalty amount without taking the matter to court. Further, payment plans can lock vulnerable people into making payments over years.984

8.4.21 A number of stakeholders confirmed that a reason that infringement-originating matters end up in court is that court is the only avenue for seeking a just penalty in light of the recipient’s particular mitigating circumstances (including financial hardship).985 In its submission to the Council, the Infringements Working Group said a driver of infringement cases into open court is the:

\[\text{disproportionate impact of the current system on people experiencing poverty} – \text{people who can afford to deal with their infringements by payment can avoid the stress of going to court, contesting an infringement and potentially receiving a criminal record. People experiencing poverty cannot afford to exit the system.}\]

8.4.22 The requirement in the Attorney-General’s Guidelines that infringement penalties be ‘set at an amount lower than a person might expect to receive were the matter to go to court’987 arguably has application in considering how well the infringements system provides scope to adjust the penalty in light of financial hardship in an individual case.

Effective and efficient infringement penalty enforcement

8.4.23 In his letter to the Council accompanying the terms of reference, the Attorney-General set out a number of aims of the review, including:

- the need to tackle issues that contribute to non-compliance, reduced credibility of the system, and reduced effectiveness and efficiency of court fines and infringement notices;
- to increase payment rates and reduce debt arising out of unpaid fines; and
- to seek to provide other options to satisfy debt for those who cannot pay upfront or on a payment plan.988

A comprehensive financial hardship program

8.4.24 Ensuring that infringement penalties are payable, and paid, is essential to their effectiveness as a sanction and to the credibility of the infringements system. In its review of penalty notices, the New South Wales Law Reform Commission emphasised:

\[\text{the need to respond to the impact of fixed penalty amounts on low-income earners and the compounding effects of penalty notice debt on social disadvantage and personal and family distress. Enforcing debt in relation to those who cannot pay is wrong in principle, and in practice wastes the resources of enforcement authorities.}\]
8.4.25 Where the penalty for a single infringement amounts to all or a significant proportion of a person’s weekly income, the likelihood of the person being able to pay the infringement diminishes. At best, recipients in this position sign up to long payment plans to pay a penalty that a person on a middle income could pay immediately. Even if the person has the willingness but not the means to pay, by not paying the person is going unpunished.

8.4.26 The Victorian infringements system already includes some measures to reduce the unequal effect of infringement penalties on the financially disadvantaged, including the availability of time to pay arrangements, payment plans, and payment orders, and this report recommends adding work and development permits to the suite of measures available.\(^{990}\) Strengthening the existing financial hardship measures in the infringements system by also including a concession scheme may increase the efficiency and effectiveness of the infringements system.

8.4.27 In other contexts, such as the utility services sector, the benefits of a package of measures to increase compliance among those in financial hardship have been recognised. Broadly speaking, infringement penalties and utility services are not analogous: while some level of utility consumption is essential, the commission of an infringement offence is generally a matter of choice (although some vulnerable or disadvantaged persons, such as the homeless, may be disproportionately exposed to infringement penalties).\(^{991}\) However, there are parallels between infringement penalties and utility services in relation to efficient payment collection.

8.4.28 In the utility services sector, financial hardship programs incorporate Commonwealth health care card-based concessions and other concessions, payment management, including time to pay arrangements, and referral to financial and other counselling services. The concessions system is an integral part of these programs and receives almost universal support from stakeholders in the sector, including retailers.\(^{992}\)

8.4.29 In 2005, the Victorian Government Committee of Inquiry into the Financial Hardship of Energy Consumers reported that there is a ‘strong business case’ for financial hardship programs.\(^{993}\) The Committee noted that minimising the accumulation of debts is advantageous for retailers as well as customers because it reduces the costs of debt collection and other consequences of payment default (such as utility disconnection).\(^{994}\)

\(^{990}\) See Chapter 4.

\(^{991}\) Vulnerable people, such as those experiencing homelessness, can be particularly susceptible to committing certain infringement offences (such as being drunk in a public place or travelling on public transport without a ticket). Saunders et al. describe such offences as ‘offences of poverty’, and suggest that ‘high fine amounts for such offences may be unlikely to deter future offending. Indeed, they may be more likely to entrench and perpetuate a cycle of poverty’: Saunders et al. (2013), above n 194, 36 referring to New South Wales Law Reform Commission (2012), above n 366, 118. See also Submission 4 (Victoria Legal Aid).


\(^{993}\) Department of State Development, Business and Innovation (2005), above n 992. One of the industry-leading programs is conducted by Yarra Valley Water in association with Kildonan Child and Family Services and was cash-flow positive within the first two years of operation.

\(^{994}\) Department of State Development, Business and Innovation (2005), above n 992.
8.4.30 In a similar vein, the Productivity Commission has stated that:

As well as helping consumers facing hardship, there are incentives for [utility] suppliers to run these programs. In particular, they help suppliers to:

- recoup some payment in situations where a customer is simply unable to pay immediately rather than unwilling to pay, thus reducing costs of debt collection; and
- identify potential problem customers and apply preventative measures before substantial debts arise.995

8.4.31 In addition to increasing efficiency and effectiveness, comprehensive financial hardship programs also have broader economic and social benefits by enabling a person to pay a penalty that is proportionate to his or her income and still meet essential housing, transport, and food costs. As discussed at [8.4.18], a person on a low income (particularly one derived from social security payments) may have very little, or no, capacity to pay an unadjusted infringement penalty. An income-proportionate penalty may also reduce reliance on high-interest credit by persons facing financial hardship. The Infringements Working Group reported that:

People who can’t afford to pay fines report borrowing money from Cash Convertors and accruing credit card debt to make fine payments, thus creating further financial hardship.996

8.4.32 The Victorian infringements system has some financial hardship measures, and additional measures are proposed in this report. While these measures are part of the solution for resolving financial hardship matters early, adjusting the infringement penalty itself is the missing part of the puzzle.

8.4.33 A number of stakeholders supported the introduction of an adjusted penalty for infringement recipients who are experiencing financial hardship on the basis that it may make payment achievable,997 and, by extension, the sanction more effective. Victoria Legal Aid submitted that many of its clients want to accept responsibility for their conduct, but are not in a position to pay their fines:

payment of fines is generally beyond the means of VLA clients. Clients either avoid the fine entirely, or they enter into payment ‘for life’. In these circumstances, a fine is not a realistic deterrent.998

8.4.34 In support of an adjusted penalty, Victoria Legal Aid said:

The key is balancing the use of the threat of a fine with a proportionate response. Among many VLA clients there is a willingness to pay, but the fine amount needs to be proportionate to income.999

8.4.35 As noted by Chapman et al.:

fines which are set at levels that offenders cannot meet, or which cannot be paid over a reasonable period of time are less likely to be paid than those which are set at levels which are within the means of the offender.1000

996. Submission 7 (Infringements Working Group).
997. For example, Roundtable 2 – Payment and Enforcement (26 August 2013); Meeting with Victorian Council of Social Service (VCOSS) (15 October 2013); Submission 3 (Saunders, Lansdell, Eriksson, and Brown); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
998. Meeting with Victoria Legal Aid (14 August 2013).
999. Meeting with Victoria Legal Aid (14 August 2013).
1000. Chapman et al. (2003), above n 613, 7.
8.4.36 In its 2005 review, the Victorian Parliament Law Reform Committee noted that:

the efficiency of fine collection would be improved by offering reduced penalties to those individuals whose income significantly reduced their capacity to pay. This would not only result in more revenue being collected but also in less being expended on enforcement processes. The aim is to establish a system which identifies appropriate individuals and which sets an appropriate level of reduction. The availability of fine reduction would also reflect the reality of what happens in open court where a magistrate would consider the ability of the individual to pay before setting penalties, albeit with considerably more freedom to consider evidence of capacity to pay.\textsuperscript{1001}

8.4.37 Through their recent project ‘In the Public Eye: Personal Stories of Homelessness and Fines’, PILCH Homeless Persons’ Legal Clinic also demonstrated that many of their clients expressed a willingness to accept responsibility for their offending and pay an appropriate penalty.\textsuperscript{1002} Similarly, Saunders et al. referred to the views of a number of fine recipients, financial counsellors, and legal representatives who participated in their study and supported better tailoring of penalty amounts to those people with low incomes.\textsuperscript{1003} Saunders et al. said:

while many people would like to pay their infringement fines, many simply could not afford to do so. A vast body of research has found that fixed-rate infringement penalties disproportionately affect the financially disadvantaged. Acknowledging this, many financial counsellors, legal representatives and clients who participated in our study believed that fines should be proportionate to income. Indeed, many clients suggested that they would be much more likely to pay their fines if the fines were proportionate to their income.\textsuperscript{1004}

8.4.38 Enabling penalty adjustment for those experiencing financial hardship would make the system fairer as well as likely increase compliance, reduce costs associated with enforcement (which are often unrecovered where the recipient is experiencing financial hardship), and reduce the need for some infringement matters to be taken to open court. As the Victorian Parliament Law Reform Committee concluded in 2005:

given the benefits of penalties that are more variable than those in the present Victorian system, the Committee does believe that some form of calibrated penalty should be available to certain individuals. It agrees with VCOSS and other stakeholders that ‘a compromise must be reached that reconciles operational efficiency with the reality of social inequality’.\textsuperscript{1005}

8.4.39 Adjusted penalties for those experiencing financial hardship are likely to be most effective in changing the behaviour of infringement recipients with a low number of infringement notices. An adjusted penalty may be less effective for infringement recipients who have accrued a large number of infringement penalties, as even if the individual penalties are reduced so as to better reflect the person’s circumstances, the person may not be able to pay the total of the infringements outstanding. However, structuring the system so that those experiencing financial hardship receive a fairer penalty would give many people in this category a realistic opportunity to pay their fines or expiate fines with a work and development permit or a fair and achievable payment plan.

\textsuperscript{1001.} Law Reform Committee (2005), above n 645, 418.
\textsuperscript{1002.} Justice Connect, In the Public Eye: Personal Stories of Homelessness and Fines (2013).
\textsuperscript{1003.} Saunders et al. (2013), above n 194, 65.
\textsuperscript{1004.} Submission 5 (Saunders, Lansdell, Eriksson, and Brown).
\textsuperscript{1005.} Law Reform Committee (2005), above n 645, 416, referring to Submission 30 (Victorian Council of Social Service) 7.
8.4.40 As an alternative to an adjusted penalty, stakeholders proposed adding financial hardship to the list of circumstances included in the definition of special circumstances for purposes such as internal review. Doing so would allow the infringement notice to be withdrawn altogether if the person could demonstrate the requisite link between the hardship and the offence. However, a better approach is to structure the system in a way that retains a penalty for those experiencing financial hardship, so that there is still a punitive consequence for the offending behaviour.

How can infringement penalties be adjusted?

8.4.41 Inherent in an effective infringements system is the need to balance fairness with compliance and system efficiency, as recognised in the Attorney-General’s Guidelines. Tailoring a high volume, highly automated system to accommodate fairly those experiencing financial hardship is not an easy task. However, the merit of a system that better provides for equality of punishment between those who are and those who are not experiencing financial hardship outweighs the administrative burden of establishing the system.

8.4.42 In New South Wales, the Law Reform Commission considered whether to recommend a reduced penalty for those facing financial hardship. The Commission noted some of the advantages and disadvantages of such a provision:

Setting penalty notice amounts at levels that take into account low incomes and financial hardship could increase compliance and reduce costs. Onerous enforcement measures such as driver licence sanctions, and resultant problems such as secondary offending would then occur less frequently. However, taking this approach would mean setting concession rates, defining the people to whom such a concession rate applies, and setting up a system to administer these concession rates.

8.4.43 Introducing a mechanism to adjust infringement penalties for financially disadvantaged people is likely to be administratively burdensome, particularly at the implementation stage. This burden was one of the reasons the New South Wales Law Reform Commission ultimately decided against introducing a reduced penalty, despite support from a number of its stakeholders. However, in other contexts, organisations such as VicRoads, councils, and utility companies have been able to introduce financial hardship schemes that incorporate a concession.

8.4.44 In light of the major reforms to the Victorian fines system, including IT reforms and the creation of a central administrative body, this may be an opportune time to introduce such a reform in Victoria.

8.4.45 The balance between fairness and efficiency is central to the question of how infringement penalties can be adjusted.

1006. See [8.5.111]–[8.5.116].
1007. Where financial hardship is accompanied by other circumstances such as homelessness, the person would have access to the special circumstances ground of internal review. If the recommendations set out in this report are accepted, people with special circumstances or facing financial hardship will also have access to payment through a work and development permit.
1008. Department of Justice (2006), above n 145, 2.
The imposition and enforcement of court fines and infringement penalties in Victoria

Day fines

8.4.46 One approach to better aligning infringement penalties to recipients’ financial circumstances might be a ‘day fine’ system based on similar systems in other jurisdictions (in the context of sentencing). \(^{1011}\) The New South Wales Law Reform Commission explored the possibility of an infringement scheme based on this model. \(^{1012}\)

8.4.47 Applying a day-fine approach to infringement penalties would be problematic, in light of the high volume, automated nature of the infringements system and the requirement for information-sharing. The Victorian Parliament Law Reform Committee reached similar conclusions in its 2005 report:

> the Committee is not satisfied that the costs of the sorts of individualised case management that are implicit in a day fines system can be justified without significantly affecting the automation that defines the infringement system … individualising fines to the extent of the day fines model requires the calculation of many thousands of specific penalties. While the computation of fine units and the multiplication by the income value could be accomplished with relative ease, validating many thousands of individuals’ incomes is … considerably more problematic. \(^{1013}\)

8.4.48 In light of this, a better approach to considering an infringement recipient’s financial position is one that provides a single fixed reduction for infringement recipients who meet certain requirements to establish their financial hardship.

A fixed reduction

8.4.49 A model with a set, fixed reduction for those experiencing financial hardship is preferred. The Victorian Parliament Law Reform Committee favoured a similar model in its 2005 review:

> An alternative to the day fines model that has the potential to achieve this goal is a concession penalty amount scheme, similar to the concession rates that are offered by utility and other companies to individuals with eligible social security cards. Such a model would make lower penalties available to people suffering from financial hardship without the need to calculate specific amounts for each individual. Reliance on existing social security eligibility criteria to determine suitability for such reduced fines would also obviate the need for the onerous income validation process. \(^{1014}\)

8.4.50 Submissions on this issue generally favoured a set reduction for those facing financial hardship. The Infringements Working Group submitted that:

> Fines should be proportionate to an individual’s ability to pay … People in financial hardship on health care cards should be issued with a reduced or concession fine amount. \(^{1015}\)

8.4.51 Similarly, in their submission, Dr Bernadette Saunders, Associate Professor Gaye Lansdell, Dr Anna Eriksson, and Ms Meredith Brown said:

> Provisions should be implemented to allow those in financial hardship, such as those in receipt of Centrelink benefits, to apply for a standard concession fine rate. This would provide an incentive to take early action and would subsequently increase revenue and reduce enforcement costs. \(^{1016}\)

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\(^{1011}\) See [2.5.6]–[2.5.9].


\(^{1013}\) Law Reform Committee (2005), above n 645, 416.

\(^{1014}\) Ibid 416.

\(^{1015}\) Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).

\(^{1016}\) Submission 5 (Saunders, Lansdell, Eriksson, and Brown).
8.4.52 While the Victorian Parliament Law Reform Committee first looked at a tiered model according to the range of social security benefits, it ultimately found that ‘this model would be complex and onerous to administer because of the range of social security benefits and qualifying conditions’, preferring an approach that ‘restrict[s] eligibility for lower penalty rates to very disadvantaged individuals, for example those who possess a Centrelink health care card’. Benefits of such a model include that it:

would be relatively simple to administer; is already used to obtain concessions, for example for utility bills and public transport fares, and is consistent with the idea that lower penalties should be restricted to those most in need … it provides an appropriate balance between fairness to individuals suffering financial hardship and the efficiency and integrity of the infringement notice system.

8.4.53 Providing a set fixed reduction is arguably the least complicated way of adjusting the system to better take into account the circumstances of infringement recipients who are experiencing financial hardship. Such an approach should strengthen the fairness of, and compliance with, the infringements system, ensure that more fines are paid, and reduce unrecoverable enforcement costs.

8.4.54 If it is feasible, it would be preferable for an eligible infringement recipient to be able to apply for a reduced infringement penalty to the enforcement agency as soon as the person has received an infringement penalty. This would provide for the fair and efficient finalisation of the matter, and exit from the infringements system, at the earliest possible opportunity, reducing the accrual of additional costs by the individual or the enforcement agency.

What reduction would be appropriate?

8.4.55 Only a few stakeholders made submissions about the amount of reduction that would be fair and appropriate for those experiencing financial hardship. Those who did make submissions suggested reductions of 60% to 80% based on a comparison between the weekly income of a Newstart allowance recipient and the average weekly earnings of someone in Australia or Victoria.

8.4.56 The average weekly earnings (pre-tax) in Australia (as at November 2013) are:

- $1,437.70 per week for adults in Australia working full time and $1,389.10 per week for adults in Victoria working full time; and
- $1,115.40 per week for all employees in Australia.

8.4.57 The maximum weekly payment rate for a single person with no dependent children on a Newstart allowance is $255.25. The amount varies slightly for recipients in different circumstances, for example, recipients with dependent children.

8.4.58 Thus a person on a Newstart allowance receives less than 20% of the average income of a Victorian adult working full time. When compared with all employees (regardless of age or whether full or part time), a person on a Newstart allowance receives just under 25% of the average weekly income.

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1017. Law Reform Committee (2005), above n 645, 417.
1019. Australian Bureau of Statistics (2013), above n 979, Table 2.
1020. The maximum fortnightly payment for a single person with no children is $510.50: Department of Human Services (Cth) (2014), above n 764.
On this basis, Dr Bernadette Saunders, Associate Professor Gaye Lansdell, Dr Anna Eriksson, and Ms Meredith Brown submitted that the reduction should be ‘sixty percent for those whose sole income is through Centrelink benefits’\(^{1021}\) while the Infringements Working Group submitted that the reduction should be 80%:

Fines should be proportionate to an individual’s ability to pay … Accordingly, we recommend that fines and infringements for eligible card holders … 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.\(^{1022}\)

In its review of penalty notices, the New South Wales Law Reform Commission also received few submissions on what amount constituted an appropriate reduction. The Commission referred to the submission of the Redfern Legal Centre, which ‘suggested a concession rate of 50% for low-income individuals’.\(^{1023}\)

The Victorian Department of Human Services publishes a guide to Victorian Government concessions for low-income households, for example, concessions to assist with rates, water, energy, and gas bills.\(^{1024}\) In addition to set payments and free services (for example, dental), the guide specifies reductions of 50% (up to a specified yearly maximum) on charges including:

- council rates;
- water and sewerage;
- postal redirection; and
- some motor vehicle registration charges.\(^{1025}\)

As a reduced penalty based on financial hardship would be a new addition to the Victorian infringements system, a 50% reduction, consistent with other Victorian Government concession rates, might be a useful starting point. A 50% reduction strikes an appropriate balance between strengthening the equality of effect for those experiencing financial hardship and ensuring that the system provides a meaningful consequence for offending behaviour.

In limiting the reduction to 50% (rather than the higher reduction suggested in a number of submissions), the Council is mindful that it is also recommending a number of other measures to assist those experiencing financial hardship, including the introduction of a work and development permit scheme.\(^{1026}\)

What circumstances would qualify?

Proportion of infringement recipients eligible for adjustment

It is not known what proportion of infringement notice recipients would be eligible for an adjustment of the penalty amount on the grounds of financial hardship.

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1021. Submission 5 (Saunders, Lansdell, Eriksson, and Brown).
1022. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
1026. See Chapter 4.
8.4.65 Data on the outcome of infringement notices issued in 2010–11 show that 63.98% of infringement penalties (3,182,689) were paid prior to the issue of an enforcement order. A further 4.67% of infringement penalties were resolved prior to the issuing of an enforcement order where:

- the person elected for the matter to be heard in court (37,994);
- the infringement notice was withdrawn after internal review (190,790); or
- the matter was referred to court after internal review (3,547).

8.4.66 A further 31.35% of infringement penalties were neither paid nor resolved, and these received an enforcement order.

8.4.67 It is reasonable to conclude that a proportion of those who elect to pursue the matter in the Magistrates’ Court, or move to the enforcement stage due to non-payment, do so because of financial hardship and the inability to pay the infringement penalty amount.

8.4.68 The pool of potential infringement offenders who may be eligible for an adjusted penalty, however, is likely to be broader than the proportion of those who elect to go to court and those who receive an enforcement order.

8.4.69 While data were not available on the total number of people who applied for and were granted a payment plan by enforcement agencies, the Attorney-General’s Annual Report on the Infringements System reveals that, in 2011–12, just over 338,500 payment orders were granted by the Infringements Court, representing increases from 319,000 in 2010–11 and 221,600 in 2009–10.1027 As a payment order is only available from the Infringements Court following the issue of an enforcement order, people on payment orders do not fall within the 63.98% paid or the 4.67% resolved prior to the issuing of an enforcement order.

Options for eligibility

8.4.70 There is merit in harmonising the criteria for determining financial hardship between different components of the financial hardship provisions in the infringements system.

8.4.71 A number of suggestions for determining eligibility were made,1028 including that the discount should apply to holders of a:

- Centrelink health care card;
- Centrelink pensioner concession card;
- Commonwealth seniors health card;
- Victorian public transport asylum seeker concession card; and
- any other card that certifies the holder’s entitlement to Commonwealth health concessions.

8.4.72 The Victorian Department of Human Services guide to concessions describes concessions for holders of a:

- Centrelink health care card;
- Centrelink pensioner concession card; and
- a number of Department of Veterans’ Affairs repatriation health cards.1029

1027. Department of Justice (2012), above n 180, 23; Department of Justice (2013), above n 344.

1028. Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).

While enforcement agencies manage their own payment plan arrangements, the *Infringements Act 2006 (Vic)* (‘*Infringements Act*’) provides that an enforcement agency must offer a payment plan to a person who applies, if that person meets the eligibility requirements in the Attorney-General’s Guidelines, which provide that:

Early entry into a payment plan, before the matter reaches the Infringements Court, will allow those wanting to pay their infringement notice by instalment or an extension of time the opportunity to do so without accruing additional enforcement costs. It also diverts people from the court system who have a genuine desire to pay their infringement notice … A person will be automatically entitled to be offered a payment plan if they are in receipt of any one of the following:

- a Commonwealth Government (Centrelink) Pensioner Concession Card;
- a Department of Veterans’ Affairs Pensioner Concession Card or Gold Card; or
- a Centrelink Health Care Card (all types including non-means tested). 1031

As at 28 June 2013, there were 420,463 Victorians holding a health care card, 953,953 holding a pensioner concession card, and 73,841 people holding a Commonwealth seniors health card. Combined, 25.5% of the Victorian population hold a health care card, a pensioner concession card, or a Commonwealth seniors health card. 1033

The availability of payment plans and the current proposal for an adjusted penalty have similar policy objectives: to increase the fairness and equal application of the infringements system, to ensure that penalties are achievable (and ultimately achieved), and to divert people from court or from enforcement action. For this reason, the test for whether a person is eligible for an adjusted penalty should be the same as the test for automatic entitlement for a payment plan.

A drawback of the current test is that, while concession cards such as pensioner concession cards are generally available as part of a package to alleviate poverty, some people who are currently eligible cannot be described as being in financial hardship. For example, the value of a person’s primary residence is not considered in determining eligibility for the age pension and the resulting pensioner concession card. While this issue is beyond the scope and jurisdiction of this report, the Council acknowledges that the current approach to pensioner concession cards makes them an imperfect measure of financial hardship. This issue has been recognised in other contexts. For example, in 2013, the Business Council of Australia observed that:

The Australian social compact is predicated on having an acceptable social safety net. If this safety net is to be affordable over time then it must be tightly targeted to the most disadvantaged in society … As the population ages it will become increasingly important to ensure that age pension arrangements are well targeted and appropriately means tested to take account of people’s capacity to fund their retirement based on income from superannuation and other assets. 1034

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1030. Infringements Act 2006 (Vic) ss 46(1), 46(3).
1031. Department of Justice (2006), above n 145, 4–5. The guidelines also provide for broader access to payment plans, at the enforcement agency’s discretion, for example for those holding a Victorian Senior’s Card.
1032. Email from Department of Social Services (Cth), 19 November 2013 (June 2013 break down of concession cards by state and territory).
1033. Email from Department of Social Services (Cth), 19 November 2013 (June 2013 break down of concession cards by state and territory). The proportion of the population holding concession cards was calculated by combining the concession card data with estimated resident population data: Australian Bureau of Statistics, Australian Demographic Statistics, Sept 2013, cat. no. 3101.0 (2013). See Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ [www.sentencingcouncil.vic.gov.au].
While the Council recommends consistency in the test for payment plans and a reduced penalty, the test may need to be re-evaluated from time to time to ensure that it is appropriately targeted to financial hardship. The principle behind a financial hardship adjustment is to ensure that infringement penalties have equal effect, to the extent that is possible in a high volume, largely automated system. In this context, no test is likely to be perfect. However, extending financial hardship provisions too far beyond those genuinely in need may undermine the deterrent value of infringement penalties.

The adjusted penalty amount is intended to provide equality before the law by appropriately mitigating the penalty amount for eligible infringement recipients. This will afford the infringements system a broad measure to recognise the differential impact of an infringement penalty amount on people experiencing financial hardship compared with people who are not. The credibility and effectiveness of the infringements system will be improved by enhancing the equality of its impact, perceptions of fairness, and the prospects of compliance by low-income infringement recipients.

The Council’s view

For the reasons discussed in this chapter, the Council has reached the view that there should be a fixed adjustment to the infringement penalties for recipients who are experiencing financial hardship. Such a reduction will strike a better balance between the principle of proportionality and the principle of equal effect of the law and will better harmonise the approach to capacity to pay in the infringements system and in sentencing. A reduced penalty is consistent with other reductions for people experiencing financial hardship (such as reductions set out in the Victorian Department of Human Services guide to concessions for low-income households)\(^{1035}\) and will complete the package of reforms to ensure that infringement penalties operate fairly, effectively, and efficiently on people experiencing financial hardship. The Council is of the opinion that the reduction should be 50%, consistent with other income-based reductions in Victoria.

**Recommendation 39: Reduced penalties in cases of financial hardship**

Infringement penalty recipients who are experiencing financial hardship should receive a reduced infringement penalty amount of 50%.

Eligibility for the reduced penalty should be the same as eligibility for automatic entitlement to a payment plan.

**Recommendation 40: Eligibility for reduced penalties in cases of financial hardship**

Eligibility for the reduced penalty should be the same as eligibility for automatic entitlement to a payment plan in the Attorney-General’s Guidelines to the Infringements Act 2006.

\(^{1035}\) Department of Human Services (2013), above n 1024.
8.5 Internal review

8.5.1 This section examines some key aspects of the internal review process, with a focus on how problems with the current process impact on the case flow into the courts.

8.5.2 One of the safeguards in the infringements system is the right of an infringement notice recipient (for most infringement offences) to apply to the enforcement agency for a review of the decision to issue the infringement notice. This is intended to identify cases early on that should not be prosecuted through the infringements system. For example, it is designed to identify vulnerable people (with defined special circumstances) and remove them from the system.

8.5.3 A number of those consulted by the Council, however, expressed concerns with the current law and operation of internal reviews, submitting that problems with internal review are a significant reason why infringement matters end up in court, particularly cases raising special circumstances.

8.5.4 This feedback was supported by the comparatively low number of applications for internal review based on special circumstances — 6,762 applications or 1.3% of internal review applications in 2012–13 — and the comparatively high number of cases heard in court where special circumstances have been raised — approximately 34,000 charges in 2012–13, estimated to represent between one- and two-thirds of all infringement matters heard in court.1036

8.5.5 Common issues raised in relation to internal review include the following:

- Enforcement agencies are required to refer unsuccessful applications for internal review based on special circumstances to the Magistrates’ Court. While originally intended as a safeguard, this provision is operating as a disincentive to apply for internal review based on special circumstances. Because these cases are heard in the general list of the Magistrates’ Court, vulnerable infringement recipients are reluctant to apply for internal review, often preferring to instead go through the enforcement process so that they can gain access to the Special Circumstances List of the Magistrates’ Court.
- The circumstances included in the definition of special circumstances are too narrow; in particular, financial hardship and family violence should be included.
- Even where a person has compelling special circumstances, it is difficult to obtain the necessary proof to establish a nexus with the offending.
- There is variation between different enforcement agencies in their approach to internal review, and in particular, internal review on the ground of special circumstances.
- These factors in combination are dissuading people from using internal review provisions.

8.5.6 The following discussion focuses on the internal review process, the various grounds for review, and the powers of an enforcement agency on internal review. The application rates and outcomes for each of the grounds for internal review are also presented.

8.5.7 Consistent with the outcomes of previous examinations of internal review, this analysis reveals a wide range of variation among enforcement agencies with respect to the receipt of, and response to, internal review applications. This variation was particularly noticeable with respect to reviews requested on the ground of special circumstances.

8.5.8 These findings are discussed with respect to potential recommendations for change to the review process.

1036. This includes charges heard on the Special Circumstances List of the Magistrates’ Court and cases referred to the general list after an unsuccessful application for internal review based on special circumstances. See [8.1.13], [8.1.17]–[8.1.20].
**Internal review process**

8.5.9 For most infringement offences, a person who receives an infringement notice has at least 28 days\(^\text{1037}\) from the date of receipt to apply in writing to the enforcement agency for a review of the decision to issue the infringement notice. Unless the agency asks the infringement recipient for further information, the enforcement agency must review the infringement notice within 90 days from the date of application\(^\text{1038}\).

8.5.10 The internal review process serves a dual purpose, in that it:

- enables those who receive infringement notices to test the lawfulness and fairness of those decisions. It provides the enforcement agency with feedback and the opportunity to assess the consistency, reliability and efficiency of its processes\(^\text{1039}\).

8.5.11 Certain offences are excluded from the internal review process\(^\text{1040}\). For these offences, there are alternative methods of objecting to the infringement penalty notice. For example, the recipient of an infringement penalty notice for drink driving, drug driving, or excessive speeding may object in writing to the infringement notice, requesting that the matter be dealt with by a court\(^\text{1041}\). Once such an objection is received, the infringement notice is cancelled and a charge sheet must be filed\(^\text{1042}\). For this reason, it was not possible to distinguish between infringement-originating and charge-originating offences of this nature in the Magistrates’ Court data\(^\text{1043}\).

8.5.12 Each year, applications for internal review are made in relation to just under 10% of infringement penalty notices. For example, in 2012–13, there were 503,380 applications for internal review out of 5,998,896 infringements issued (8.39%).

**Grounds for review**

8.5.13 An application for internal review may be made on the grounds that the person believes:

- there are exceptional circumstances that excuse the conduct for which the infringement notice was issued; or
- the decision to issue the infringement notice:
  - was contrary to law; or
  - involved a mistake of identity; or
- that special circumstances apply to the person\(^\text{1044}\).

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\(^{1037}\) The application for internal review can be made at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates. Infringements Act 2006 (Vic) s 22(2).

\(^{1038}\) Infringements Act 2006 (Vic) ss 24(3)(a)(i)–(ii); Infringements (Reporting and Prescribed Details and Forms) Regulations 2006 (Vic) r 10. If further information is requested from the applicant, the enforcement agency must consider a person’s application for an internal review within 125 days of receipt of the application. A detailed description of the process for internal review is provided in Appendix I of this report.


\(^{1040}\) Internal review is not provided for a traffic infringement notice that is issued in respect of a drink driving infringement, a drug driving infringement, or an excessive speed infringement, under the Road Safety Act 1986 (Vic); a work safety infringement, under the Transport (Compliance and Miscellaneous) Act 1983 (Vic); or offences involving alcohol or other drugs in relation to marine transport, under the Marine (Drug, Alcohol and Pollution Control) Act 1988 (Vic). See Infringements Act 2006 (Vic) ss 21(a)–(c).

\(^{1041}\) Road Safety Act 1986 (Vic) s 89A(4).

\(^{1042}\) Road Safety Act 1986 (Vic) s 89A(6).


\(^{1044}\) Infringements Act 2006 (Vic) ss 22(1)(a)–(6).
**Exceptional circumstances**

8.5.14 The Infringements System Oversight Unit’s information paper on internal review provisions explains that:

The ‘exceptional circumstances’ test, like the special circumstances test, provides the infringements system with the flexibility to determine whether, taking into account the circumstances in which the offending conduct occurred, the imposition of a penalty was justified.1045

8.5.15 To that end, the ground labelled ‘exceptional’ is a broad, catch-all ground that is not defined by the Infringements Act. The Infringements System Oversight Unit’s information paper defines the ground as based on excusing conduct, stating that:

Exceptional circumstances cover cases where a person has enough awareness and self-control to be liable for his or her conduct, but has a good excuse.1046

8.5.16 The information paper presents examples of the types of circumstances that might support an application based on exceptional circumstances.

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**The person did not know that the conduct was an offence:** The exceptional circumstances provision could cover a person who did not have the language skills needed to understand signs or rules, or who lacked the local knowledge needed to interpret the relevant signs or markings. Similarly, a person who was able to demonstrate that he or she was not aware of a very recent change in the law or rule might successfully claim exceptional circumstances.

**The person was not in a position to avoid committing the offending conduct:** Exceptional circumstances can also include unforeseen or unpreventable circumstances that result in the person not being in a position to prevent the offending conduct. Examples of such circumstances include a medical emergency or an unavoidable and unforeseeable delay. Exceptional circumstances can also include sudden, temporary, and short-term medical conditions.

In addition, where an elderly person has been served an infringement notice, the person’s age and any associated frailty, poor health, or vulnerability, are relevant in determining whether exceptional circumstances apply. For example, an elderly person who received an infringement for failing to hold a valid ticket might successfully claim confusion as an exceptional circumstance and be excused.

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1046. Ibid.
8.5.17 The Fines Victoria website adds that an enforcement agency is less likely to accept an application based on exceptional circumstances ‘if the offence is for behaviour that endangers the rest of the community (for example, running a red-light).’\(^{1047}\)

8.5.18 Another circumstance that may give rise to a successful claim of exceptional circumstances is where the infringement recipient is the victim of family violence, and the infringement offence occurs in that context, for example where:

- a violent partner incurs an infringement penalty notice in the victim’s name, and the victim of the violence is afraid to nominate their partner as the actual offender;
- a victim of family violence incurs infringements in the context of fleeing the relationship, for example, sleeping in an unregistered car and being charged with driving/owning an unregistered vehicle; and
- the violence that is being perpetrated includes controlling the victim’s finances, and the victim of the violence commits offences due to not having access to any money, for example, shop theft.

8.5.19 In practice, exceptional circumstances may operate as a ‘backup’ ground to other grounds, particularly special circumstances. For example, if an application for internal review based on special circumstances (such as a mental illness) does not establish the requisite link between the mental illness and the offence on the material, the enforcement agency may nevertheless withdraw the infringement (with or without a warning) on the basis of exceptional circumstances if it is warranted.\(^{1048}\)

8.5.20 While this ground accounts for the largest proportion of applications for internal review, there was little mention of it in consultations as a driver of infringement matters into open court.

**Contrary to law and mistaken identity**

8.5.21 Both contrary to law and mistaken identity are characterised as grounds that raise ‘a defect or mistake made in the decision to serve the notice.’\(^{1049}\)

8.5.22 In its information paper for enforcement agencies, the Infringements System Oversight Unit explains ‘contrary to law’ as follows:

> An action or decision is contrary to law if an enforcement officer acts unlawfully, unfairly, improperly or beyond his or her authority in taking that action or decision.

The agency may need a checklist of matters relevant to a ‘contrary to law’ review.

If a person claims that a decision to serve an infringement notice was contrary to law, some of the matters that the agency would need to consider on review are:

- Was the officer authorised to make the decision to serve the notice?
- Has the agency complied with all the procedural requirements?
- Were all the relevant signs etc clear, visible and unambiguous?
- Did the issuing officer make a mistake in deciding to issue the notice?
- Did the issuing officer act improperly or unfairly in deciding to issue the notice?\(^{1050}\)


\(^{1048}\) Email from Wyndham City Council to the Sentencing Advisory Council, 8 March 2014.

\(^{1049}\) Infringements System Oversight Unit (2008), above n 1039, 5.

\(^{1050}\) Ibid 8.
8.5.23 The information paper gives the following example.\footnote{1051}

A person receives an infringement notice for parking in a loading zone at 2pm on a Saturday afternoon. The sign indicates that the area is a loading zone on weekdays only. Finding: The issuing officer made a mistake in deciding to issue the notice and the notice should be withdrawn.

8.5.24 The ground of ‘mistaken identity’ applies where ‘the applicant argues that he or she was not in fact the person who breached the law.’\footnote{1052}

8.5.25 These grounds are both binary in that if established they should exonerate the person completely; if not established, the infringement is likely to be confirmed.

**Special circumstances**

8.5.26 The Infringements System Oversight Unit information paper explains that:

The infringements regime recognises there are circumstances in which a person’s capacity to comply with a law or regulation is limited for reasons beyond their control. In such circumstances, it would be unfair to punish the person for their non-compliance.\footnote{1053}

8.5.27 Special circumstances are defined as:

- a mental or an intellectual disability, disorder, disease, or illness where the disability, disorder, disease, or illness results in the person being unable to understand that conduct constitutes an offence, or to control conduct that constitutes an offence;
- a serious addiction to drugs, alcohol, or a volatile substance where the serious addiction results in the person being unable to understand that conduct constitutes an offence, or to control conduct which constitutes an offence; or
- homelessness where the homelessness results in the person being unable to control conduct which constitutes an offence.\footnote{1054}

8.5.28 ‘Homelessness’ is described as:

- living in crisis accommodation;
- living in transitional accommodation;
- living in any other accommodation provided under the Supported Accommodation Assistance Act 1994 (Cth); or
- inadequate access to safe and secure housing as defined in section 4 of the Supported Accommodation Assistance Act 1994 (Cth).\footnote{1055}

\footnote{1051. Infringements System Oversight Unit (2008), above n 1039, 8.}
\footnote{1052. Ibid.}
\footnote{1053. Ibid.}
\footnote{1054. Infringements Act 2006 (Vic) s 3.}
\footnote{1055. Infringements (General) Regulations 2006 (Vic) r 7.}
8.5.29 The following examples of diagnosed mental illnesses are set out on the Enforcement Review Program information page:

- Alzheimer’s disease;
- bipolar disorder;
- dementia;
- depression and anxiety (although a medical report indicating the severity of the illness is required for the purpose of enforcement review);
- psychosis;
- schizophrenia; and
- severe mood disorder.1056

8.5.30 The Enforcement Review Program information page also provides the following examples of neurological disorders:

- acquired brain injury;
- Huntington’s disease;
- intellectual disability;
- multiple sclerosis and other related diseases; and
- Parkinson’s disease.1057

8.5.31 The importance of identifying special circumstances cases early and removing them from the system was emphasised during the Second Reading Speech of the Infringements Bill:

people with special circumstances are disproportionately, and often irrevocably, caught up in the system. In a just society, the response to people with special circumstances should not be to issue them with an infringement notice.1058

8.5.32 Although applications for internal review on the ground of special circumstances form a very small proportion of the total infringements issued (0.12% of the infringements issued in 2012–13, representing only 1.4% of applications for internal review), special circumstances cases formed a far more significant proportion of charges heard in the Magistrates’ Court. While the data are imperfect, the Council estimates that, in 2010–11, infringement-originating charges where special circumstances had been raised (at internal review or in an application for revocation) accounted for:

- between one- and two-thirds of identifiable infringement-originating charges in the Magistrates’ Court; and
- at least 9% of all charges heard in the Magistrates’ Court (including infringement and non-infringement charges).1059

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1056. Magistrates’ Court of Victoria (2012), above n 880.
1057. Ibid.
1059. A total of 374,440 charges were heard by the Magistrates’ Court in 2010–11. In that same year, 31,031 infringement-originating charges were heard by the Magistrates’ Court Special Circumstances List (Magistrates’ Court data; see Sentencing Advisory Council, ‘Court Fines and Infringement Penalties: Data Methodology’ <www.sentencingcouncil.vic.gov.au>) and 3,119 infringements were referred to court following an unsuccessful application for internal review based on special circumstances (Department of Justice (2011), above n 882). The Council estimates that between 47,830 (12.8%) and 93,035 (24.8%) of the 374,440 charges heard in the Magistrates’ Court in 2010–11 originated from the infringements system.
8.5.33 While the inclusion of special circumstances as a ground for internal review is intended to assist the early identification of people in this category and their removal from the system, the data analysed by the Council indicate that the reverse may be happening, with more special circumstances matters heard in court than via internal review.

Multiple or uncertain grounds

8.5.34 The Infringements System Oversight Unit’s information paper explains that enforcement agencies should ‘adopt an “enabling” approach to the application process’\(^{1060}\) including:

- permitting the applicant to rectify or replace an application that is deficient in some respect;
- permitting or encouraging an applicant who is unsure how to characterise the grounds for requesting a review to seek a review on all the prescribed grounds;
- indicating the information required to support the application;
- referring the applicant, where appropriate, to agencies that can assist or advocate on his or her behalf; and
- establishing procedures:
  - to help identify applicants for internal review who may have special needs and actively seek help and support. For example, if an applicant has sought a review on the grounds of mistake or exceptional circumstances, but it is clear that his or her circumstances would fit within the definition of ‘special circumstances’, the agency should treat the application as a ‘special circumstances’ matter;\(^{1061}\)

8.5.35 Enforcement agencies confirmed that, where one ground is raised but not established, they may still withdraw the notice (with or without a warning) if the matters raised fall under a different ground. For example, where an application raises circumstances of the type covered in the definition of special circumstances, but the requisite link to the offence is not established, the agency may withdraw the infringement on the ground of exceptional circumstances.\(^{1062}\)

Agency powers on review

General powers

8.5.36 After reviewing a decision, the enforcement agency may:

- confirm the decision to serve an infringement notice;
- withdraw the infringement notice and serve an official warning;
- withdraw the infringement notice;
- withdraw the infringement notice and refer the matter to court;
- waive all or any prescribed costs;
- approve a payment plan; or
- do any combination of these actions (where compatible).\(^{1063}\)

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1061. Ibid 4–5.
1062. Email from Wyndham City Council to the Sentencing Advisory Council, 8 March 2014.
1063. Infringements Act 2006 (Vic) ss 25(1)(a)–(h).
Confirmation where application based on special circumstances

8.5.37 If the application for review is based on the ground of special circumstances, after reviewing a decision the enforcement agency may:

- confirm the decision to serve an infringement notice;
- withdraw the infringement notice and serve an official warning; or
- withdraw the infringement notice.\footnote{Infringements Act 2006 (Vic) ss 25(2)(a)–(c).}

8.5.38 If an enforcement agency confirms the decision to serve the infringement notice, the enforcement agency \textit{must} refer the matter to the court for hearing or, where the infringement recipient is a child, withdraw the infringement notice and file a charge sheet and summons in the Children’s Court.\footnote{Infringements Act 2006 (Vic) s 25(3).}

Confirmation where application not based on special circumstances

8.5.39 If the enforcement agency confirms the decision to serve the infringement notice after a review on grounds other than special circumstances, the person must pay the infringement penalty amount and any prescribed costs by whichever is the later of:

- the due date specified on the infringement notice;
- the due date specified on the penalty reminder notice; or
- 14 days after receiving notice of the outcome of the review.\footnote{Infringements Act 2006 (Vic) ss 26(1)(a)–(c).}

Strengthening the consistency of internal review

Outcomes of internal review applications

8.5.40 Five groups of agencies issued the majority of infringement notices in 2012–13. Combined, these five agencies issued 92.9% of the 6.0 million infringements: local governments (28.5%), the Traffic Camera Office (22.6%), Victoria Police Toll Enforcement Office (29.0%), Victoria Police (9.6%), and the Department of Transport (3.3%).

8.5.41 Figure 34 (page 266) sets out the main outcomes for each ground of review in 2012–13 for these five enforcement agency groups. The infringement notice was confirmed in over half (52.8%) of all internal review decisions. In relation to grounds of review, applications lodged on the ground that the infringement notice was contrary to law were the most likely to be confirmed (68% of 59,370 applications). Applications for internal review on the grounds of exceptional circumstances and special circumstances had the most reviews resulting in a withdrawn notice with an official warning (31% and 36% respectively). Applications for internal review on the ground of mistaken identity were almost equally confirmed (51%) or withdrawn (48%). Internal reviews where the infringement was withdrawn and the matter referred to court (not applicable for special circumstances) accounted for 0.1% of all internal review outcomes in 2012–13 (these are not shown on the charts).
Figure 34: Internal review application outcomes across the five broad enforcement agencies by grounds of application, 2012–13

Exceptional circumstances

8.5.42 From 2009–10 to 2012–13, there were 1,300,588 internal review applications to the above five groups of enforcement agencies on the ground of exceptional circumstances. Figure 35 shows that the Department of Transport had the highest rate of applications on this ground, with 166 applications for every 1,000 infringements issued by that agency.

8.5.43 The percentages of infringements confirmed across agencies following an exceptional circumstances application ranged from 42% for the Traffic Camera Office to 67% for Victoria Police. Some of this variation is likely to reflect the variation in offences for which infringement penalty notices are likely to be issued across agencies. For example, the Fines Victoria website states that an enforcement agency may be less likely to accept an application based on exceptional circumstances ‘if the offence is for behaviour that endangers the rest of the community (for example, running a red-light)’.1067

Contrary to law

8.5.44 From 2009–10 to 2012–13, there were 233,821 applications to the five groups of enforcement agencies for internal review on the ground that the infringement notice was contrary to law. This means there were 5.6 applications for internal review based on exceptional circumstances for every one application based on contrary to law grounds. The Department of Transport received only 14 applications on this ground (0.02 applications per 1,000 infringements issued). Applications to local governments accounted for 76% of the internal review applications on this ground, at 27 applications for every 1,000 infringement notices issued.

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Figure 35: Rate of application for internal review on the ground of exceptional circumstances across the five broad enforcement agencies, 2009–10 to 2012–13

![Bar chart showing the rate of application for internal review](chart1)

Figure 36: Outcomes of applications for internal review on the ground of exceptional circumstances across the five broad enforcement agencies, 2009–10 to 2012–13

![Bar chart showing the outcomes of applications](chart2)

Figure 37: Rate of application for internal review on the ground of contrary to law across the five broad enforcement agencies, 2009–10 to 2012–13

![Bar chart showing the rate of application for internal review](chart3)
8.5.45 There was also a range of infringement confirmation rates across agencies, from a low of 25% for the Victoria Police Toll Enforcement Office to 93% for the Traffic Camera Office (Figure 38). The high confirmation rate for the Traffic Camera Office is perhaps not surprising given the nature of the ground and the existence of photographic evidence. Few other conclusions can be drawn about the different confirmation rates for agencies. Given the link between this ground and the power of the agency to issue the notice, this ground is likely to arise in different contexts and circumstances for different agencies.

**Mistaken identity**

8.5.46 From 2009–10 to 2012–13, there were 24,744 applications to the five groups of enforcement agencies for internal review on the ground of mistaken identity. About half (50.6%) of those applications concerned infringement notices issued by local governments. Local governments, the Department of Transport, and the Traffic Camera Office received between 1.4 and 1.9 applications per 1,000 infringements issued. Victoria Police (non-toll enforcement) received just 0.3 applications on the ground of mistaken identity for every 1,000 infringement notices issued.
8.5.47 Figure 40 shows that official warnings were very rare for applications on this ground, and overall confirmation rates were lower relative to applications on the other internal review grounds. There was reasonable consistency for this ground across enforcement agencies, which is unsurprising given the binary nature of the ground: the infringement recipient either was or was not found to be the offender. This is also reflected in the limited use of official warnings for this ground.

Special circumstances

8.5.48 From 2009–10 to 2012–13, there were 26,969 applications to the five groups of enforcement agencies for internal review on the ground of special circumstances. Figure 41 displays the relative rates (per 1,000 infringements issued) at which special circumstances internal review applications were lodged across the five broad groups of agencies. As with the application rates for the other grounds of internal review, these rates demonstrate variation across agencies.
8.5.49 There was a much greater degree of variation of outcome for this ground than for any of the others, which is counterintuitive given that this ground has the most restrictive test. The percentage of cases for which infringements were confirmed following special circumstances applications ranged from 3.4% for the Department of Transport to 93.4% for the Victoria Police Toll Enforcement Office. The use of warnings ranged from 96.3% for the Department of Transport to 4.5% for the Victoria Police Toll Enforcement Office (Figure 42).

8.5.50 Figure 43 separately compares outcomes for a number of local government agencies and demonstrates further variation in outcomes for special circumstances applications. In order to control for small number variation, this analysis was restricted to those local government agencies that:

(a) issued at least 1,000 infringements over the period of interest; and
(b) received at least 50 special circumstances applications.

8.5.51 This resulted in 27 local government agencies being retained for analysis. Within this group, the percentage of applications where the infringement was confirmed ranged from 0% to 63%, with an average of 18.9%.

Variation and inconsistency among enforcement agencies

8.5.52 One of the significant changes introduced by the Infringements Act in 2006 was that the legislation contained extensive provisions for dealing with internal review, with the aim of ensuring a fair and consistent approach.

8.5.53 Since then, a number of reports into the Victorian infringements system have highlighted inconsistency as a particular problem and as a driver of cases into open court.1068 The Victorian Auditor-General’s 2009 review of the withdrawal of infringement notices found that:

While agencies have made progress in implementing the new system, there are still many improvements needed to assure the public and Parliament that the withdrawal of notices is contributing to a fairer system. Levels of agency non-compliance were significant in many cases, and internal review and withdrawal frameworks were either inadequate or had gaps. This has led to inconsistent decision-making within and across agencies. This means that people in similar situations are not being treated consistently when notices are being considered for withdrawal. Consistency is a hallmark of a fairer system, and its absence casts doubt over the fairness of the whole system.1069

8.5.54 The Auditor-General said:

While withdrawal of notices is only one part of the overall infringements system, it is significant and central to the initiative to make the system fairer. The internal review process provides a check on the legitimacy and fairness of the original decision and enables inappropriate decisions to be overturned before any significant enforcement action has commenced. It also affords the agency the opportunity to ascertain the recipient’s circumstances and to consider, even if the initial decision is confirmed, the appropriateness and prospects of pursuing payment of the fine.1070

1068. For example, Victorian Auditor-General (2009), above n 1039; Saunders et al. (2013), above n 194.
1070. Ibid 2.
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**Figure 42:** Outcomes of applications for internal review on the ground of special circumstances across the five broad enforcement agencies, 2009–10 to 2012–13

<table>
<thead>
<tr>
<th>Department of Transport</th>
<th>Local governments</th>
<th>Traffic Camera Office</th>
<th>Victoria Police (general)</th>
<th>Victoria Police (toll enforcement)</th>
</tr>
</thead>
<tbody>
<tr>
<td>% special circumstances applications confirmed</td>
<td>96.3</td>
<td>64.5</td>
<td>72.6</td>
<td>86.4</td>
</tr>
</tbody>
</table>

**Figure 43:** Proportion of infringement notices confirmed after internal review on the ground of special circumstances across various local government agencies, 2009–10 to 2012–13

<table>
<thead>
<tr>
<th>Local government agency</th>
<th>% special circumstances applications confirmed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (n = 150)</td>
<td>62.7</td>
</tr>
<tr>
<td>2 (n = 1077)</td>
<td>62.0</td>
</tr>
<tr>
<td>3 (n = 534)</td>
<td>58.2</td>
</tr>
<tr>
<td>4 (n = 171)</td>
<td>58.2</td>
</tr>
<tr>
<td>5 (n = 204)</td>
<td>43.9</td>
</tr>
<tr>
<td>6 (n = 506)</td>
<td>37.3</td>
</tr>
<tr>
<td>7 (n = 186)</td>
<td>36.8</td>
</tr>
<tr>
<td>8 (n = 181)</td>
<td>35.5</td>
</tr>
<tr>
<td>9 (n = 73)</td>
<td>33.7</td>
</tr>
<tr>
<td>10 (n = 68)</td>
<td>30.1</td>
</tr>
<tr>
<td>11 (n = 156)</td>
<td>14.7</td>
</tr>
<tr>
<td>12 (n = 6,045)</td>
<td>14.1</td>
</tr>
<tr>
<td>13 (n = 220)</td>
<td>13.6</td>
</tr>
<tr>
<td>14 (n = 51)</td>
<td>11.8</td>
</tr>
<tr>
<td>15 (n = 105)</td>
<td>11.4</td>
</tr>
<tr>
<td>16 (n = 53)</td>
<td>11.3</td>
</tr>
<tr>
<td>17 (n = 141)</td>
<td>7.1</td>
</tr>
<tr>
<td>18 (n = 181)</td>
<td>6.6</td>
</tr>
<tr>
<td>19 (n = 168)</td>
<td>3.0</td>
</tr>
<tr>
<td>20 (n = 70)</td>
<td>1.4</td>
</tr>
<tr>
<td>21 (n = 706)</td>
<td>0.0</td>
</tr>
<tr>
<td>22 (n = 449)</td>
<td>0.0</td>
</tr>
<tr>
<td>23 (n = 255)</td>
<td>0.0</td>
</tr>
<tr>
<td>24 (n = 197)</td>
<td>0.0</td>
</tr>
<tr>
<td>25 (n = 183)</td>
<td>0.0</td>
</tr>
<tr>
<td>26 (n = 123)</td>
<td>0.0</td>
</tr>
<tr>
<td>27 (n = 82)</td>
<td>0.0</td>
</tr>
</tbody>
</table>
8.5.55 The Auditor-General concluded the 2009 review with a series of recommendations targeted at both the Infringements System Oversight Unit and the enforcement agencies issuing infringements. Some of these recommendations emphasised quality assurance of the withdrawal data and the development of consistent key performance indicators, benchmarks and reporting systems.\(^{1071}\)

8.5.56 The internal review data suggest that issues remain with quality assurance of the internal review data being collected and reported. Analysis of the relative rates of special circumstances applications across local government agencies indicated a range in rate of applications per 1,000 infringements, from 0 to 92.7. This included some local government agencies that reported having received no applications for special circumstances internal review despite issuing over 11,000 infringements.\(^{1072}\) As with the issues raised by the Auditor-General, this variation would be worthy of subsequent analysis to verify the veracity of the reported data.

8.5.57 With respect to the data presented here, although there is clear variation with respect to the applications for, and outcomes of, special circumstances internal reviews among enforcement agencies, the data do not provide any insight into the reasoning behind the decisions in question nor the quality of the applications made. There is no ‘correct’ proportion of confirmations or withdrawals.

8.5.58 Explanations for variation that could be indicative of inconsistency include:

- different approaches to interpreting the nexus required by the current definition of ‘special circumstances’;
- different tolerance levels to the degree of evidence required – for example, if a medical report simply describes the infringement recipient’s mental illness but is silent as to whether this is likely to have caused the offending behaviour; some enforcement agencies might accept the report as sufficient support for the application, whereas others might not;
- a lack of internal policies and processes within an enforcement agency, leading to inconsistent decision-making; and
- internal inconsistencies within enforcement agencies – for example, an agency may have good policies and processes in place but might have issues with the training of staff.

8.5.59 Some degree of variation may be explained by the different types of offences dealt with by different enforcement agencies, as the nexus between the special circumstance and the offence may be more or less difficult to establish for different offences. It might be relatively clear cut to establish that a person’s alcohol addiction and homelessness made it difficult for that person to control behaviour that constituted the offence of being drunk in a public place. It may be more difficult to establish a nexus between homelessness and an offence such as driving unregistered in a toll zone.

8.5.60 Even in relation to offences that are similar, different enforcement agencies might have different considerations. For example, Victoria Police pointed out that when police issue parking infringements, it is likely to be in response to a report of a vehicle causing problems

\(^{1071}\) Victorian Auditor-General (2009), above n 1039, 62, 64.

\(^{1072}\) Unpublished data provided by IMES to the Council for the purposes of this report.
to traffic flow or public safety, such as where a car is parked in a clearway or across a pedestrian crossing, as opposed to parking infringements issued by other enforcement agencies, which may relate to someone not paying for parking or overstaying.  

8.5.61 A key issue raised in relation to the current internal review process is that variation in the approach of different enforcement agencies is discouraging infringement recipients (and those who assist them) from applying for internal review, particularly on the ground of special circumstances. Framing this variation in terms of inconsistency, the Infringements Working Group explained that:

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.  

8.5.62 Consistent with this, Victoria Legal Aid also called for:

a more consistent approach to the consideration of applications for internal review between enforcement agencies. This could be achieved through the establishment of a model code of conduct for the assessment of applications for internal review, particularly on the grounds of special circumstances.

In this way, the internal review process provides an important point of intervention not only to identify special circumstances but also to avoid the unnecessary or unjustified expenditure of public resources on enforcement action where there is little prospect of fine revenue being recovered.

At the time the Victorian Auditor-General’s Office conducted their examination of the withdrawal of infringement notices at the internal review stage, they noted the potential for inconsistent decision-making in relation to special circumstances applications, as well as the large number of special circumstance appeals denied by Victoria Police. Despite the passage of time, our anecdotal experience would support the same observations being made of the current operation and outcomes of internal review processes.

VLA supports greater scrutiny and governance for internal review processes.  

8.5.63 While the variation demonstrated in the data does not unequivocally indicate that there is inconsistency between enforcement agencies, the degree of variation does provide support for the views of stakeholders that inconsistency is present within and among agencies that are conducting internal reviews based on special circumstances.

1073. Meeting with Victoria Police (18 February 2014).

1074. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).

1075. Submission 4 (Victoria Legal Aid).
Guidance and oversight

Targeting the problem

8.5.64 Advocates of introducing measures to improve internal review consistency among enforcement agencies supported the introduction of a set of central principles. Victoria Legal Aid suggested ‘the establishment of a model code of conduct for the assessment of applications for internal review, particularly on the ground of special circumstances’.1076 The Infringements Working Group supported the introduction of guidelines to improve consistency, suggesting that a 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.1077

8.5.65 The need for a central policy for special circumstances review has also been recognised by some enforcement agencies. One such agency, the City of Melbourne, has undertaken considerable work in this regard, as part of a joint initiative with the United Nations Global Compact Cities Programme. The two organisations convened a working group ‘to create an operating policy for enforcement agencies to use when internally reviewing a special circumstances application’.1078 The working group consisted of other enforcement agencies, the Department of Justice, the Magistrates’ Court, community lawyers, and financial counsellors.1079

8.5.66 To launch the policy, the City of Melbourne hosted a workshop to take enforcement agencies and other infringement stakeholders through the operating policy using a range of examples. Representatives of the Sentencing Advisory Council attended the workshop to understand some of the issues that enforcement agencies face in conducting special circumstances internal reviews.1080

8.5.67 The operating policy aims to:

(a) improve the internal review process for people with special circumstances;
(b) assist enforcement agencies and applicants to comply with their legal responsibilities under the Infringements Act and the requirements of procedural fairness;
(c) provide a guidance framework for enforcement agencies in dealing with special circumstances internal review applications to promote transparency and consistency in decision-making;
(d) afford consideration to the common difficulties experienced by people with special circumstances; and
(e) outline the information required to be submitted for an application to be considered in full.1081

1076. Submission 4 (Victoria Legal Aid).
1077. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
1080. Special Circumstances Infringement Review workshop, 4 February 2014.
8.5.68 While not binding, the operating policy:

seeks to encourage consistent processes and provide greater clarity about acceptable
evidence, but acknowledges that matters still need to be decided on a case by case basis. Each
enforcement agency will consider the application submitted and apply its discretion in choosing
from the available decisions under the Infringements Act 2006 (Vic).\(^{1082}\)

8.5.69 Guidance for the assessment of internal review applications must strike a balance between
the competing objectives of:

- strengthening consistency in decision-making across enforcement agencies and assisting
  with the application of the law; and
- ensuring that prosecutorial discretion about which matters to pursue is not fettered
  and that the separation of powers doctrine is respected by 'not prescriptively directing
  independent agencies in the execution of their statutory duties'.\(^{1083}\)

8.5.70 It is possible under section 5(1)(c)(iii) of the Infringements Act for the Attorney-General,
after consultation with any other minister whose area of responsibility may be affected by
the Attorney-General’s Guidelines, to make guidelines with respect to internal review by an
enforcement agency. However, the Council is not recommending this be done at this time.

8.5.71 As has been explained, the variations discussed above are consistent with the patterns that
resulted from the Auditor-General’s 2009 review of withdrawals. In addition, while the data
analysed here suggest there could be inconsistencies influencing the internal review process,
the data examined do not indicate where the problems could be or give any indication of
the extent of these problems. An audit process would be required to establish this and to
identify specific sources of inconsistency.

8.5.72 The Auditor-General’s 2009 recommendations are still valid in relation to the quality
assurance of withdrawal data and the need for consistent policies, procedures, and
guidelines developed in accordance with the intent of the Infringements Act. Once these
processes are established, targeted intervention would be an effective and efficient response
if it appears that specific agencies (or sections within agencies) are not operating in a manner
that is consistent with the processes.

**Greater oversight**

8.5.73 A degree of government oversight is required to ensure that enforcement agencies have
developed appropriate processes and policies, internal review data are accurately recorded
and reported, and internal reviews are conducted consistently within and among the range
of enforcement agencies.

8.5.74 Independent of the Council’s review, a new legislative package has been developed to
establish an administrative model for collecting and enforcing court fines and infringement
penalties in Victoria. Alongside other changes, the Fines Reform Bill will:

reform processes for internal agency review of infringements by giving the Government the
power to establish and enforce processes for review across Victoria’s 100 plus enforcement
agencies to promote consistency and fairness.\(^{1084}\)

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1083. Victorian Auditor-General (2009), above n 1039, 10 (Response of the Secretary to the Department of Justice).
1084. See Appendix 2: Department of Justice, Overview of the Fines Reform Legislative Amendment Package (2014).
8.5.75 Under the new model, the administrative body will have a Fines Director who will:

- have powers to monitor enforcement agency compliance with the [Infringements Act] generally and in particular in respect of internal review outcomes. There will be powers provided to the Director to make recommendations and to report outcomes to the Attorney-General.1085

8.5.76 The power that will be vested in the Fines Director to monitor outcomes of internal reviews across enforcement agencies is an important measure to ensure consistency, particularly in relation to special circumstances applications. The importance of consistency was emphasised by many stakeholders; for example, Victoria Legal Aid recommended that:

- internal review processes be more consistent and adhere to a consistent framework for assessment of applications for internal review, including applications on the basis of special circumstances.1086

8.5.77 Perceived inconsistency is a particular issue in relation to applications for internal review based on special circumstances and is part of the reason that approximately 30,000 infringement charges are proceeding to court each year instead of utilising the option of internal review. While these applications amount to a small proportion of applications for internal review, cases raising special circumstances account for a significant proportion of infringement matters heard in court. The terms of reference request the Council to report on issues in relation to infringement matters heard in open court. Improving the effectiveness of internal review as a safeguard for these cases is likely to increase uptake of internal reviews and reduce the number of special circumstances cases that are taken to court.

8.5.78 The Council supports giving the Fines Director powers to:

- monitor enforcement agency compliance with the Infringements Act generally and in particular in respect of internal review outcomes; and
- make recommendations and to report outcomes to the Attorney-General.

Oversight or an independent review body?

8.5.79 Strengthening the oversight of the internal review process is consistent with the range of measures recommended by the Auditor-General in his report1087 and is part of the solution to ensuring consistency within and among enforcement agencies.

8.5.80 While a number of stakeholders supported 'a more consistent approach to the consideration of applications for internal review between enforcement agencies',1088 particularly in relation to review based on special circumstances, there was a range of suggestions as to how this could be achieved.

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1085. See Appendix 2: Department of Justice, Overview of the Fines Reform Legislative Amendment Package (2014).
1086. Submission 4 (Victoria Legal Aid).
1088. Submission 4 (Victoria Legal Aid); see also Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
8.5.81 Some stakeholders submitted that in light of the variation in internal review outcomes (particularly in relation to special circumstances), the right to internal review should be replaced with a right of review by an independent review board. Victoria Legal Aid submitted that:

Consideration should also be given to whether it may be appropriate to consolidate the review processes in the one agency. This would ensure that matters are not inappropriately referred to open court and are resolved at the earliest opportunity. This agency could be an existing agency responsible for the oversight of the infringements system—such as the Infringements System Oversight Unit—and could assume broader responsibility for monitoring the consistency and quality of decision-making in internal review processes. It would also relieve the current burden of the application process for people who are required to make separate applications to different enforcement authorities.

8.5.82 Other stakeholders firmly opposed removing the review process from enforcement agencies. These stakeholders pointed to the importance of the ‘feedback loop’ created by the internal review process, which allows enforcement agencies to continuously monitor and improve their issuing processes. The importance of this was recognised by the Infringements System Oversight Unit, which describes the internal review process as one that ‘provides the enforcement agency with feedback and the opportunity to assess the consistency, reliability and efficiency of its processes’.

8.5.83 Opponents of an independent review body also submitted that different enforcement agencies enforce different offences, and the considerations relevant to, for example, a parking officer’s decision to issue a parking infringement are different from the considerations for other enforcement agencies, such as Victoria Police. Victoria Police emphasised that their focus is on public safety and this will have a bearing on the decision to issue an infringement and the review of whether the decision to issue it is correct.

8.5.84 A key issue with the proposal to establish an independent review body is that the suggestion is made primarily in response to concerns raised about the consistency of internal reviews based on special circumstances. While these cases are undoubtedly placing pressure on the courts, the cases represent a small proportion of the total number of applications for internal review. For example, in 2012–13, internal reviews based on special circumstances accounted for 1.3% of total internal review applications (6,762 out of 503,380 applications for internal review). Even if 28,438 special circumstances applications for internal review are added to the number (as a projection of the number of infringement notices where the recipient could potentially apply for internal review rather than utilising the Special Circumstances List of the Magistrates’ Court), this only takes the proportion of special circumstances applications to 6.6% of the total number of internal review applications. Abandoning the entire internal review process in the hope that more special circumstances cases will be resolved earlier is not justified, particularly given the other recommendations in this report that should improve the process.

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1089. For example, Submission 4 (Victoria Legal Aid). See also Saunders et al. (2013), above n 194, 11.
1090. Submission 4 (Victoria Legal Aid).
1091. For example, Meeting with Victoria Police (18 February 2014).
1093. Meeting with Victoria Police (18 February 2014).
Other jurisdictions

8.5.85 The majority of Australian jurisdictions have an internal review process, rather than one that is centralised. For example, the Queensland, South Australian, Western Australian, and Tasmanian infringement regimes all provide a right of internal review to the issuing agency.\textsuperscript{1094}

8.5.86 New South Wales has a different model whereby applications for review are made to the State Debt Recovery Office (SDRO). If a penalty notice is not paid by the due date, the SDRO sends a penalty reminder notice giving the person 28 days to pay or finalise the fine. Upon receiving a penalty notice or a reminder notice a person can request a review by the SDRO. A review can be conducted on the grounds of alleged error or special circumstances (as defined). One of three outcomes is possible following review:

- the penalty stands – the offence is proven and the circumstances or issues raised do not warrant a caution. The fine must be paid or the person may elect to go to court to have the matter determined;
- a caution is given – the offence is proven but, in the circumstances, a caution is warranted. The fine does not have to be paid; or
- cancellation – the penalty notice does not sufficiently disclose the offence or has been issued in error. The fine does not have to be paid.

8.5.87 While reviews conducted by the SDRO are technically independent of the agency that issued the infringement notice, the SDRO ‘may consult the issuing agency where clarification of any aspect is required’. Furthermore, the SDRO is not responsible for all reviews; some agencies in New South Wales that issue infringement notices conduct their own reviews. In these cases, the SDRO acknowledges receipt of the person’s application and forwards the request to the respective agency.\textsuperscript{1095} For example, the New South Wales Police Force conducts its own reviews.

8.5.88 A consideration in determining whether an independent review body should be introduced in Victoria is that an independent right of review already exists at the enforcement stage (a similar stage at which reviews are available through the SDRO in the New South Wales system).\textsuperscript{1096} Forthcoming changes to revocation and the enforcement review process, including aligning the grounds for enforcement review with the grounds for internal review, will result in infringement recipients having a second opportunity for a review of the infringement – by a body independent of the enforcement agency.\textsuperscript{1097} Further, in relation to applications for enforcement review based on special circumstances, this report has recommended the establishment of a specialist unit within the administrative body, which should add an additional layer of protection for these cases.\textsuperscript{1098}


\textsuperscript{1095}. State Debt Recovery Office (NSW), SDRO Review Guidelines (Office of State Revenue, 2013) 3.

\textsuperscript{1096}. See discussion at [5.2.10]–[5.2.30].

\textsuperscript{1097}. See [5.2.14]–[5.2.19].

\textsuperscript{1098}. See [5.2.20]–[5.2.30].
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The Council’s view

8.5.89 For the above reasons, the Council considers that it is appropriate to exercise caution and does not recommend that the current internal review process should be replaced with an independent review body at this time. This is in light of:

- the right of an infringement recipient to seek enforcement review and the recommendations in this report in relation to enforcement review;
- the powers and responsibility that the Fines Director will have to monitor internal review outcomes; and
- the main variation indicated by the data being in relation to internal reviews based on special circumstances, which currently comprise less than 2% of all internal reviews.

8.5.90 While the Council does not support removing the internal review process from enforcement agencies, it does support other measures to strengthen consistency.

8.5.91 The Fines Director should be given the power to monitor internal review outcomes. This is consistent with the conclusions of the Auditor-General from 2009 that the preferable approach to ensuring consistency and compliance in internal reviews is to identify and directly address problems with individual enforcement agencies, rather than replacing the internal review process.

8.5.92 As part of the Fines Director’s role in monitoring the internal review process, the Fines Director should issue a Model Review Policy containing principles and criteria for determining applications for internal review (as suggested by a number of stakeholders) and enforcement review. The Model Review Policy should set out common examples under each ground of review and provide a non-exhaustive list of acceptable evidence for establishing the grounds.

Recommendation 41: Oversight and monitoring of internal review by Fines Director

The Fines Director should have an oversight function on the conduct of internal review by enforcement agencies, including through:

- monitoring outcomes of internal reviews, including collecting and reporting on data on applications for internal review, the grounds of application, and the outcomes;
- auditing enforcement agencies, including the extent to which policies and procedures are in place to assist the internal review process;
- assessing compliance by enforcement agencies with the provisions on internal review set out in the Infringements Act 2006 (Vic), including the intent of the legislation; and
- publishing frequent reports, including on internal review applications, grounds, outcomes, and measures taken by enforcement agencies to ensure consistency and compliance.

1099. Submission 4 (Victoria Legal Aid), Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).

1100. See for example, State Debt Recovery Office (NSW), above n 1095.

1101. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
8.5.93 The purpose of the Model Review Policy is to:

- assist enforcement agencies in developing and evaluating their own internal policies governing internal review;
- support the administrative body in conducting enforcement reviews; and
- assist applicants with understanding the grounds on which applications may be made and formulating applications.

8.5.94 The Model Review Policy should be prepared in consultation with key infringements system stakeholders, including enforcement agencies and organisations (both legal and financial) that assist infringement notice recipients. The Model Review Policy should cover such matters as:

- interpreting the grounds on which an application for review may be made;
- examples of common circumstances that give rise to applications for review under each ground;
- a non-exhaustive list of acceptable evidence to support an application, including for each of the common circumstances (taking into account difficulties in providing written evidence of special circumstances such as homelessness);
- the types of circumstances in which it may be appropriate for an enforcement agency or the administrative body to waive the requirement for a practitioner’s statement;
- the information that the enforcement agency should provide to applicants; and
- ‘best practice’ standards for conducting reviews, particularly those based on special circumstances and those raising circumstances of family violence.

8.5.95 Documents that might assist in the preparation of the Model Review Policy include (in no particular order):

- the City of Melbourne Special Circumstances Infringement Review Model Operating Policy for Enforcement Agencies (February 2014);
- the Infringements System Oversight Unit’s information paper on internal reviews under the Infringements Act; and
- the New South Wales Attorney-General’s internal review guidelines under the Fines Act 1996 (NSW) and the New South Wales State Debt Recovery Office’s review guidelines.

8.5.96 Once the Model Review Policy has been issued, the Fines Director should provide enforcement agencies with assistance and support, including assistance with interpreting the Model Review Policy and developing or reviewing their own internal policies.

**Recommendation 42: Model Review Policy for internal review and enforcement review**

The Fines Director should issue a Model Review Policy containing principles and criteria for determining applications for internal review and enforcement review (including principles that apply to applications on the ground of special circumstances and on the ground of exceptional circumstances in circumstances of family violence).
A perception of inconsistency in the conduct of special circumstances internal reviews was not the only issue driving infringement matters into court, rather than having them filter through an internal review process. The remainder of this chapter presents a discussion of a number of other issues with special circumstances internal review that have contributed to the number of infringement matters with special circumstances in the Magistrates’ Court, in particular:

- the automatic referral to open court (in the general list) following an unsuccessful application for special circumstances internal review; and
- issues with the test for special circumstances.

**Automatic referral to court in relation to special circumstances**

**Issues with automatic referral**

8.5.98 Under the *Infringements Act*, if an enforcement agency determining an application for internal review based on special circumstances confirms the decision to serve the infringement notice, the enforcement agency must:

- refer the matter to court for hearing; or
- where the infringement recipient is a child, withdraw the infringement notice and file a charge sheet and summons in the Children’s Court.\(^\text{1102}\)

8.5.99 This provision was intended as a safeguard of the infringements system for vulnerable people. This was recognised in the Auditor-General’s report on withdrawal of infringement notices:

As an added protection, the Act provides that where a person has had their application for internal review on special circumstances grounds rejected by an agency, the agency can only prosecute the matter in open court.\(^\text{1103}\)

8.5.100 In practice, however, this provision appears to be problematic. A common theme in Council consultations was that the provision is a disincentive to those with special circumstances to utilise the internal review process. Dr Bernadette Saunders, Associate Professor Gaye Lansdell, Dr Anna Eriksson, and Ms Meredith Brown submitted that:

Disadvantaged groups may feel intimidated by the criminal justice system for a variety of reasons and may experience a significant amount of distress when appearing in court. Disclosing their mental illness and/or other difficult and stressful personal situations in a public forum may exacerbate this.\(^\text{1104}\)

8.5.101 A participant at Roundtable 1 emphasised that the rigidity of this provision is a clear driver of infringements into court through the enforcement process:

it's our standard practice not to make internal review applications for … most of our clients. In fact, we generally wait until they become enforced … Because of the rigidity of the evidence that’s required, and the likelihood that they’ll be referred to open court, we will get less suitable outcomes. We often just don’t use internal review at all.\(^\text{1105}\)

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1102. *Infringements Act 2006* (Vic) s 25(3).
1104. Submission 5 (Saunders, Lansdell, Eriksson, and Brown).
1105. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013).
8.5.102 It was clear from the consultations that this provision places pressure on infringement recipients and enforcement agencies alike. For example, Victoria Police told the Council that:

Whilst ‘special circumstances’ is clearly defined within the Act, it can be particularly difficult to determine whether legitimate special circumstances exist or whether withdrawal is appropriate and often matters are referred to the Magistrates’ Court for determination.

Referral of a matter to the Magistrates’ Court is in most cases not the desirable or expected outcome of a person making an application on these grounds. This legislative provision removes the option from the applicant to expiate the infringement offence by way of payment. It more often than not results in a ‘finding of guilt’ by the Magistrates’ Court hearing a matter, which will consequently appear on the licence history of the accused (unlike an infringement notice, which will not).

A person presenting with special circumstances is disadvantaged by these requirements as they are forced down this path rather than having the option to elect to take this path.

It places pressures on the applicant (and/or their representatives), enforcement agencies and the Magistrates’ Court.1106

8.5.103 While enforcement agencies may request further information from the applicant prior to determining the review,1107 it is clear that automatic referral places pressure on enforcement agencies and acts as a disincentive to infringement recipients.

8.5.104 There was general support for the abolition of automatic referral to court under section 25(3) of the Infringements Act,1108 and for matters to proceed through enforcement if the enforcement agency decides to pursue a matter following an unsuccessful application for internal review based on special circumstances. Victoria Legal Aid submitted that:

agencies should have to proactively seek enforcement of matters through an opt in process.

Currently, matters are automatically referred to open court without any requirement that the enforcement agencies decide to prosecute the matter. By introducing an opt in requirement, there will be better consideration of which matters to pursue and a greater incentive for the enforcement agencies to engage in the process.1109

8.5.105 Many of those who made submissions emphasised that court should be a last resort, and that:

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.1110

1106. Meeting with Victoria Police – Road Policing Enforcement Division (24 September 2013).
1107. Infringements Act 2006 (Vic) s 23.
1108. Submission 4 (Victoria Legal Aid); Submission 6 (North Melbourne Legal Service Inc.); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
1109. Submission 4 (Victoria Legal Aid).
1110. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
8.5.106 The data supported stakeholders’ submissions that the automatic referral process acts as a disincentive to applying for internal review. In 2012–13, there were 6,762 applications for internal review based on special circumstances, but there were 28,438 charges heard in the Magistrates’ Court in the Special Circumstances List following a finding of special circumstances by the Infringements Court. If even half of the charges heard in the Special Circumstances List instead had proceeded as applications for internal review based on special circumstances, the number of applications on this ground would have almost tripled, potentially reducing the burden on the Magistrates’ Court, enforcement agencies, and infringement recipients.

The Council’s view

8.5.107 The Council recommends abolishing the requirement for enforcement agencies to transfer matters to court if they confirm a decision to issue an infringement notice following an application for internal review based on special circumstances. Such cases should proceed in the same way as cases involving an application for internal review based on other grounds.

**Recommendation 43: No automatic referral of cases to court following an unsuccessful internal review based on special circumstances**

Section 25(3) of the *Infringements Act 2006* (Vic) should be repealed, to remove the requirement that enforcement agencies refer cases to court following an unsuccessful application for internal review based on special circumstances.

**Difficulties in establishing special circumstances**

**Categories of special circumstances**

8.5.108 A number of stakeholders reported that issues in relation to the definition of special circumstances are currently a barrier to utilising internal review provisions, particularly in light of the automatic transfer to court if the application is unsuccessful. These problems are contributing to infringement recipients with special circumstances taking the infringement to court (for example, the Special Circumstances List after revocation) rather than making an application for internal review.

8.5.109 The current definition of special circumstances provides an exclusive list of the circumstances that can be considered. Critics of the current definition argue that it is too narrow and that it should be:

- broadened to include family violence and financial hardship; or
- changed so that it is an inclusive list, and other circumstances, such as family violence, gambling, or financial hardship can be properly considered where appropriate.

8.5.110 The report by Saunders et al. raised similar concerns about the limited circumstances included in the definition:

there are other groups who do not meet the legislated criteria yet are often equally as disadvantaged as those who do – specifically, people who are experiencing long-term financial hardship and those who are victims of domestic violence.1111

Family violence and financial hardship

8.5.111 A number of stakeholders consulted by the Council supported the introduction of family violence into the definition of special circumstances.1112 There was also support for the inclusion of financial hardship into the list of circumstances captured in the definition.

8.5.112 Stakeholders were concerned that victims of family violence sometimes receive infringement notices for offences committed by a violent partner, who they are too afraid to nominate as the offender.

8.5.113 A related issue is that family violence sometimes causes victims significant financial hardship (for example, where the perpetrator controls the family finances) or fleeing violence causes victims to become temporarily homeless (for example, finding shelter in a refuge or sleeping in a car with their children). While there may be ample proof of the violence, sometimes the related homelessness can be difficult to prove if the person is not receiving support from an agency or if there are risks associated with publishing the address of a refuge.1113

8.5.114 Saunders et al. stated that ‘all of the legal representatives in our study who were asked whether they thought domestic violence should be included as a special circumstances criterion agreed that it should’.1114 Similarly, PILCH Homeless Persons’ Legal Clinic called for amendments that recognised ‘the role family violence plays’ in a victim accruing infringements (both when fleeing violence or when a violent partner incurs fines in the victim’s name).1115

8.5.115 The call to introduce safeguards into the infringements system for victims of family violence is not unique to Victoria. In the Australian Capital Territory, Street Law advocated introducing defined special circumstances into the Australian Capital Territory infringements system, as has been done in Victoria. Street Law suggested that special circumstances be defined to include exceptional financial hardship and domestic violence.1116 Street Law reported that:

People who are severely socially and financially disadvantaged due to homelessness, addiction, disability, domestic violence, and/or mental illness may not have paid fines because:

- They do not have a fixed or stable address at which to receive mail;
- They are unable to afford to pay outstanding fines, even by instalments, because they have no disposable income;
- They have more immediate concerns than the payment of fines, including mental illness, inadequate housing, and social isolation.

These people continue to present to financial counselling services and advocacy organizations with significant debts. They are even less likely to be able to afford to pay their infringements than other low-income people, and so are likely to have their driver’s licences fine suspended and suffer the consequences documented above. This debt both causes and entrenches their financial and social disadvantage and homelessness.1117

1112. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Submission 4 (Victoria Legal Aid); Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).

1113. Submission 5 (Saunders, Lansdell, Eriksson, and Brown).


1115. Submission 10 (PILCH Homeless Persons’ Legal Clinic).


8.5.116 Support for the inclusion of financial hardship into the definition extended beyond circumstances of family violence. Saunders et al. argued that:

People who are caught in a cycle of extreme financial hardship may feel compelled to commit ‘offences of poverty’ in order to survive. Deciding whether to steal some food or to starve, or to travel on a train without a ticket so as to keep an important appointment, is the kind of dilemma most people do not have to face. One client spoke about the dilemma of having no money and being forced to make the decision to travel on public transport without a ticket. She said she often tried to walk to her appointments, but if the distance was too great she would catch public transport. She commented:

If I haven’t got the money sometimes I try and walk but it depends on the time. I don’t take a seat. I stand up … I’m not taking anyone’s spot. (Client 24)

Clearly, someone who cannot afford to purchase a ticket cannot afford to pay a $207 fine. Moreover, these types of ‘offending’ are unmistakably linked to a state of poverty and arguably meet the special circumstances criterion of being unable to control the offending behaviour.1118

Family violence as an exceptional circumstance

8.5.117 Although family violence does not form part of the current definition of special circumstances, infringements committed in circumstances of family violence may currently be considered under the ground of exceptional circumstances. Stakeholders reported that this occurs.1119

8.5.118 The difficulty of this approach is that there is no central policy setting out typical examples of exceptional circumstances cases, or the principles and approaches that should be applied in considering them. This leaves every enforcement agency to determine when circumstances of family violence warrant the withdrawal of the infringement penalty (with or without a warning) on the ground of exceptional circumstances.

8.5.119 Therefore, a purpose of extending the definition of special circumstances to include family violence would be to make it clear to infringement recipients and enforcement agencies that family violence may be an appropriate basis on which an infringement may be withdrawn. However, this purpose could also be achieved through the Fines Director issuing a clear Model Review Policy that sets out examples of circumstances where an application for review based on exceptional circumstances could be made where the offence had been committed in the context of family violence.

8.5.120 Further, there are a number of drawbacks to shifting family violence from an exceptional circumstance to the definition of special circumstances, including the following:

• Removing flexibility in the approach taken by an enforcement agency to assessing applications for review based on family violence – if family violence is included as a category of special circumstances, the infringement recipient will have to establish a nexus between the violence and the offence; if family violence remains within the ground of exceptional circumstances, there can be greater flexibility in considering applications on this basis.

• Issues around proof – linked to the requirement for the nexus, including family violence as a defined special circumstance may lead to more onerous requirements as to proof. Applicants may be requested to provide material in support of an assertion that the violence contributed to the person being unable to control the conduct that constituted the offence.

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1119. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013).
• Imperfect ‘fit’ where the infringement was not committed by the infringement recipient – part of the justification for including family violence as a special circumstance is that it may assist infringement recipients who are too afraid to nominate their violent partner as the offender. However, inherent in the definition of special circumstances is the requirement that the circumstance results in the recipient being unable to control or to understand his or her own conduct. An unstated assumption is that the applicant has committed the offence but has reasons why he or she should be excused. This definition is stretched where an infringement recipient is seeking to be excused because he or she could not control the behaviour of another person who is the actual offender. The flexibility of the ground of exceptional circumstances provides better scope to consider the merits of different family violence circumstances.

8.5.121 While acknowledging that there are circumstances in which it is appropriate to withdraw infringement notices because of issues around family violence, the Council believes that these issues can be better and more flexibly addressed under the ground of exceptional circumstances. Therefore, the Council does not recommend that family violence be included in the definition of special circumstances.

8.5.122 However, to support consistency and to make it clear that there are circumstances where family violence may justify the withdrawal of an infringement penalty notice, the Model Review Policy recommended in this report should include common examples of exceptional circumstances applications (including those based on family violence) and the principles and approaches that should be applied to considering such applications. In particular, the Model Review Policy should provide guidance on considering applications for review based on exceptional circumstances involving family violence. This is recommended as part of Recommendation 42.

8.5.123 The Council also does not recommend that the definition of special circumstances be expanded to include those experiencing financial hardship, in light of other existing and recommended safeguards for this group, including:

• the recommendation for an adjusted infringement penalty (Recommendation 39);
• the recommendations about the introduction of a work and development permit scheme (Recommendations 12 and 13);
• the existing provision for payment plans;
• the existing ability for people to apply for internal review on the basis of exceptional circumstances; and
• the recommendation that enforcement review is made available on the same grounds as internal review, including exceptional circumstances (Recommendation 16).

An exhaustive or inclusive list of circumstances?

8.5.124 Several stakeholders suggested that the special circumstances definition be amended so that the list of qualifying circumstances is inclusive, rather than exhaustive. This would allow those responsible for determining whether special circumstances are established to broaden the definition as required to include other similar circumstances. For example, an enforcement agency might accept an application for internal review on the ground of special circumstances based on a gambling addiction that resulted in the person being unable to control the conduct that constituted the offence. One argument for this approach is that it is more flexible and would allow analogous circumstances to be considered in appropriate cases.

1120 For example, Submission 4 (Victoria Legal Aid).
8.5.125 In the Council’s view, changing the definition to make the list inclusive is not necessary in light of the ground of exceptional circumstances, which can operate as an alternative ground where circumstances do not fall into the definition of special circumstances. Given the potential for special circumstances, if established, to result in prosecution being ceased, or to result in a work and development permit, there is transparency and certainty in an exhaustive list of circumstances.

8.5.126 Making the definition of special circumstances an inclusive list that allows new circumstances to be added by discretion risks:

- less certainty and transparency in the application of special circumstances;
- greater inconsistency in the approach to considering special circumstances;
- broadening the definition of special circumstances to such an extent that it undermines the credibility of special circumstances as a ground of review;
- reducing the efficiency of the review process;
- blurring the line between special circumstances and exceptional circumstances as separate grounds for internal review and enforcement review.

8.5.127 In light of the other recommendations in this report and for the reasons outlined above, the Council is not persuaded that the definition should be amended to include an inclusive list of special circumstances.

Establishing a nexus between the circumstance and the offence

The nexus required

8.5.128 The definition of special circumstances requires a link, or nexus, between the defined circumstance and the offence. The person must have a circumstance that ‘results in the person being unable to understand that the conduct constitutes an offence, or to control such conduct’.1

8.5.129 Those who work in the infringements system – both in enforcement and in representing recipients – reported that supporting evidence for special circumstances applications frequently falls short of establishing the required link. For example, a doctor might report that a person has chaotic thinking, poor impulse control, depression, and anxiety, but may not feel comfortable in saying that this condition resulted in the person being unable to control his or her conduct on the specific occasion. This issue was raised by a number of participants at the Council’s roundtable consultations, for example:

A lot of doctors are reluctant to say, ‘Yes, this condition caused them to break the law.’ So I always rephrase my letters, ‘May have contributed to them incurring an offence’.2

8.5.130 This issue is exacerbated where time has passed between the offending and the medical assessment or where the person was not in treatment during the offending period:

often for a lot of clients, during their most chaotic times, which will align with their period of offending … they weren’t engaged with support services. So, it’s quite difficult to get professionals to retrospectively comment on what the impact might have been.3

1121. See [8.5.14]–[8.5.19].
1122. Infringements Act 2006 (Vic) s 3.
1123. This was raised in a number of meetings including Roundtable 1 – Warnings, Review, and Open Court (19 August 2013).
1124. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013).
1125. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013).
8.5.131 Many of those consulted suggested that a better test for special circumstances would require a person to have a circumstance that ‘contributed to’ the person being unable to understand that the conduct constitutes an offence, or to control such conduct’ and that more flexibility is required in relation to the supporting evidence.

PILCH Homeless Persons’ Legal Clinic (HPLC) submitted:

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.

8.5.132 PILCH further stated that this amended definition:

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.

8.5.133 The Infringements Working Group supported broadening the nexus between the circumstance and the offence because:

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.

8.5.134 The change to the nexus in the definition proposed by stakeholders is not unprecedented in the criminal justice system. For example, where a federal offender is suffering from an intellectual disability, the sentencing court may make a program probation order if it is satisfied that the disability contributed to the commission of the offence by the person and that an appropriate education program or treatment program is available for the person.

8.5.135 Similarly, the Victorian Drug Court may make a drug treatment order if satisfied on the balance of probabilities that the offender is dependent on drugs and/or alcohol, and that dependency ‘contributed to the commission of the offence’.

1126. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Submission 5 (Saunders, Lansdell, Eriksson, and Brown); Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).

1127. Submission 10 (PILCH Homeless Persons’ Legal Clinic).

1128. Submission 10 (PILCH Homeless Persons’ Legal Clinic).

1129. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).

1130. Crimes Act 1914 (Cth) s 208Y(1)(b).

8.5.136 The Council was persuaded that the current nexus is problematic and that the definition of special circumstances under section 3 of the Infringements Act should be amended to provide that special circumstances are established if the particular circumstance ‘contributed to’ (rather than ‘results in’) the offender being unable to:

- understand that the conduct constitutes an offence; or
- control conduct that constitutes an offence (as the case may be).

Recommendation 44: Broaden test for special circumstances
The test for special circumstances in section 3 of the Infringements Act 2006 (Vic) should be amended to replace the words ‘results in’ with the words ‘contributed to’.

Evidence required
8.5.137 The Fines Victoria website specifies that the following evidence is required for an infringement recipient to qualify as having special circumstances for the purposes of internal review or revocation. It states that:

Where the circumstances relate to (a) a mental or intellectual disability or disorder, disease or illness or (b) a serious addiction to drugs, or alcohol or a volatile substance, the following evidence is specified:

A medical report from your doctor, psychologist, psychiatrist or psychiatric nurse is required. The report must:

- give a diagnosis of your medical or mental health condition for the past 12 months
- demonstrate that you were suffering from this condition at the time of the offence
- demonstrate how this condition affects your daily life and contributed to you receiving an infringement notice; and
- be signed and dated within the last 12 months.\textsuperscript{1132}

8.5.138 For special circumstances based on homelessness it states that:

A report from an agency such as Salvation Army, Hanover, St Vincent’s (or other agency funded under the Supported Accommodation Assistance Act 1994 (Cth)) is required. You may also wish to provide a report from your doctor, psychologist or psychiatrist. The report or letter must:

- include details of current living arrangements (if any)
- give details of period of homelessness
- demonstrate how this circumstance contributed to your receiving an infringement notice
- provide any additional information that may assist the Infringements Court; and
- be signed and dated within the last 12 months.\textsuperscript{1133}

8.5.139 A number of stakeholders and participants at the Council’s roundtable consultations noted that obtaining medical reports to prove the nexus can be costly and that the costs are rarely covered by legal aid.


\textsuperscript{1133} Ibid.
8.5.140 In addition to the difficulties in obtaining evidence to satisfy the nexus, another concern raised was the inconsistency in the sources of evidence accepted and insufficient flexibility in the range of support workers whose evidence is accepted. There is an in-built tension between ensuring that measures to protect people with special circumstances are designed tightly enough to avoid exploitation by those who do not qualify, and ensuring that measures are flexible enough to make sure those who should qualify do qualify.

8.5.141 The City of Melbourne and the United Nations Global Compact Cities Program operating policy (see [8.5.65]–[8.5.68]) outlines acceptable supporting evidence:

(a) Acceptable evidence is capable of confirming the existence of a relevant condition and linking that condition to the conduct (i.e. establishing the existence of special circumstances).

(b) Reports attesting to special circumstances can be accepted from relevant practitioners, including but not limited to:

(i) in the case of an application based on a mental or intellectual disability, disorder, disease or illness: a general practitioner, case manager, psychiatrist, psychologist or psychiatric nurse.

(ii) in the case of an application based on a serious alcohol or drug dependency condition: a general practitioner, case manager, psychiatrist, psychologist, accredited drug treatment agency or accredited drug counsellor.

(iii) in the case of an application based on homelessness: a case worker, case manager, agency funded under the Supported Accommodation Assistance Act 1994 or other health or community welfare service provider (e.g. Salvation Army, Jesuit Social Services).

(c) The amount of evidence required does not increase where the applicant is seeking review of multiple infringement notices concurrently.1134

8.5.142 The operating policy, while not binding, provides guidance on how special circumstances might be established.

8.5.143 As explained at [8.5.92]–[8.5.96], the Council is of the view that a Model Review Policy should be issued. This Model Review Policy should include a non-exhaustive list of the types of evidence that may be accepted in support of an application for review, including an application based on special circumstances.

Organisations assisting recipients should encourage internal review

8.5.144 As outlined earlier in this chapter, some organisations who assist infringement recipients advise clients with special circumstances not to exercise the right to apply for internal review but rather wait until the enforcement stage to take action. At the enforcement stage, people with established special circumstances may access the Special Circumstances List of the Magistrates’ Court if the enforcement agency does not withdraw the infringement.1135 Stakeholders also noted that it is increasingly difficult to have an infringement notice withdrawn based on special circumstances.1136

8.5.145 The information from stakeholders about the increasing difficulty in having matters withdrawn – and the decreasing willingness to try internal review – was supported by data on special circumstances cases.

1135. See Appendix 1.
1136. For example, Roundtable 1 – Warnings, Review, and Open Court (19 August 2013).
8.5.146 Figure 44 shows that in the period from 2009–10 to 2012–13:

- applications for internal review based on special circumstances declined by 34%, from a rate of 1.29 applications per 1,000 infringements in the 6 months to December 2009, to 0.85 applications per 1,000 infringements in the 6 months to June 2013. This reduction is even more noteworthy given that the number of infringements issued increased by 28.5% over the same period of time;
- the percentage of infringements withdrawn by agencies following an application for internal review based on special circumstances declined by 58.1% in the period;
- the percentage of applications resolved by the infringement being withdrawn and the person receiving an official warning increased by 32.1%; and
- the percentage of applications that were unsuccessful (that is, the infringement was confirmed) increased by 36.7%.

8.5.147 The data show that, while applications for internal review had been steadily increasing from 2009–10 to early 2012, they started decreasing following a decrease in the number of successful applications for internal review based on special circumstances in late 2011. This supported the information provided to the Council that support agencies were no longer recommending internal review to clients because of a belief that enforcement agencies are inconsistent in their approach to special circumstances and that some agencies are more reluctant to find that special circumstances have been established to the requisite standard.

Figure 44: Proportion of applications for internal review on the ground of special circumstances by 1,000 infringements issued, and outcomes 2009–10 to 2012–13
8.5.148 The fact that special circumstances cases are being driven into open court, rather than being identified and resolved earlier in the system through the internal review process, is of concern because:

- it indicates that the infringements system is not operating as well as it could be;
- it appears that the already stretched resources of the Magistrates’ Court are being further stretched because of problems upstream in the system;
- proceeding to the enforcement process is exposing those with special circumstances to the risk of added costs;
- the requirement to plead guilty to access the Special Circumstances List means that the most vulnerable people in the infringements system may be receiving a criminal record for an infringement, regardless of whether or not the court records a conviction.  

8.5.149 If the recommendations set out in this report are implemented, support agencies tasked with helping infringement recipients who have special circumstances should encourage recipients to resolve matters as early as possible, rather than proceeding to the enforcement stage.

8.5.150 The reforms to internal review recommended in this chapter, and a willingness of those assisting infringement recipients to re-engage with the internal review process, should reduce the number of infringement matters heard in open court, including in the Special Circumstances List.

**Special Circumstances List**

8.5.151 The Special Circumstances List of the Magistrates’ Court was introduced as part of the court’s Enforcement Review Program, which ‘enables the court to impose outcomes that reflect the circumstances of the offending’. The Special Circumstances List operates at the Melbourne Magistrates’ Court and also at the Neighbourhood Justice Centre in Collingwood.

8.5.152 The recommendations in this report in relation to both internal review and enforcement review are likely to reduce the number of infringement recipients with special circumstances whose matters are heard in the Special Circumstances List of the Magistrates’ Court. Nonetheless, it is likely that some cases will continue to be heard on the list (if the enforcement agency elects to continue the prosecution following a successful application for enforcement review based on special circumstances).

8.5.153 The Magistrates’ Court website sets out the following process for the Special Circumstances List:

Clients must attend court and be prepared to plead guilty to the offence, unless they have exceptional circumstances such as being institutionalised. The Magistrate or Judicial Registrar will take into consideration the ‘special circumstances’ outlined in the application when determining an appropriate outcome to the matter. Magistrates and judicial registrars have full discretion as to what type of order can be imposed, but could include a dismissal pursuant to Section 76 of the Sentencing Act 1991, an Undertaking to be of Good Behaviour or reimposition of the fine. The prosecutor may request VicRoads to perform a licence review for driving related offences. Demerit points are still recorded with VicRoads for the relevant regulated offences upon a finding of guilt.

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1137. See [8.5.163]–[8.5.169] for discussion of this issue.
1138. Magistrates’ Court of Victoria (2012), above n 880.
1139. See in particular Recommendations 16–19, 41–44.
1140. Magistrates’ Court of Victoria (2012), above n 880.
8.5.154 Stakeholders were generally supportive of the Special Circumstances List and viewed it as an important safeguard of the infringements system. 1141 A number of suggestions were made as to how the list can be strengthened, including:

- providing for the list in the Infringements Act;
- considering how the list could be extended to those outside the Melbourne region;
- ensuring that the list is appropriately resourced; and
- providing an option for dealing with people on the list without a finding of guilt in certain circumstances.

8.5.155 While these matters go beyond the scope of this report, they are addressed briefly in turn below.

Operation of the Special Circumstances List

8.5.156 A key benefit of the Special Circumstances List in addressing the offending of those with special circumstances is that the face-to-face contact between the infringement recipient and the court allows the person’s offending and circumstances to be addressed. Representatives of the Special Circumstances List discussed the importance of taking steps ‘to prevent behaviour from continuing’ and there needing ‘to be work done to make sure they are not there again next year and [the] year after’. 1142 They spoke about the need ‘to put an intervention into the behaviour’, particularly where the offending relates to public safety. 1143

8.5.157 While Magistrates’ Court representatives said that people ‘should come into court as a last resort’, they commented that sometimes ‘coming to court can provide a circuit-breaker’ and that sometimes a fine can be the most appropriate penalty to modify the person’s behaviour. 1144

8.5.158 A number of stakeholders suggested that the Special Circumstances List should be specifically provided for in the Infringements Act and that it should be available in courts other than the Melbourne Magistrates’ Court and the Neighbourhood Justice Centre. 1145

8.5.159 Victoria Legal Aid submitted that:

Many of our clients and other people appearing in the Magistrates’ Court in relation to special circumstances are unwell, may have unstable housing arrangements and may not have established links to support services. The court environment provides a good opportunity to facilitate brief interventions to assist vulnerable people. The Enforcement Review Program was established in contemplation of these interventions … people who live in rural or regional Victoria have to travel to Melbourne if they wish to have their matter heard in the Special Circumstances List. This represents a substantial barrier for access to justice given the costs and distances associated with travel to metropolitan Melbourne, particularly for people who are already vulnerable. This has been demonstrated in our casework.

In 2009, the Auditor-General recommended in the review of the withdrawal of infringement notices that the provision of services to people with special circumstances in regional centres be reviewed. It noted that the lack of direct access for people with special circumstances in regional areas to the court assistance program provided through the Enforcement Review Program

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1141. For example, Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Submission 4 (Victoria Legal Aid); Submission 10 (PILCH Homeless Persons’ Legal Clinic).
1142. Meeting with Magistrates’ Court of Victoria – Special Circumstances List (9 January 2014).
1143. Meeting with Magistrates’ Court of Victoria – Special Circumstances List (9 January 2014).
1144. Meeting with Magistrates’ Court of Victoria – Special Circumstances List (9 January 2014).
1145. For example, Submission 5 (Saunders, Lansdell, Eriksson, and Brown).
diminishes the effectiveness of diverting offenders with special circumstances and impedes the intended operation of the Act.

VLA supports renewed consideration of the expansion of therapeutic court programs, including the Special Circumstances List, to rural and regional locations to overcome the disadvantage created by ‘postcode justice’.1146

8.5.160 While the complexities of judicial administration are beyond the scope of this report, the Council considers that, given the strong support for the list from a broad range of stakeholders, the government should consult with the Magistrates’ Court on whether (and to which regions) the operation of the list should be expanded. The Special Circumstances List should not, however, be prescribed in legislation. Further, the Magistrates’ Court of Victoria should receive additional funding to administer the Special Circumstances List, including funding to extend it beyond the Melbourne Magistrates’ Court and the Neighbourhood Justice Centre if necessary.

Recommendation 45: Extend operation of Special Circumstances List
The government should consult with the Magistrates’ Court in relation to whether the list should be extended to other regions where there is currently no Special Circumstances List.

The Magistrates’ Court of Victoria should receive additional funding to administer the Special Circumstances List, including funding to extend the list beyond the Melbourne Magistrates’ Court and the Neighbourhood Justice Centre if necessary.

8.5.161 While a number of specialist courts (such as the Drug Court1147 and the Koori Court1148) have been established in legislation, the same is not true for specialist lists that generally have been developed by courts on their own initiative.

8.5.162 When considering the legislative footing of an existing practice, the court’s discretion to apply its resources is an important consideration: the very flexibility of administration that enabled the court to develop a tailored response to a particular group coming before it should not be restrained by legislative prescription.

Finding of guilt
8.5.163 A concern about the current operation of the Special Circumstances List is that the infringement recipient must ‘be prepared to plead guilty to the offence, unless they have exceptional circumstances such as being institutionalised’.1149 The requirement to plead guilty to access the Special Circumstances List means that the most vulnerable people in the infringements system may receive a criminal record for their infringement offence, regardless of whether or not the court records a conviction. This is because of the current Victoria Police information release policy, which provides that:

Victoria Police release criminal history information on the basis of findings of guilt, and may also release details of matters currently under investigation or awaiting court hearing. It is important to note that a finding of guilt without conviction is still a finding of guilt and will be released according to the information release policy.1150

1146. Submission 4 (Victoria Legal Aid).
1147. Magistrates’ Court Act 1989 (Vic) s 4A.
1148. Magistrates’ Court Act 1989 (Vic) s 4D; County Court Act 1958 (Vic) s 4A.
1149. Magistrates’ Court of Victoria (2012), above n 880.
1150. See Victoria Police (2013), above n 870.
8.5.164 A number of stakeholders pointed out that the finding of guilt and consequent accessible criminal record mean that this small, most vulnerable minority of infringement recipients are being disadvantaged compared with the bulk of infringement recipients without special circumstances who can escape a criminal record by paying the infringement penalty. For example, the Infringements Working Group said that:

people who can afford to deal with their infringements by payment can avoid the stress of going to court … and potentially receiving a criminal record. People experiencing poverty cannot afford to exit the system.

8.5.165 Victoria Legal Aid submitted that the finding of guilt that accompanies a hearing in the Special Circumstances List:

undermines the intention of the Act to accommodate special circumstances through more therapeutic and diversionary options to ensure that they are not disproportionately impacted by the operation of the infringements system.

8.5.166 A number of stakeholders, including representatives of the Special Circumstances List, supported the development of a new order for use on the list that would allow people to be dealt with without a finding of guilt. Victoria Legal Aid submitted that this would ‘appropriately recognise that people with special circumstances should not end up with a criminal record’.

8.5.167 Such an order could be modelled on the diversion order currently available for low level offending heard in the Magistrates’ Court (see [8.2.19]–[8.2.22]).

8.5.168 While the development of such an order is beyond the scope of the terms of reference, there is merit in such an order being investigated by the government through consultation with the Magistrates’ Court and other relevant stakeholders.

8.5.169 If a new order is created for the Special Circumstances List, the availability of work and development permits (see [4.4.42]–[4.4.61]) as part of that order could provide an effective option for dealing with infringement recipients with special circumstances in the Special Circumstances List.

Recommendation 46: New order for Special Circumstances List

The government should consult with the Magistrates’ Court and other stakeholders in relation to the creation of an order for use in the Special Circumstances List to provide infringement offenders with the opportunity to avoid a criminal record by undertaking conditions (such as a work and development permit) if the infringement recipient acknowledges responsibility for the offence.

1151. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
1152. Submission 7 (Infringements Working Group), endorsed by Submission 3 (Youthlaw), Submission 6 (North Melbourne Legal Service Inc.), Submission 8 (Brimbank Melton Community Legal Centre), and Submission 10 (PILCH Homeless Persons’ Legal Clinic).
1153. Submission 4 (Victoria Legal Aid).
1154. Meeting with Magistrates’ Court of Victoria – Special Circumstances List (9 January 2014).
1155. Submission 4 (Victoria Legal Aid).
Chapter 9:
Tolling infringement offences
9.1 Legislative authority to impose tolling infringement penalties

9.1.1 During consultation on issues arising from the number of infringement matters subsequently heard in open court, a broad range of stakeholders, including support services, enforcement agencies and the courts, identified tolling offences as a key problem within the infringement penalty enforcement system.1156

9.1.2 Section 73 of the Melbourne City Link Act 1995 (Vic) and section 204 of the EastLink Project Act 2004 (Vic) establish that it is an offence to drive an unregistered vehicle (that is, a vehicle not covered by a pass or account) in the CityLink and EastLink toll zones respectively. The infringement penalty amount for 2013–14 under each Act is 1 penalty unit or $144.36.

9.1.3 The vast majority of trips – some 96% – on each of CityLink and EastLink are made by drivers of registered vehicles, meaning that these vehicles are covered by either a tolling account or a pass (which can be purchased up to 3 days after travel).

9.1.4 If no arrangements are made by the motorist to pay the toll, the toll road operators are permitted to issue the motorist with an invoice and, subsequently, a reminder or final notice, which includes tolls incurred during travel as well as authorised administration fees.

9.2 Enforcement of tolling infringement penalties

9.2.1 Failure to pay the amount outstanding on the final notice will result in the matter being referred to Victoria Police, who will issue a single infringement notice for each day of travel, irrespective of the number of tolling offences committed on that day.1157

9.2.2 Even though less than 1% of toll road trips result in an infringement notice, there are approximately 1.5 million tolling infringement notices issued per year.1158

9.2.3 As at 31 March 2012, tolling infringement warrants accounted for 44.4% of all outstanding infringement warrants.1159

9.2.4 As with other infringement notices, failure to pay the infringement penalty by the due date will result in a penalty reminder notice being issued. If this is not paid, an enforcement order may be granted in respect of the infringement. Finally, if the infringement is not paid following an enforcement order, the Infringements Court may issue an infringement warrant, giving the Sheriff power to enforce that warrant. Additional fees accrue for each stage of this process (see Appendix 1).

1156. Roundtable 1 – Warnings, Review, and Open Court (19 August 2013); Roundtable 2 – Payment and Enforcement (26 August 2013); Meeting with Victoria Police (18 February 2014); Meeting with Magistrates’ Court of Victoria (23 August 2013); Meeting with Victoria Legal Aid (14 August 2013).

1157. Only one infringement notice per day (for each tolling operator) can be issued to a person: Melbourne City Link Act 1995 (Vic) s 73(4); EastLink Project Act 2004 (Vic) s 204(7).

1158. Unpublished data provided by IMES to the Council for the purposes of this report.

1159. Ibid.
9.3 Costs

9.3.1 The CityLink Concession Deed provides that Transurban may recover $11.38 from the state for each infringement notice that is issued by Victoria Police. The state pays this to the operator prior to enforcement proceedings taking place. The balance of the infringement penalty amount is retained by the state.

9.3.2 The EastLink Concession Deed sets out the EastLink equivalent, described as a ‘toll infringement payment’, which is the sum of the toll amount, the enforcement allowance amount ($9.09) and the VicRoads ‘look up’ fee ($1.40 plus GST).

9.3.3 The regulations have set the ‘prescribed administrative costs’ recoverable by each operator at $40.00 for each charge found proven upon a successful prosecution. During consultation, a number of stakeholders commented that the fixed nature of these prescribed administrative costs, which are compulsorily ordered by the Magistrates’ Court upon a tolling charge being proven, is an obstacle to resolution of matters, particularly for people whose matters are determined in the Special Circumstances List.

9.4 Increasing burden of tolling offences on the Magistrates’ Court

9.4.1 There are two sources of data that give insight into the relative contribution that the tolling offences make to the overall workload of the Magistrates’ Court. The first is the number of tolling charges finalised in the Magistrates’ Court (both independently and as a function of workload overall). The second is the number of charges addressed at infringement warrant enforcement hearings in the Magistrates’ Court, under section 160 of the Infringements Act 2006 (Vic) (‘Infringements Act’).

9.4.2 Figure 45 (page 300) shows a 430% increase in the number of tolling charges finalised in the Magistrates’ Court from 2004–05 to 2012–13. In addition to this, Figure 46 (page 300) demonstrates that, while the total number of charges finalised in the Magistrates’ Court increased by 19%, the relative percentage of tolling offence charges finalised each year increased, from 1.6% in 2004–05 to 7.0% in 2012–13.
The imposition and enforcement of court fines and infringement penalties in Victoria

Figure 45: Number of tolling offence charges finalised in the Magistrates’ Court, 2004–05 to 2012–13

Figure 46: Number of charges finalised by whether tolling offence or other offence, Magistrates’ Court, 2004–05 to 2012–13
9.4.3 In parallel with these trends, Figure 47 demonstrates an equivalent pattern for the overall volume of infringement warrant enforcement hearings relating to tolling offences.\(^{1165}\) Between 2009–10 and 2012–13, the total number of infringement warrant enforcement hearings increased by 284%.

9.4.4 At the same time, the relative percentage of warrants finalised at these hearings that were concerned with tolling offences increased from 49.7% in 2009–10 to 70.4% in 2012–13.

9.4.5 The proportion of non-tolling infringement penalties finalised at an infringement warrant enforcement hearing is increasing gradually, while the proportion of tolling infringement penalties finalised at the same hearings is increasing exponentially.

Figure 47: Number of infringement penalties finalised at infringement warrant enforcement hearings, by whether tolling offence or non-tolling offence, Magistrates’ Court, 2009–10 to 2012–13

\(^{1165}\) Infringements Act 2006 (Vic) s 160.
9.5 High volume offenders

9.5.1 Figure 48 shows the number of tolling charges per case between 2004–05 and 2012–13. Over 1,500 cases had 20 or more charges, and 244 cases had over 100 tolling charges. The highest number of charges for a natural person was 753, while the highest number of charges for a corporation was 799.

9.5.2 The high number of tolling charges suggests that the issuing of an infringement notice, for a substantial number of repeat offenders, may not be an appropriate response to the offending behaviour. A recommended response to high volume tolling offenders is presented in Chapter 4.166

Figure 48: Number of charges of drive unregistered in toll zone per case in the Magistrates’ Court, all cases, 2004–05 to 2012–13.167

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166. See [4.3.113]–[4.3.132].
167. This graph includes offences under the Melbourne City Link Act 1995 (Vic) s 73 and the EastLink Project Act 2004 (Vic) s 204.
Chapter 9: Tolling infringement offences

9.6 Enforcement cost of toll roads

9.6.1 The proportion of people complying with the law and paying for trips on a toll road is extremely high. The small percentage of offenders who do not comply, however, results in a large number of infringement notices, given the large volume of trips made on toll roads each day.

9.6.2 Further, as discussed at [4.3.113]–[4.3.132], a number of high volume offenders accrue significant numbers of unpaid infringement penalties as a result of tolling offences.

9.6.3 While providing ease of use and economic benefits from the efficient movement of people and freight, an open toll road means that there are no physical barriers to offending. As a consequence, it is likely that, despite ongoing efforts to encourage compliance, a small number of recalcitrant offenders may continue to offend.

9.6.4 In considering the future development of toll roads and any associated contractual arrangements with toll road operators, the Victorian Government should have close regard to the potential associated costs of enforcement, including resourcing requirements for the Magistrates’ Court.

9.6.5 Analysis of the infringements system and consultation with key stakeholders involved in that system highlight significant issues with tolling infringement penalties that extend beyond the issues of enforcement (for example, issues with contracts and commercial arrangements). Exploration of these issues is beyond the scope of this report and exceeds the Council’s statutory functions.1168

9.6.6 The Victorian Government should establish a working group to assist it in considering solutions to the increasing burden on the criminal justice system of existing toll road infringement offences and the potential associated costs of enforcement as a result of the future development of toll roads.

Recommendation 47: Establish working group to consider tolling infringement offences

The Attorney-General and the Minister for Roads should establish a working group that includes representation from:

- VicRoads (including Commercial Roads);
- the courts;
- the Department of Justice;
- toll road operators;
- Victoria Police;
- the Taxi Services Commission; and
- the Infringements Working Group.

The working group should identify and implement potential solutions to the increasing burden of tolling infringement offences on the criminal justice system in Victoria.

Chapter 10:
Imposition and enforcement of court fines and infringement penalties against children
10.1 Introduction

10.1.1 This chapter contains analysis of the imposition and enforcement of court fines and infringement penalties against children, incorporating:

- the use of court fines, including data on, and analysis of:
  - the number of fines;
  - the most common offences to receive a fine;
  - fine amounts;
  - fines as an additional sentence; and
  - payment of court fines;
- the use of infringement penalties, including data on:
  - the number of infringement penalties;
  - the most common offences to receive an infringement penalty;
  - payment of infringement penalties;
- the law and principles for the use of fines and infringement penalties; and
- the enforcement of court fines and infringement penalties.

10.1.2 This chapter also presents recommendations in light of these data and this analysis.

Harmonised enforcement

10.1.3 Unlike for adults, for children the system of enforcement of court fines and infringement penalties is broadly harmonised. Enforcement of court fines and enforcement of infringement penalties through the Children and Young Persons Infringement Notice System (CAYPINS) are centralised through the Children’s Court, and the same powers are available to the court on an enforcement hearing for default of payment of a court fine or an infringement penalty.1169

Limited sanctions for enforcement

10.1.4 Also unlike for adults, the range of sanctions that may be imposed on children to enforce the payment of court fines or infringement penalties is limited.

10.1.5 Further, the limited success in the enforcement of court fines and infringement penalties against children suggests that the current available sanctions are not achieving their intended result. As a consequence, a number of stakeholders have questioned whether financial penalties, in the form of a court fine or an infringement penalty, are a meaningful sanction or sentence for most children.1170 While resolving this question is beyond the scope of this report, this chapter explores some of the relevant issues.

1169. Children, Youth and Families Act 2005 (Vic) sch 3; s 378.
10.2 Use of court fines against children

Law and principles

Legislative framework

10.2.1 In Victoria, the Criminal Division of the Children’s Court has jurisdiction to hear and determine summarily all criminal charges against children, including charges of indictable offences (apart from fatal offences).1171 To come within the Children’s Court jurisdiction, a person must be over the age of 10 years but under 18 years at the time of the alleged offence, and under the age of 19 years at the time a proceeding is commenced.1172

10.2.2 When sentencing a child found guilty of an offence, the Children’s Court may impose a fine, with or without conviction.1173 The amount of the fine that may be imposed is limited, with different maxima set according to whether the child is older or younger than 15 years of age.

10.2.3 A fine imposed by the Children’s Court must not exceed five penalty units per offence for a child aged 15 years or over, or 1 penalty unit per offence for a child under 15 years of age, and must be lower than the maximum amount that can be imposed on an adult for the same offence.1174 Where the fine is imposed in respect of more than one offence, the fine cannot be greater than 10 penalty units for a child aged 15 years or over, or an aggregate of two penalty units for a child aged under 15 years.1175

10.2.4 In determining the fine amount, the court must take into account the financial circumstances of the child.1176 Unlike for adults, there is no provision for the Children’s Court to still impose a fine if it is unable to take financial circumstances into account.1177 The court must order the fine to be paid by instalments if the child so requests.1178

Purposes of fines against children

10.2.5 The purposes of sentencing in the Children’s Court are markedly different from sentencing in courts of adult jurisdiction.

10.2.6 Unlike the purposes of a sentence under the Sentencing Act 1991 (Vic) discussed at [2.2.15], the principles set out in the Children, Youth and Families Act 2005 (Vic) are all directed at an assessment of the particular offending behaviour and the needs of the offender. For example, in determining which sentence to impose on a child, the court must consider factors including the need to strengthen and preserve the relationship between the child and the child’s family, the desirability of allowing the child to live at home and continue with education, training, or employment, the need to minimise stigma to the child, and the suitability of the sentence to the child.1179

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1171. Children, Youth and Families Act 2005 (Vic) ss 360(1)(e), 516(1)–(b).
1172. Children, Youth and Families Act 2005 (Vic) s 3(1).
1173. Children, Youth and Families Act 2005 (Vic) ss 360(1)(e), 373(a)–(b).
1175. Children, Youth and Families Act 2005 (Vic) s 373(b).
1178. Children, Youth and Families Act 2005 (Vic) s 375(2)(a). See generally sections 375–379. Payment may also be by instalments if deemed appropriate by the court: Children, Youth and Families Act 2005 (Vic) s 375(2)(b). The child may, at any time, apply to have a fine varied or paid in instalments or to have more time to pay a fine: Children, Youth and Families Act 2005 (Vic) s 377.
10.2.7 Unlike in courts of adult jurisdiction, where rehabilitation is but one of five purposes for which a sentence may be imposed, in the Children’s Court rehabilitation is the overarching principle. However, in appropriate cases, the emphasis on rehabilitating the offender is qualified by the need to protect the community, to specifically deter offenders and to ensure that offenders are held accountable for their actions.\textsuperscript{1180}

10.2.8 The Children’s Court must consider these purposes when determining, as with any other sentence, whether it is appropriate to impose a fine, and if so, the amount that should be imposed.\textsuperscript{1181}

**Number of court fines imposed against children**

10.2.9 Fines are the second most common sanction imposed in the Children’s Court. Figure 49 shows that, from 2009–10 to 2012–13, a fine was imposed in 22.1% of cases sentenced in the Children’s Court (4,628 out of 20,982 cases).\textsuperscript{1182} The most common sentence was a good behaviour bond.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure49.png}
\caption{Percentage of proven cases receiving each type of sentence, Children’s Court, 2009–10 to 2012–13\textsuperscript{1183}}
\end{figure}

\begin{itemize}
\item Good behaviour bond: 33.6\% (n = 7,057)
\item Fine: 22.1\% (n = 4,628)
\item Probation: 18.5\% (n = 3,874)
\item Accountable undertaking: 10.3\% (n = 2,159)
\item Youth supervision order: 7.4\% (n = 1,551)
\item Youth justice centre order: 4.0\% (n = 835)
\item Dismissed: 3.8\% (n = 802)
\item Youth attendance order: 1.4\% (n = 295)
\item Other: 1.4\% (n = 286)
\end{itemize}

\textsuperscript{1181} Sentencing Advisory Council (2012), above n 1180, vi.
\textsuperscript{1182} In 2006–07 and 2007–08 over half the proven cases in the Children’s Court received a fine; however, the figures for those years were exceptional due to a change in legislation that allowed defendants aged 17 at the time of offending to have their case heard in the Children’s Court, as well as issues with the delayed implementation of the CAYPINS infringement system for young people, which resulted in many children having to go to court to deal with infringement matters.
\textsuperscript{1183} The percentages for each sentence do not add to 100\% because some cases received more than one type of sentence. ‘Other’ includes any sentence that did not have sufficient numbers to make up more than 1\% of the total number of proven cases on its own. It includes sentences such as convicted and discharged, non-accountable undertakings, and youth residential centre orders.
10.2.10 While fines were the second most common sanction in the Children’s Court, a far smaller proportion of offenders received a fine than in the Magistrates’ Court. This is explained (at least in part) by the different principles governing sentencing in the Children’s Court, the inappropriateness of fines as a sentence for young children or children who have no income, and differences in the range and proportion of offences heard in the Children’s Court and the Magistrates’ Court.

10.2.11 The percentage of children sentenced to a fine in the Children’s Court changes substantially according to the age of the child. Offenders sentenced to a fine are most commonly 17 or 18 years old. Almost half of all 18 year olds sentenced, and just under one-third of all 17 year olds sentenced, received a fine between 2009–10 and 2012–13. Very few children aged under 16 years (and none under 12 years) received a fine in that period.

10.2.12 The differences in the proportion of fines received for each age group correspond with the experience of stakeholders consulted for the Council’s 2012 Sentencing Children and Young People report. One stakeholder commented that those receiving fines for the offence of recklessly causing serious injury were ‘likely to be 17 year olds, probably working, who can afford to pay a fine’.\footnote{1184 Sentencing Advisory Council (2012), above n 1180, 135.} This view was commonly expressed during the Council’s consultations for the Sentencing Children and Young People report.\footnote{1185 Ibid.}

10.2.13 These data may suggest that the Children’s Court does not consider fines to be an appropriate sentence for younger children, and that the court is more likely to impose fines on children who have capacity to pay. Alternatively, a fine may be imposed on children who have committed more serious offending, or where previously other more lenient orders have been imposed for prior offending.

Figure 50: Cases receiving fines by offender’s age at time of sentencing, Children’s Court, 2009–10 to 2012–13

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{cases_receiving_fines_by_age.png}
\caption{Cases receiving fines by offender’s age at time of sentencing, Children’s Court, 2009–10 to 2012–13}
\end{figure}
### Most common offences resulting in a court fine

10.2.14 The 10 most common offences for which a fine was imposed by the Children’s Court between 2009–10 and 2012–13 (Table 15) consist mainly of driving offences (4 of the 10) and public transport offences (2 of the 10). The Council previously found that fines were commonly imposed for driving offences in the Children’s Court.\(^{1186}\)

10.2.15 Most of the 10 most common offences can be dealt with by way of an infringement penalty, either as a matter of course or in particular circumstances.

#### Table 15: The 10 most common offences resulting in a fine, Children’s Court, 2009–10 to 2012–13

<table>
<thead>
<tr>
<th>Rank</th>
<th>Offence type</th>
<th>Infringement offence?</th>
<th>Number of charges sentenced</th>
<th>Percentage of all charges with fines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Use public transport without valid ticket (Transport (Ticketing) Regulations 2006 (Vic) various)(^a)</td>
<td>Yes</td>
<td>1,447</td>
<td>16.1%</td>
</tr>
<tr>
<td>2</td>
<td>Purchase/consume alcohol/enter licensed premises while underage (Liquor Control Reform Act 1998 (Vic) s 123)</td>
<td>Yes</td>
<td>562</td>
<td>6.2%</td>
</tr>
<tr>
<td>3</td>
<td>Use unregistered motor vehicle or trailer on highway (Road Safety Act 1986 (Vic) s 7)</td>
<td>Yes</td>
<td>460</td>
<td>5.1%</td>
</tr>
<tr>
<td>4</td>
<td>Learner driving vehicle without qualified driver (Road Safety (Drivers) Regulations 2009 (Vic) r 46(2))(^b)</td>
<td>Yes</td>
<td>440</td>
<td>4.9%</td>
</tr>
<tr>
<td>5</td>
<td>Unlicensed driving (Road Safety Act 1986 (Vic) s 18)</td>
<td>In some circumstances</td>
<td>398</td>
<td>4.4%</td>
</tr>
<tr>
<td>6</td>
<td>Theft (excluding shop theft) (Crimes Act 1958 (Vic) s 74)</td>
<td>No</td>
<td>379</td>
<td>4.2%</td>
</tr>
<tr>
<td>7</td>
<td>Place feet on seats – public transport vehicle or premises (Transport (Conduct) Regulations 2005 (Vic) r 27B)</td>
<td>Yes</td>
<td>371</td>
<td>4.1%</td>
</tr>
<tr>
<td>8</td>
<td>Drive without L plates displayed (Road Safety (Drivers) Regulations 2009 (Vic) r 47(1))</td>
<td>Yes</td>
<td>324</td>
<td>3.6%</td>
</tr>
<tr>
<td>9</td>
<td>Criminal damage (intentionally damage/destroy property) (Summary Offences Act 1966 (Vic) s 9(1))</td>
<td>In some circumstances</td>
<td>249</td>
<td>2.8%</td>
</tr>
<tr>
<td>10</td>
<td>Shop theft (Crimes Act 1958 (Vic) s 74)</td>
<td>Yes</td>
<td>233</td>
<td>2.6%</td>
</tr>
</tbody>
</table>

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\(^{a}\) Includes offences from the Transport Act 1983 (Vic).

\(^{b}\) Includes offences under the Road Safety (Drivers) Regulations 1999 (Vic) r 213(1B) (repealed).

\(^{1186}\) Sentencing Advisory Council (2012), above n 1180, 148.
Fine amounts

Maximum fines

10.2.16 As described at [10.2.3], a fine imposed by the Children’s Court must not exceed five penalty units per offence for a child aged 15 years or over, or 1 penalty unit per offence for a child under 15 years of age, and must be lower than the maximum amount that can be imposed on an adult for the same offence.1187

10.2.17 Figure 51 shows the distribution of fine amounts in Children’s Court cases between 2009–10 and 2012–13.

10.2.18 The majority of fines imposed were either less than $100 or between $100 and $200. It was rare for the fine amount to exceed $1,000. The median fine amount from 2009–10 to 2012–13 was $140.00.

Figure 51: Number of cases given a fine as part of sentencing by total fine amount, Children’s Court, 2009–10 to 2012–131188

<table>
<thead>
<tr>
<th>Total fine for case</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $100</td>
<td>1,777</td>
</tr>
<tr>
<td>$100 to less than $200</td>
<td>1,069</td>
</tr>
<tr>
<td>$200 to less than $300</td>
<td>523</td>
</tr>
<tr>
<td>$300 to less than $400</td>
<td>419</td>
</tr>
<tr>
<td>$400 to less than $500</td>
<td>230</td>
</tr>
<tr>
<td>$500 to less than $600</td>
<td>307</td>
</tr>
<tr>
<td>$600 to less than $700</td>
<td>100</td>
</tr>
<tr>
<td>$700 to less than $800</td>
<td>84</td>
</tr>
<tr>
<td>$800 to less than $900</td>
<td>36</td>
</tr>
<tr>
<td>$900 to less than $1,000</td>
<td>11</td>
</tr>
<tr>
<td>$1,000 or more</td>
<td>72</td>
</tr>
</tbody>
</table>

1187. Children, Youth and Families Act 2005 (Vic) s 373(a). Where the fine is imposed in respect of more than one offence, the fine cannot be greater than 10 penalty units for a child aged 15 years or over, or an aggregate of two penalty units for a child under 15 years of age: Children, Youth and Families Act 2005 (Vic) s 373(b).

1188. This graph only includes fines given in the Children’s Court.
Figure 52 presents the median fine amounts by age at sentence in the Children’s Court between 2009–10 and 2012–13. It shows that the median fine amount generally increases with age. The median fine amount for a person sentenced at 19 years of age ($200) is substantially higher than the median fine amount for a person sentenced at 15 years of age ($100). This may be explained by the greater capacity of older children to pay a fine, and also potentially the involvement of older children in more serious offending than younger children.

Fines as an additional sentence

A fine may be imposed in addition to another sentence. In the Children’s Court, a fine was the only sentence ordered in the overwhelming majority (94.4%) of cases where a fine was imposed from 2009–10 to 2012–13. This includes cases where an aggregate fine was imposed for more than one offence.

Over the same period, another sentence type was ordered in only 5.4% of cases where a fine was imposed. Two or more other sentence types were ordered in a negligible number of cases where a fine was imposed.

Figure 53 shows the other sentence types ordered in cases where fines were imposed in the Children’s Court from 2009–10 to 2012–13. A custodial sentence in a youth justice centre was the most common sentence to accompany a fine (ordered in 2.0% of cases where a fine was imposed).

This graph only counts proven sentences. It excludes other results that are not sentences, such as charges that are struck out or diverted. A small number of cases that received a youth residential order (2 cases) or a non-accountable undertaking (1 case) in addition to a fine were excluded from this graph.
**Payment of Children’s Court fines**

10.2.23 Figure 54 shows the percentage of Children’s Court cases where a fine was imposed (excluding fines for transport ticketing offences) according to whether payment of the fine had been completed or not. In most years, only a small percentage of fines were completely paid, usually approximating 30% of fines imposed in any one year. The percentage of cases with complete payment was slightly lower in 2012–13, most likely because fines imposed in more recent years would be subject to ongoing payment under instalment orders or time to pay orders.\(^{1190}\) A similar observation was made in respect of fine payment rates among adults (see [2.8.10]).

10.2.24 Adults have a higher rate of fine payment than children. For example, approximately 61% of adults who received a fine in the Magistrates’ Court in 2004–05 had completed payment, compared with 32.5% of children who received a fine in the same year. Adults had consistently higher rates of payment between 2004–05 and 2012–13 in comparison with children. The effectiveness of court fines as a sanction against children is questionable, given that the vast majority of children do not complete payment.

10.2.25 The Council’s *Sentencing Children and Young People* report considered the imposition of fines by the Children’s Court, and found that ‘[s]takeholders were generally unimpressed with fines as a sentencing option for children’.\(^{1191}\) During a roundtable consultation conducted by the Council for that report, one participant commented:

> Well I think [in regards to fines] they’re absolutely useless generally, and most of the fines that are being imposed are imposed for transit offenders, ex parte offenders. Sometimes a 17 year old who’s got employment and has had a bit of a history in the courts … you might say, ‘Well you can pay a fine for your offending because you’re in a position to pay it’, but it’s not a very good sanction for a young person.\(^{1192}\)

**Figure 54:** Percentage of cases (excluding transport ticketing cases) where a fine was imposed, by completed payment, Children’s Court, 2004–05 to 2012–13\(^{1193}\)

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1192. Ibid.
1193. This graph is based on only the amount owed by a court-imposed fine. Amounts owed due to non-fine orders, such as compensation orders, court costs, and other fees, are not included in calculating whether the payment is complete or incomplete.
10.3 Use of infringement penalties against children

Law and principles

Legislative framework

10.3.1 There is no general, legislated prohibition on the type or number of offences for which an infringement notice may be issued to children, other than the general principle that children are not criminally liable until the age of 10.1194

10.3.2 A child is defined as a person who, at the time of the alleged commission of the offence, was under the age of 18 years.1195 The Victoria Police ‘Infringement Notice Codes and Penalties Guide’ states that infringement notices are not to be issued ‘to any person under 14 years of age’.1196

10.3.3 Subject to anything contrary in the Children, Youth and Families Act 2005 (Vic), the Infringements Act 2006 (Vic) (‘Infringements Act’) also applies to infringement notices issued against children.1197 As a consequence, children and young people:

• can request internal review by an enforcement agency;
• can be considered for a payment plan; and
• are covered by the standard rules regarding the service of infringement notices.

10.3.4 Infringements notices issued against children are enforced by the Children’s Court, under CAYPINS.1198

Most common infringement offences by children

10.3.5 Data could not be obtained on the total number of infringement notices issued to children. However, data were available for the 44,773 infringement matters registered with CAYPINS from 2009–10 to 2012–13.

10.3.6 Within this dataset, the most common type of infringement offence during the period from 2009–10 to 2012–13 was not having a valid ticket on public transport (42.8% of infringement offences dealt with by CAYPINS). Other public transport-related infringements, such as placing feet on seats, using concession tickets when not entitled, and smoking or possessing liquor on public transport, were also frequently dealt with by CAYPINS. The non-public transport-related infringements generally pertained to driving motor vehicles, or riding a bike without a helmet.

1194. Children, Youth and Families Act 2005 (Vic) s 3(1) (definition of ‘child’).
1195. Children, Youth and Families Act 2005 (Vic) s 3(1) (definition of ‘child’).
1196. Victoria Police (2012), above n 140.
1197. Infringements Act 2006 (Vic) s 7(3).
Table 16: The 10 most common infringements heard by CAYPINS, 2009–10 to 2012–13

<table>
<thead>
<tr>
<th>Rank</th>
<th>Offence name</th>
<th>Number of infringements issued</th>
<th>Percentage of infringements issued</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Use public transport without a valid ticket</td>
<td>19,165</td>
<td>42.8%</td>
</tr>
<tr>
<td></td>
<td><em>(Transport (Ticketing) Regulations 2006 (Vic) various)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Place feet on seats – public transport vehicle or premises</td>
<td>4,348</td>
<td>9.7%</td>
</tr>
<tr>
<td></td>
<td><em>(Transport (Conduct) Regulations 2005 (Vic) r 27B)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Use exemption/concession tickets when not entitled – public transport</td>
<td>3,148</td>
<td>7.0%</td>
</tr>
<tr>
<td></td>
<td><em>(Transport (Ticketing) Regulations 2006 (Vic) various)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Fail to wear bicycle helmet</td>
<td>2,601</td>
<td>5.8%</td>
</tr>
<tr>
<td></td>
<td><em>(Road Safety (Road Rules) 2009 (Vic) various)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unlicensed driving <em>(Road Safety Act 1986 (Vic) s 18)</em></td>
<td>1,877</td>
<td>4.2%</td>
</tr>
<tr>
<td>6</td>
<td>Use unregistered motor vehicle or trailer on highway</td>
<td>1,803</td>
<td>4.0%</td>
</tr>
<tr>
<td></td>
<td><em>(Road Safety Act 1986 (Vic) s 7)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Smoking on public transport vehicle or premises</td>
<td>1,073</td>
<td>2.4%</td>
</tr>
<tr>
<td></td>
<td><em>(Transport (Conduct) Regulations 2005 (Vic) various)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Learner driving vehicle without qualified driver</td>
<td>784</td>
<td>1.8%</td>
</tr>
<tr>
<td></td>
<td><em>(Road Safety (Drivers) Regulations 2009 (Vic) r 46(2))</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Possess open liquor – public transport</td>
<td>773</td>
<td>1.7%</td>
</tr>
<tr>
<td></td>
<td><em>(Transport (Conduct) Regulations 2005 (Vic) r 24(2))</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Drive without L plates displayed</td>
<td>531</td>
<td>1.2%</td>
</tr>
<tr>
<td></td>
<td><em>(Road Safety (Drivers) Regulations 2009 (Vic) r 47(1))</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

a. Includes offences under the *Transport Act 1983 (Vic).*

b. Includes offences under the *Transport (Compliance and Miscellaneous) Act 1983 (Vic) s 220C* and *Transport (Ticketing) Regulations 2006 (Vic) rr 9(5), 10(3), 20(1).*

c. Includes offences under the *Transport Act 1983 (Vic) ss 222A(1)(a)–(c) (repealed)* and *Transport (Conduct) Regulations 2005 (Vic) rr 24A(1)(a)–(c), 24A(2).*

d. Includes offences under the *Road Safety (Drivers) Regulations 1999 (Vic) r 213(1B) (repealed).*
Infringement penalty amounts

10.3.7 There are reduced penalties for children for some infringement offences. For example, a child who commits a transport infringement or a ticket infringement offence is subject to a different penalty than an adult.\textsuperscript{1199} Aside from these offence-specific reductions, children must pay the same infringement penalty amounts as adults.

10.3.8 Youthlaw criticised the absence of broad-based reductions for children, noting that children do not have the same capacity as adults to pay a penalty – children commonly have no income, or earn much less than an adult.\textsuperscript{1200} Given the differences in financial capacity between children and adults, Youthlaw submitted that the infringement penalty amounts listed in the following table were excessive when imposed against children. The issue of whether penalty amounts for children should be set lower than those for adults is discussed at [10.6.1]–[10.6.17].

10.3.9 Table 17 reproduces a comparison of infringement penalty amounts for adults and children, discussed by Youthlaw.\textsuperscript{1201}

<table>
<thead>
<tr>
<th>Infringement</th>
<th>Infringement penalty amount</th>
<th>Maximum court fine amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refusing to move on (adult)\textsuperscript{a}</td>
<td>$282</td>
<td>$722</td>
</tr>
<tr>
<td>Refusing to move on (child)</td>
<td>$282</td>
<td>$722</td>
</tr>
<tr>
<td>Purchasing a knife (only an offence for a child aged 16–18 years-old)\textsuperscript{b}</td>
<td>$282</td>
<td>$722</td>
</tr>
<tr>
<td>Drunk in a public place (adult)\textsuperscript{c}</td>
<td>$563</td>
<td>$1,155</td>
</tr>
<tr>
<td>Drunk in a public place (child)</td>
<td>$563</td>
<td>$722</td>
</tr>
<tr>
<td>Disorderly conduct (adult)\textsuperscript{d}</td>
<td>$563</td>
<td>$1,444</td>
</tr>
<tr>
<td>Disorderly conduct (child)</td>
<td>$563</td>
<td>$722</td>
</tr>
<tr>
<td>Possession of a graffiti implement (adult)\textsuperscript{e}</td>
<td>$704</td>
<td>$3,609</td>
</tr>
<tr>
<td>Possession of a graffiti implement (child)</td>
<td>$704</td>
<td>$722</td>
</tr>
<tr>
<td>Carrying a knife (adult)\textsuperscript{f}</td>
<td>$1,000</td>
<td>$17,323</td>
</tr>
<tr>
<td>Carrying a knife (child aged 16–18 years-old)</td>
<td>$1,000</td>
<td>$722</td>
</tr>
</tbody>
</table>

\textsuperscript{a} Summary Offences Act 1966 (Vic) ss 6, 60AA(1), 60AA(1AB)(a), 60AB(3).
\textsuperscript{b} Control of Weapons Act 1990 (Vic) ss 6(1AA), 11B, 1IC(b).
\textsuperscript{c} Summary Offences Act 1966 (Vic) ss 13, 60AA(1), 60AA(1AB)(a), 60AB(4).
\textsuperscript{d} Summary Offences Act 1966 (Vic) ss 17A, 60AA(1), 60AA(1AB)(a), 60AB(4).
\textsuperscript{e} Graffiti Prevention Act 2007 (Vic) ss 7(1), 11(4).
\textsuperscript{f} Control of Weapons Act 1990 (Vic) ss 6(1), 11B, 1IC(a).

\textsuperscript{1199} Transport (Infringements) Regulations 2010 (Vic) r 8.
\textsuperscript{1200} Submission 3 (Youthlaw).
\textsuperscript{1201} Submission 3 (Youthlaw).
Chapter 10: Imposition and enforcement of court fines and infringement penalties against children

Payment of infringement penalties by children

10.3.10 Comprehensive data could not be obtained on the number of infringement penalties issued to children that are paid prior to enforcement action by CAYPINS; however, data were available on the payment of transport and ticketing infringement penalties.

10.3.11 There are several steps in the CAYPINS enforcement process. If an infringement penalty is not paid to the enforcement agency, the infringement notice may be registered with CAYPINS. At this point a number of options for discharge of the penalty are available, or the matter may be heard in open court. If these options are not exercised, the infringement notice may be considered by the registrar, who may remit the notice to the enforcement agency or order that payment not be enforced, among other options. If an infringement penalty remains unpaid following these steps, the court conducts an enforcement hearing. CAYPINS is described in detail in Appendix 1.

Number of infringement penalties paid by children prior to enforcement

10.3.12 Infringement penalties issued by the Department of Transport, Planning and Local Infrastructure (‘transport infringements’) are the most common penalties registered with the Children’s Court for enforcement under CAYPINS.

10.3.13 In 2011–12, 22,446 transport infringements were issued to children and young persons. Of those, 45.9% (10,299) were paid prior to registration for enforcement with the Children’s Court. In the same year, 6,245 transport infringements were registered with the Children’s Court for enforcement through CAYPINS. On the basis of data from 2011–12 and 2012–13, there were no differences in the payment rates for transport infringements between children and adults.

Payment after enforcement

10.3.14 Figure 55 (page 318) shows the percentage of infringement penalties registered with CAYPINS according to whether payment of the penalty was completed post-registration. In most years, only a small percentage of infringement penalties were completely paid, ranging from 6.7% of penalties in 2007–08 to 16.4% of penalties in 2009–10.

10.3.15 In another category of cases, payment of the infringement penalty was not required (that is, the infringement notice was cancelled, or the case was transferred to the Children’s Court for hearing). The percentage of cases where payment was not required ranged from 0.1% in 2007–08 to 12.5% in 2009–10.

10.3.16 The majority of CAYPINS cases in all years had not resulted in completed payment.

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1205. In 2011–12, the proportion of adults that paid transport infringement penalties prior to enforcement was 45.9%, representing 75,524 of 164,606 transport infringement penalties issued to adults. For children, the proportion was also 45.9%, representing 10,299 of 22,446 transport infringement penalties issued to children. Similarly, in 2012–13 the proportion of adults that paid transport infringement penalties prior to enforcement was 42.2%, representing 70,272 of 166,526 transport infringement penalties issued to adults. For children, the proportion was also 42.2%, representing 9,582 of 22,708 transport infringement penalties issued to children: Email from Department of Transport, Planning and Local Infrastructure to Sentencing Advisory Council, 4 February 2014.
1206. The data for 2007–08 is likely to be atypical, due to a lag in registering CAYPINS matters from earlier years as a result of the delayed introduction of the CAYPINS system.
10.4 Enforcement of court fines and infringement penalties against children

10.4.1 The enforcement of court fines and infringement penalties against children has already been broadly harmonised. At an enforcement hearing, the orders available to the court are identical to those available for court fine default.1208 These include an order for property seizure.

10.4.2 There are significant challenges in determining the most appropriate sanction for a child, whether as a sentence at first instance, or to enforce the payment of a fine. For example, a number of the sanctions available for the enforcement of court fines against adults are unavailable, impractical and/or would likely be a disproportionate response to fine default by a child.

Enforcement sanctions against children

10.4.3 If a child defaults on payment of a fine for more than one month, the Children’s Court may:

• elect not to enforce the fine;
• adjourn the hearing of the matter for up to 6 months;
• order that the fine be varied;
• vary any instalment order;
• order the seizure of property; or
• release the child on probation or a youth supervision order for no more than 3 months.1209

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1207. This graph is based on only the amount that the CAYPINS registrar decides is owed on the infringement. CAYPINS did not exist prior to 2007–08. The ‘no payment required’ category occurs when the CAYPINS registrar finds that the child does not have to pay the money requested in the infringement. This can be due to the infringement being cancelled by the registrar or enforcement agency, or because the child requested that the case be heard in the Children’s Court.

1208. Children, Youth and Families Act 2005 (Vic) sch 3; s 378.

10.4.4 Property seizure is the most common enforcement sanction for court fine default by children. Between 2004–05 and 2011–12, orders for property seizure were made in approximately 70% of cases where a fine was imposed. In 2012–13, orders for property seizure were made in fewer cases (37.8% of cases where a fine was imposed), most likely because payment is still being undertaken in relation to recently imposed fines, particularly via instalment orders and time to pay orders.

10.4.5 Over the period from 2009–10 to 2012–13, no warrant was issued for property seizure in 36.8% (1,702) of fine default cases, and 43.5% (15,984) of penalty default cases. Warrants were issued but not executed in 59.1% (2,737) of fine default cases and 55.3% (20,326) of penalty default cases.

10.4.6 It is therefore likely that a substantial number of fines and penalties against children are not discharged following enforcement action, given the common use of property seizure as an enforcement sanction, and the high rate of unissued and unexecuted warrants following the making of a property seizure order.

10.4.7 Some participants in the Council’s roundtable on payment and enforcement maintained that, consistent with the data, property seizure was generally ineffective in satisfying unpaid fines and penalties because of the limited property children hold (if they hold property at all).1210

10.5 Effectiveness of fines and penalties for children

10.5.1 A full examination of the use and enforcement of fines and penalties against children is beyond the scope of this report. It raises complex issues of fairness and effectiveness that require consultation with a broad range of stakeholders. On the basis of the low rate of fine payment by children, and the limited ability to enforce payment by children given their financial circumstances, the effectiveness of fines as a sentence for children would appear to be in doubt. Youthlaw submitted that:

> fines are not an effective model of dealing with children under the [Children, Youth and Families Act 2005 (Vic)], as the only purpose of fines is to have a significant negative financial impact on children. Further, a lack of understanding of enforcement mechanisms for infringements causes further stress and anxiety for children. Fines are particularly punitive for vulnerable children experiencing disadvantage.1211

10.5.2 It is recommended that the Department of Justice undertake a review of the use of low-end sentencing orders against children. This review should consider, among other topics, the effectiveness of fines as a sentence for children, and whether other, non-monetary sanctions may be better able to fulfil the sentencing objectives set out in the Children, Youth and Families Act 2005 (Vic).1212

Recommendation 48: Review of low-end orders for children

The Department of Justice, in cooperation with the Department of Human Services, should undertake a review of the use of low-end sentencing orders against children.

1210. Roundtable 2 – Payment and Enforcement (26 August 2013).
1212. See [10.2.5]–[10.2.8].
10.6 Infringement penalties issued to children and equality before the law

10.6.1 In Chapter 8, the Council examined issues surrounding the proportionality of infringement penalty amounts and persons experiencing financial hardship. The Council recommended that, in accordance with the principle of equality before the law, an adjusted penalty should be available for eligible persons experiencing financial hardship that recognised the differential impact of a fixed penalty on those people compared with people who are not experiencing financial hardship.\(^{1213}\)

10.6.2 This section examines whether or not a similar reduction – applied when fixing an infringement penalty amount – should apply for children.

**Should penalty amounts be lower for children?**

10.6.3 The primary sentencing principle that applies to children is rehabilitation. Secondary purposes include the need to strengthen and preserve the relationship between the child and the child’s family, the desirability of allowing the child to live at home and continue with education, training, or employment, the need to minimise stigma to the child, and the suitability of the sentence for the child.\(^{1214}\)

10.6.4 Some of these purposes are consistent with the principles on which the Infringements Act is based, including:

- the need to balance fairness with compliance and system efficiency; and
- a requirement that individual circumstances be taken into account.\(^{1215}\)

10.6.5 One of the considerations in determining proportionality of punishment is whether the punishment that is proportionate to the severity of the offence ‘should be modified so there is approximate equality of impact. In this respect, the young offender merits special consideration under proportionality.’\(^{1216}\) Stakeholders who supported an adjusted penalty in cases of financial hardship also supported an adjusted penalty for children who received infringement penalties.\(^{1217}\) Youthlaw stated that:

> [infringement penalties] which are imposed on children should be affordable, fair and manageable having regard to the particular circumstances of the child and any special disadvantage or hardship they are experiencing or may experience as a result of the [infringement penalty].\(^{1218}\)

10.6.6 When a fine is imposed, the court must consider the financial circumstances of the child when determining the amount of the fine;\(^{1219}\) however, there is no such enquiry at the time an infringement penalty is imposed. This indicates that there is some need for financial capacity to be taken into account either in setting penalty amounts for children, or at the penalty payment stage (for example, by allowing children to pay at a reduced rate).

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1213. See Recommendation 39.
1214. Children, Youth and Families Act 2005 (Vic) ss 10(3)(a)–(r).
1215. Department of Justice (2006), above n 145, 2.
1216. Lovegrove (2010), above n 924, 323.
10.6.7 The New South Wales Law Reform Commission recommended in 2012 that penalty amounts be set at a lower rate for children. The Commission stated that:

A lower rate would recognise that children and young people earn significantly less money than adults, if they earn any money at all. Setting penalty notice amounts at a level that a young person is capable of paying may prevent young people being overwhelmed by debt, and consequently increase compliance and reduce enforcement costs. Higher levels of compliance could offset any discount in penalty notice amounts. Lowering penalty notice amounts would also improve consistency with court imposed fines and child-specific offences, which already acknowledge that children and young people have a lower financial capacity.\(^{1220}\)

10.6.8 The Commission considered that lower penalty amounts for children would recognise the income inequality of children in comparison with adults, and the ‘need to avoid disproportionate punishment’.\(^{1221}\) The Commission observed that:

children and young people should be treated differently from adults and are entitled to special protections when taking into account their age, lack of maturity and lack of financial capacity.\(^{1222}\)

10.6.9 Children in work are paid at a much lower rate than adults. As at the time of publication, the national minimum wage for a child is as follows:

- under 16 years: 36.8% of the adult minimum wage ($6.03 per hour);
- 16 years: 47.3% of the adult minimum wage ($7.74 per hour);
- 17 years: 57.8% of the adult minimum wage ($9.46 per hour); and
- 18 years: 68.3% of the adult minimum wage ($11.18 per hour).\(^{1223}\)

10.6.10 In addition to wage inequality, unemployment rates are higher among children and young people than adults. As at February 2014, the unemployment rate among people aged 15 to 24 years was 12.4%. This is more than double the rate of adult unemployment.\(^{1224}\)

10.6.11 In a survey of children and young people carried out by Youthlaw, 70% of respondents reported that having a fine added stress to their life. Nearly 25% of respondents stated that they could not afford to pay their fines. In addition, 64% of respondents stated that they would be more likely to pay a fine if it was a reasonable amount.\(^{1225}\)


\(^{1221}\) Ibid [12.42].

\(^{1222}\) Ibid [12.44].


\(^{1224}\) Australian Bureau of Statistics, *Labour Force, Australia*, February 2014, cat. no. 6202.0 (2014). The youth unemployment rate will to some extent reflect the movement of young persons in and out of study; nonetheless, even taking this factor into account, the youth unemployment rate is still substantially higher than the adult unemployment rate.

\(^{1225}\) Youthlaw (2013), above n 1211.
Method and rate of adjustment

10.6.12 The New South Wales Law Reform Commission recommended that penalties for children be set at a fixed percentage (in this case, 25%) of the adult penalty amount. This rate was consistent with pre-existing adjustments for children (for example, the penalty for fare evasion by a child was set at 25% of the adult rate).1226

10.6.13 Few stakeholders consulted by the Council commented on what the rate of adjustment for children should be, or the method by which it should be adjusted (that is, whether penalty amounts for children should be adjusted under legislation, or whether a reduction should be available for children following the imposition of an infringement penalty). In contrast with the New South Wales Law Reform Commission, Youthlaw submitted that penalties imposed on children should be able to be reduced post-imposition under financial hardship provisions. A child would have to apply to an enforcement agency for such a reduction.1227

10.6.14 The infringements system already provides a number of reduced penalties for children, which are prescribed on an offence-by-offence basis. For example, a child who commits a transport infringement or a ticket infringement offence faces a different penalty from an adult.1228 The current reduced penalty afforded to children varies according to each offence. For example, where separate penalty amounts are prescribed for children and adults under the Transport (Infringements) Regulations 2010 (Vic), the infringement penalty amount for a child offender is fixed at 0.5 of a penalty unit.

10.6.15 The corresponding penalty amounts for adults under the Transport (Infringements) Regulations 2010 (Vic) range from 0.98 of a penalty unit for the offence of ‘continuing to occupy unreserved seat when requested to make seat available’ to 5 penalty units for the offence of ‘moving, interfering or tampering with equipment owned, or operated by the public transport ticketing body’. The penalty amount for a child represents approximately 50% and exactly 10% of the adult penalty for those offences, respectively. For 2013–14, the penalty difference for the latter offence equates to $72 for a child and $722.00 for an adult.1229

The Council’s view

10.6.16 On the basis of the limited financial capacity of children, infringement penalty amounts for children should be set at a lower rate than penalty amounts for adults. This is preferable to a reduction for children at the payment stage, which would introduce an additional administrative burden for enforcement agencies and the administrative body, and relies on a child having the knowledge, confidence, and resources to request a reduction. A broad-based penalty adjustment for children also has the benefit of improved transparency, which may assist in deterring future offending, and may lead to an increase in payment rates if the penalty amount is more easily paid by children.

1227. Youthlaw (2013), above n 1211.
1228. Transport (Infringements) Regulations 2010 (Vic) r 8.
10.6.17 Infringement penalty amounts for children should be set at a maximum of 50% of adult penalty amounts. This would accommodate the lower incomes of children in comparison with adults (children earn between 36.8% and 68.3% of the adult minimum wage) and the high level of youth unemployment. Each of these indicators of inequality is likely to be ongoing rather than temporary.

Recommendation 49: Reduced infringement penalty amounts for children
The infringement penalty amount for a child should be set at a maximum of 50% of the infringement penalty amount for an adult.
Where an existing infringement penalty amount for a child is less than 50% of an infringement penalty amount for an adult, the lower penalty amount should apply.
Appendices
Appendix 1: The court fine and infringement penalty enforcement systems

Enforcement of court fines – adults

Stage 1 – court imposes a fine
The Magistrates’ Court, County Court, and Supreme Court may impose a fine when sentencing a person found guilty of a criminal offence.1230 If a court decides to fine an offender, the court may make an order allowing the offender to pay by instalments1231 or providing the offender with time to pay.1232

Options at this stage
At this stage, the person on whom the fine is imposed may:

- appeal (or apply for leave to appeal) the sentence;
- apply to the Magistrates’ Court for a rehearing, if the fine was imposed by that court in the absence of the person;
- pay the fine at the court at which the fine was imposed;
- apply to the registry of the court at which the fine was imposed:
  - for time to pay;
  - for an instalment order;
  - for variation of an instalment order;
  - to covert the fine to community work; or
- apply to the registry of the court at which the fine was imposed (where the circumstances of the offender have changed, or were wrongly stated) for variation of an instalment order or time to pay order.

Appeal/apply for leave to appeal
A person sentenced to a fine in the Magistrates’ Court may, within 28 days,1233 appeal against that sentence to the County Court.1234 These appeals are conducted as a full rehearing of the matter.

A person sentenced to a fine in the County Court or the Trial Division of the Supreme Court can, within 28 days,1235 apply to the Court of Appeal for leave to appeal.1236 This application for leave to appeal is normally heard by a single Judge of Appeal and may be refused if there is no reasonable prospect that the Court of Appeal will impose a less severe sentence than the original sentence.1237

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1230. Sentencing Act 1991 (Vic) ss 49(1)–(2); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 49 (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).


1233. Criminal Procedure Act 2009 (Vic) s 255(1).

1234. Criminal Procedure Act 2009 (Vic) s 254.

1235. Criminal Procedure Act 2009 (Vic) s 279(1).

1236. Criminal Procedure Act 2009 (Vic) s 278.

1237. Criminal Procedure Act 2009 (Vic) s 280(1)(a).
Apply for rehearing
If a person is convicted of a summary offence and fined by the Magistrates' Court in his or her absence (ex parte), he or she may apply to the Magistrates' Court for a rehearing.1238

Pay the fine
If at the time of imposition of the fine the court does not allow for time to pay or order that the fine be paid by instalments, the offender has one month to pay the fine.1239

Different methods of payment are acceptable within different jurisdictions and at different court locations.

The current methods of payment available are as follows.

Table A1: Payment methods in the Magistrates’ Court

<table>
<thead>
<tr>
<th>Payment method</th>
<th>No blue statement</th>
<th>Blue statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash (in person)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Cheque</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Money order</td>
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<td>Yes</td>
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<tr>
<td>Credit card</td>
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<td>Yes</td>
</tr>
<tr>
<td>EFTPOS</td>
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<td>Yes</td>
</tr>
<tr>
<td>Centrepay</td>
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</tr>
<tr>
<td>BPay</td>
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</tr>
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<td>Credit card by phone</td>
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<td>No</td>
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<tr>
<td>Credit card online</td>
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<tr>
<td>Australia Post Office</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Direct debit</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

The Magistrates’ Court of Victoria has EFTPOS facilities at all venues, save and except for small courts that are visited infrequently.

The ability to pay via BPAY and at Australia Post venues is dependent on having the relevant payment codes, both of which are printed on the statement of fines and penalties (the ‘blue statement’).

If a person requests a printout of the penalty while at the court, or enters an instalment order through the registry after his or her hearing, the blue statement is not generated.

In all other court commenced cases, the blue statement is generated.

1238. Criminal Procedure Act 2009 (Vic) s 88.
1239. Sentencing Act 1991 (Vic) s 62(i); the period for default will be 28 days from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69(4) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
The imposition and enforcement of court fines and infringement penalties in Victoria

Apply for time to pay
After imposition of the fine, the offender may apply to the court for an order for more time to pay the fine.\textsuperscript{1240}

Apply for an instalment order
After imposition of the fine, the offender may apply to the court for an order that the fine be paid by instalments.\textsuperscript{1241}

Apply to vary a time to pay or instalment order
If an instalment order is made at the time of imposition of the fine, the offender can apply for the court to vary the terms of the order.\textsuperscript{1242}

Apply to convert the fine to unpaid community work
An offender who has been fined by a court may apply to the court for an order allowing him or her to perform unpaid community work\textsuperscript{1243} where the fine is not more than an amount equivalent to 100 penalty units.\textsuperscript{1244}

The value of unpaid community work under a fine conversion order is one hour for each 0.2 of a penalty unit or part of 0.2 of a penalty unit. An offender may be sentenced up to the equivalent of 100 penalty units, with a minimum of 8 hours and a maximum of 500 hours.\textsuperscript{1245}

\begin{table}[h]
\centering
\begin{tabular}{|l|l|}
\hline
\textbf{Payment method} & \textbf{Available} \\
\hline
Cash (in person) & Yes \\
Cheque & Yes \\
Money order & Yes \\
Credit card & Yes \\
EFTPOS & Yes \\
Centrepay & No \\
BPay & No \\
Credit card by phone & No \\
Credit card online & No \\
Australia Post Office & No \\
Direct debit & No \\
\hline
\end{tabular}
\caption{Payment methods in the County Court}
\end{table}

\begin{table}[h]
\centering
\begin{tabular}{|l|l|}
\hline
\textbf{Payment method} & \textbf{Available} \\
\hline
Cash (in person) & Yes \\
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Money order & Yes \\
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Credit card online & No \\
Australia Post Office & No \\
Direct debit & No \\
\hline
\end{tabular}
\caption{Payment methods in the Supreme Court}
\end{table}

\textsuperscript{1240}. Sentencing Act 1991 (Vic) s 55(1)(a); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 60(1)–(2) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\textsuperscript{1241}. Sentencing Act 1991 (Vic) s 55(1)(b); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 57(1)–(2) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\textsuperscript{1242}. Sentencing Act 1991 (Vic) s 55(1)(c); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 61(1)–(4) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\textsuperscript{1243}. Sentencing Act 1991 (Vic) s 55(1)(d); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 64(1) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\textsuperscript{1244}. Sentencing Act 1991 (Vic) s 55(1)(d); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 64(2)(a)–(b) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\textsuperscript{1245}. Sentencing Act 1991 (Vic) s 63(2); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 69O(1)–(2) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
Apply for variation where altered/wrongly stated circumstances
An offender may apply for variation of a time to pay or instalment order if:

- the offender’s circumstances have materially altered since the order was made, resulting in the offender being unable to comply;
- the offender’s circumstances were wrongly stated or presented to the court when the order was first made; or
- the offender is no longer willing to comply with the order.

When hearing an application on these three grounds, in addition to varying the order made, the court has the power to resentence the offender.

Stage 2 – warning notice/outstanding fine letter
Although under the Sentencing Act 1991 (Vic) (‘Sentencing Act’) an offender is in default if payment has not been made within one month of the due date of the fine (or due date of an instalment under an instalment order), it is the practice of the Magistrates’ and County Courts to send a reminder letter to the offender.

The warning notice (Magistrates’ Court), outstanding fine letter (County Court), or reminder letter (Supreme Court) each states that the person is in default of payment and that the fine or instalment must be paid, or the person must apply to the court for an order, within 28 days.

Options at this stage
At this stage, the offender may exercise any of the options listed above in Stage 1.

Stage 3 – warrant issued
If an offender defaults on the payment of a fine (or payment of an instalment order of a fine) for more than one month, a warrant for that person’s arrest may be issued by the registrar of the court that imposed the fine.

In practice, the registrar of the court will not issue a warrant until 28 days after the reminder letter (in the form of a ‘warning notice’ or ‘outstanding fine letter’ as described above) has been sent, and within that time the offender has not paid the fine, has not made arrangements for payment, or has not applied for any other order.

If no action is taken by the offender, the court will issue a warrant, which authorises the Sheriff, the Sheriff’s Office, or the police to arrest the offender under warrant.

Offender in custody
If the offender is in custody, the court must still issue a warrant to progress the matter to a hearing. The Sheriff will ascertain the offender’s date of release from custody, or when the offender will be released on parole.

1246. Sentencing Act 1991 (Vic) ss 61(1)(a)–(c); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 63(1)(a)–(c) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
1247. Sentencing Act 1991 (Vic) ss 61(1)(a)–(c); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 63(1)(a)–(c) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
1248. Sentencing Act 1991 (Vic) s 62(l); the period for default will be 28 days from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69(4) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
1249. Sentencing Act 1991 (Vic) s 62(l); the period for default will be 28 days from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69(4) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
1250. Meeting with County Court Fines Enforcement Officer (21 June 2013).
If there is sufficient time left on the custodial sentence that the offender is serving, the court will list a hearing by video link to deal with the outstanding fine.

**Stage 4 – seven-day notice**

After the warrant has been issued, the Sheriff serves on the offender a ’Notice About the Procedure for Enforcement of Fines’, otherwise described as a ‘seven-day notice’. This notice states that, if the offender does not take action within seven days to pay the fine or make an application to the court, then the warrant will be executed and enforcement action will be taken. The notice also contains a summary of the options available to the offender.1251

**Options at this stage**

During the seven-day notice period, the offender may still exercise any of the options listed above in Stage 1.

If the amount of the outstanding fine is less than 100 penalty units, the Sheriff may provide the offender, at the same time as the notice, with a form for the offender to consent to the making of a fine conversion order.1252

If the offender consents to the making of the fine conversion order, the offender must report to a specified community corrections centre within two clear working days of the order coming into effect.1253

At any time while a fine conversion order is in force, the offender can make payments to reduce the number of hours required to be performed under the order.1254 Payment can be made:

- in person at a community corrections centre during business hours;
- by post to a community corrections centre;
- by electronic funds transfer, or by a credit card, to an Authorised Deposit Taking Institution; or
- in cash, or by bank cheque or money order made payable to the Department of Justice.

**Stage 5 – execution of the warrant (arrest of fine defaulter)**

The warrant will be executed1255 if, within the seven-day period, the offender does not:

- pay the fine;
- sign a form consenting to the making of a fine conversion order; or
- make an application to the court for any other order.

The offender will be arrested under the warrant by a Sheriff’s officer. Following arrest, the offender is ordinarily taken to a police station, or more commonly, will have agreed to meet the Sheriff’s officer at a police station, prior to arrest.1256 As a Sheriff’s officer cannot bail the offender, a police officer will then bail the offender to appear before the court that imposed the fine.

1251.  *Magistrates’ Court Criminal Procedure Rules 2009 (Vic) r 100–101, Form 5D; County Court Criminal Procedure Rules 2009 (Vic) r 5.06, Form 5C; Supreme Court (Criminal Procedure) Rules 2008 (Vic) r 5.07, Form 6-5B.*

1252.  *Sentencing Act 1991 (Vic) s 62A; from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 69D(1)–(4) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).*

1253.  *Sentencing Act 1991 (Vic) s 62B(1)(d); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69V(1)(d) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).*

1254.  *Sentencing Act 1991 (Vic) ss 63B(1)–(2); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 69U(1)–(3) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).*

1255.  *Sentencing Act 1991 (Vic) s 62A; from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 69D(1)–(4) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).*

1256.  *Meeting with Sheriff’s Operations, South Eastern Metropolitan Region (SEMR) (7 August 2013).*
**Options at this stage**

At this stage, the person may pay the outstanding amount, otherwise the matter will proceed to a fine default hearing.

**Stage 6 – fine default hearing**

At the hearing for the default of payment, the court may:

- make a fine default unpaid community work order requiring the defendant to perform unpaid community work; or
- order that the defendant be imprisoned; or
- order that the amount of the fine still unpaid be discharged by seizure of property; or
- vary an order that the fine is to be paid by instalments; or
- adjourn the hearing for up to six months.1257

The court may also exercise these powers *ex parte*, that is, in the absence of the offender.1258

The court must not impose an order of imprisonment if he or she satisfies the court that the defaulter did not have the capacity to pay the fine or the relevant instalment, or had some other reasonable excuse for non-payment.1259

**Options at this stage**

The offender must comply with any orders made by the court.

If the court makes a fine default unpaid community work order, at any time while that order is in force, the offender can make payments to reduce the number of hours required to be performed under the order.1260

Payment can be made:

- in person at a community corrections centre during business hours;
- by post to a community corrections centre;
- by electronic funds transfer, or by a credit card, to an Authorised Deposit Taking Institution; or
- in cash, or by bank cheque or money order made payable to the Department of Justice.1261

If the Magistrates’ Court makes an order for imprisonment of the offender, the offender can make payments to reduce the number of days required to be served in prison under the order.1262 If the offender is serving no other sentence, he or she must be discharged if the full amount outstanding is paid.1263

If the full amount is not paid, the term of imprisonment must be reduced by the same proportion of the total number of days’ imprisonment ordered to be served that the amount paid represents as a proportion of the total amount outstanding.1264

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1260. Sentencing Act 1991 (Vic) ss 63B(1)–(2); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 69U(1)–(3) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
1261. Sentencing Regulations 2011 (Vic) rr 18(1)–(4).
1262. Magistrates’ Court Act 1989 (Vic) ss 71(5)(a)–(b).
1263. Magistrates’ Court Act 1989 (Vic) ss 71(5)(a)–(b).
1264. Magistrates’ Court Act 1989 (Vic) s 71(1)(b).
Enforcement of court fines – children

Stage 1 – imposition of a court fine in the Children’s Court

The Children’s Court may impose a fine when sentencing a child found guilty of an indictable or summary offence.\textsuperscript{1265}

If the court decides to fine the child, the court must make an order allowing the child to pay by instalments if the child requests this\textsuperscript{1266} or if the court thinks it appropriate.\textsuperscript{1267}

The court may also allow the child time to pay if an instalment order is not made when imposing a fine.\textsuperscript{1268}

Options at this stage

At this stage, the child on whom the fine is imposed may:

- appeal the sentence;
- pay the fine at the Children’s Court; or
- apply to the Children’s Court to make or vary the payment arrangements.

Appeal

The child may appeal to the County Court (or if the court was constituted by the President, to the Trial Division of the Supreme Court) against the imposition of a fine as sentence.\textsuperscript{1269}

Payment

Payment of fines to the Children’s Court can be made in the following ways.

Application to make or vary payment arrangements

After the imposition of a fine, a child may apply to the court for an instalment order, or an order for time to pay, or for variation of either of those orders if already made.\textsuperscript{1270}

\begin{table}[h]
\centering
\small
\begin{tabular}{|l|c|}
\hline
Payment method & Available \\
\hline
Cash (in person) & Yes \\
Cheque & Yes \\
Money order & Yes \\
Credit card & Yes \\
EFTPOS & Yes \\
CentrePay & No \\
BPay & No \\
Credit card by phone & No \\
Credit card online & No \\
Australia Post Office & No \\
Direct debit & No \\
\hline
\end{tabular}
\caption{Table A4: Payment methods in the Children’s Court}
\end{table}

\textsuperscript{1265} Children, Youth and Families Act 2005 (Vic) s 373.
\textsuperscript{1266} Children, Youth and Families Act 2005 (Vic) s 375(2)(a).
\textsuperscript{1267} Children, Youth and Families Act 2005 (Vic) s 375(2)(b).
\textsuperscript{1268} Children, Youth and Families Act 2005 (Vic) s 376.
\textsuperscript{1269} Children, Youth and Families Act 2005 (Vic) s 424(1).
\textsuperscript{1270} Children, Youth and Families Act 2005 (Vic) ss 377(a)–(c).
Stage 2 – notice to appear
If a child defaults in the payment of a fine (or an instalment under an order to pay a fine by instalments) for more than one month, the Children's Court will serve a notice by post for the child to appear before the court.

Options at this stage
At this stage, prior to the hearing, the child can:
- pay the fine at the Children's Court; or
- apply to the Children's Court to make or vary the payment arrangements; or
- do nothing and appear at the fine default hearing.

Stage 3 – court appearance: powers of the court
When the person in default appears before the court, the court may:
- waive the balance of any fine that remains unpaid;
- adjourn the hearing for up to six months, on any terms;
- order that the fine be varied;
- order that any instalment order be varied;
- issue a warrant to seize property for the amount that remains unpaid; or
- release the child on probation or on a youth supervision order for a maximum period of 3 months.

The Children's Court jurisdiction cannot order that a child perform community work in lieu of payment of fines and cannot detain a child for default of payment of fines.

Stage 4 – warrant to arrest
If the person fails to appear or service of the notice cannot be effected, the court may order that a warrant to arrest the child be issued.

The child would be arrested by a police officer and then commonly bailed to appear before the Children's Court.

Stage 5 – enforcement of warrant to seize property
If the court orders a warrant to be issued to seize property to the value of the outstanding amount, the Sheriff will be directed to execute the warrant by seizing property belonging to the person to the value of the warrant.

In practice, the Sheriff does not execute property seizure warrants issued against children.
Enforcement of court fines – corporations

Stage 1 – court imposes a fine

The Magistrates’ Court, County Court, and Supreme Court may impose a fine when sentencing a corporation found guilty of a criminal offence.1278

If the County Court or Supreme Court finds a corporation guilty of an offence against the Crimes Act 1958 (Vic), the maximum fine available to those courts is five times the maximum fine that could be imposed on a natural person found guilty of the same offence committed at the same time.1279

If a corporation is found guilty by the Magistrates’ Court in a summary hearing of an indictable offence, however, the maximum fine that the court may impose on the corporation is 2,500 penalty units.1280

The court may make an order allowing the corporation to pay by instalments1281 or providing the corporation with time to pay.1282

The court may declare a director1283 of a corporation (at the time of the offence) jointly and severally liable for a fine imposed on that corporation if the court is satisfied that:

• the corporation will not be able to pay the fine; and

• immediately before the commission of the offence there were reasonable grounds to expect that the corporation was insolvent.1284

The court must not make such a declaration if the director:

• had reasonable grounds for believing (and did believe) that the corporation was solvent at the time of the offence; and

• took all reasonable steps in carrying on the business of the corporation to ensure that it was solvent.1285

1278. Sentencing Act 1991 (Vic) ss 49(1)–(2); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 49 (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).


1280. Sentencing Act 1991 (Vic) s 113D(2).


1284. Sentencing Act 1991 (Vic) ss 50(6)(a)–(b); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 55(1)(a)–(b) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

**Options at this stage**

At this stage, the corporation on which the fine has been imposed may:

- appeal (or apply for leave to appeal) the sentence;
- apply to the Magistrates’ Court for a rehearing, if the fine was imposed by that court in the absence of the corporation;
- pay the fine at the court at which the fine was imposed;
- apply to the registry of the court at which the fine was imposed for:
  - time to pay;
  - an instalment order; or
  - variation of an instalment order; or
- apply to the registry of the court at which the fine was imposed (where the circumstances of the corporation have changed, or were wrongly stated) for variation of an instalment order or time to pay order.

**Appeal/apply for leave to appeal**

A corporation sentenced to a fine in the Magistrates’ Court may, within 28 days, appeal against that sentence to the County Court. These appeals are conducted as a full rehearing of the matter.

A corporation sentenced to a fine in the County Court or the Trial Division of the Supreme Court can, within 28 days, apply to the Court of Appeal for leave to appeal. This application for leave to appeal is normally heard by a single Judge of Appeal and may be refused if there is no reasonable prospect that the Court of Appeal will impose a less severe sentence than the original sentence.

**Apply for rehearing**

If a corporation is convicted of a summary offence and fined by the Magistrates’ Court in its absence (ex parte), the corporation may apply to the Magistrates’ Court for a rehearing.

**Pay the fine**

If at the time of imposition of the fine the court does not allow for time to pay or does not order that the fine be paid by instalments, the corporation has one month to pay the fine.

Different methods of payment are acceptable within different jurisdictions and at different court locations.

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1286. *Criminal Procedure Act 2009* (Vic) s 255(1).
1288. *Criminal Procedure Act 2009* (Vic) s 279(1).
1289. *Criminal Procedure Act 2009* (Vic) s 278.
1292. *Sentencing Act 1991* (Vic) s 62(1); the period for default will be 28 days from 1 September 2014, if not before: *Sentencing Act 1991* (Vic) s 69(4) (amended by *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic), provisions not yet in operation).
The current methods of payment available are as follows.

**Table A5: Payment methods available in the Magistrates’ Court**

<table>
<thead>
<tr>
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<td>Cheque</td>
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The ability to pay via BPay and at Australia Post venues is dependent on having the relevant payment codes, both of which are printed on the statement of fines and penalties (the ‘blue statement’).

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In all other court commenced cases, the blue statement is generated.

**Table A6: Payment methods available in the County Court**

<table>
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**Table A7: Payment methods available in the Supreme Court**

<table>
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<th>Payment method</th>
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</tr>
<tr>
<td>BPay</td>
<td>No</td>
</tr>
<tr>
<td>Credit card by phone</td>
<td>No</td>
</tr>
<tr>
<td>Credit card online</td>
<td>No</td>
</tr>
<tr>
<td>Australia Post Office</td>
<td>No</td>
</tr>
<tr>
<td>Direct debit</td>
<td>No</td>
</tr>
</tbody>
</table>
Apply for time to pay
After imposition of the fine, the corporation may apply to the court for an order for more time to pay the fine.\textsuperscript{1293}

Apply for an instalment order
After imposition of the fine, the corporation may apply to the court for an order that the fine be paid by instalments.\textsuperscript{1294}

Apply to vary a time to pay or instalment order
If an instalment order is made at the time of imposition of the fine, the corporation can apply for the court to vary the terms of the order.\textsuperscript{1295}

Apply for variation where altered/wrongly stated circumstances
A corporation may apply for variation of a time to pay or instalment order if:

• the corporation’s circumstances have materially altered since the order was made, resulting in the corporation being unable to comply;
• the corporation’s circumstances were wrongly stated or presented to the court when the order was first made; or
• the corporation is no longer willing to comply with the order.\textsuperscript{1296}

When hearing an application on these three grounds, in addition to varying the order made, the court has the power to resentence the corporation.\textsuperscript{1297}

Stage 2 – warning notice/outstanding fine letter
Although under the Sentencing Act a corporation is in default if payment has not been made within one month of the due date of the fine (or due date of an instalment under an instalment order),\textsuperscript{1298} it is the practice of the Magistrates’ Court, County Court, and Supreme Court to send a reminder letter to the corporation.

The warning notice (Magistrates’ Court), outstanding fine letter (County Court), or reminder letter (Supreme Court) each states that the corporation is in default of payment and that the fine or instalment must be paid, or the corporation must apply to the court for an order, within 28 days.

Options at this stage
At this stage, the corporation may exercise any of the options listed above in Stage 1.

\textsuperscript{1293} Sentencing Act 1991 (Vic) s 55(1)(a); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 60(1)–(2) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\textsuperscript{1294} Sentencing Act 1991 (Vic) s 55(1)(b); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 57(1)–(2) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\textsuperscript{1295} Sentencing Act 1991 (Vic) s 55(1)(c); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 61(1)–(4) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\textsuperscript{1296} Sentencing Act 1991 (Vic) ss 61(1)(a)–(c); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) ss 63(1)(a)–(c) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).

\textsuperscript{1297} Sentencing Act 1991 (Vic) s 66(1); the period for default will be 28 days from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69Y(1) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
Stage 3 – warrant to seize property issued

If the corporation defaults on the payment of a fine (or payment of an instalment order of a fine) for more than one month, a warrant for the seizure of property may be issued by the registrar of the court that imposed the fine.\footnote{Sentencing Act 1991 (Vic) s 62(1); the period for default will be 28 days from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69(4) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).}

In practice, the registrar of the court will not issue a warrant until 28 days after the reminder letter (in the form of a ‘warning notice’ or ‘outstanding fine letter’ as described above) has been sent, and within that time the corporation has not paid the fine, has not made arrangements for payment, or has not applied for any other order.\footnote{Meeting with County Court Fines Enforcement Officer (21 June 2013).}

If no action is taken by the corporation, the court will issue a warrant, which authorises the Sheriff, the Sheriff’s Office, or the police to seize property belonging to the corporation to the value of the warrant.

Stage 4 – seven-day notice

After the warrant has been issued, the Sheriff serves on the corporation a ‘Notice About the Procedure for Enforcement of Fines’, otherwise described as a ‘seven-day notice’. This notice states that, if the corporation does not take action within seven days to pay the fine or make an application to the court, then the warrant will be executed and enforcement action will be taken. The notice also contains a summary of the options available to the corporation.\footnote{Sentencing Act 1991 (Vic) s 66(3); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69Y(3) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation); Magistrates’ Court Criminal Procedure Rules 2009 (Vic) r 102, Form 51; County Court Criminal Procedure Rules 2009 (Vic) r 5.07, Form 5F; Supreme Court (Criminal Procedure) Rules 2008 (Vic) r 5.08, Form 6-5F.}

Options at this stage

During the seven-day notice period the corporation may still exercise any of the options listed above in Stage 1.

Stage 5 – execution of the warrant to seize property

The warrant will be executed\footnote{Sentencing Act 1991 (Vic) s 66(2); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69Y(2) (amended by Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).} if, within the seven-day period, the corporation does not:

- pay the fine; or
- make an application to the court for any other order.

Options at this stage

At this stage, the corporation may pay the outstanding amount, otherwise property of the corporation to the value of the warrant will be seized.
Enforcement of infringement penalties – adults

Stage 1 – person issued with infringement notice

A person served with an infringement notice has a minimum of 28 days from receipt of the notice to pay the infringement penalty to the enforcement agency.\(^{1303}\)

Any infringement notice that is posted to a person (and not handed directly to the person) will be deemed served 14 days from the date of the notice.\(^{1304}\)

Options at this stage

At this stage, the person who received the infringement notice may:

- pay the infringement penalty in total;
- apply for a payment plan;
- request the infringement penalty amount be consolidated under the Central Payment Plan Facility (if offered by the enforcement agency);
- apply for internal review;
- elect that the matter be heard in court; or
- do nothing (in which case the matter will proceed to the next stage).

Payment

Different enforcement agencies will accept different methods of payment. Infringements that are managed by Civic Compliance Victoria (including most infringements issued by state government agencies and Victoria Police), may be paid using the following methods.

Table A8: Payment methods for Civic Compliance Victoria

<table>
<thead>
<tr>
<th>Payment method</th>
<th>Speeding, red light and tolling</th>
<th>Hand written</th>
<th>Parking and local council</th>
<th>Public transport</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash (in person)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes (at post office)</td>
</tr>
<tr>
<td>Cheque</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Money order</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Credit card</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>EFTPOS</td>
<td>Yes</td>
<td>Yes</td>
<td>Some</td>
<td>Yes (at post office)</td>
</tr>
<tr>
<td>Centrepay</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>BPay</td>
<td>Yes</td>
<td>No</td>
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<td>Direct debit</td>
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<td>No</td>
<td>Some</td>
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</tr>
</tbody>
</table>

\(^{1303}\) Infringements Act 2006 (Vic) s 14; Infringements (Reporting and Prescribed Details and Forms) Regulations 2006 (Vic) s 8(1)(k).

\(^{1304}\) Infringements Act 2006 (Vic) s 162(6).
Request a payment plan

Enforcement agencies manage their own payment plan arrangements; however, the Infringements Act 2006 (Vic) (‘Infringements Act’) provides that an enforcement agency must\textsuperscript{1305} offer a payment plan to a person who applies, if that person meets the eligibility requirements in the Attorney-General’s Guidelines to the Infringements Act 2006 (Attorney-General’s Guidelines).

The Attorney-General’s Guidelines provide that a person will be automatically entitled to a payment plan if he or she is in receipt of any one of the following:

- a Commonwealth Government (Centrelink) pensioner concession card;
- a Department of Veteran’s Affairs pensioner concession card or gold card; or
- a Centrelink health care card (all types including non-means tested).\textsuperscript{1306}

If a person applies for a payment plan but is not in receipt of any of those listed cards, the enforcement agency may, in its discretion, offer a payment plan to the person.\textsuperscript{1307}

Request consolidation with Central Payment Plan Facility

The Central Payment Plan Facility is a scheme established to enable consolidation of multiple infringement penalties into a single payment plan at the infringement stage. The facility distributes payments received in order of priority, so that the earliest infringement penalty is paid out first.\textsuperscript{1308}

Participation in the Central Payment Plan Facility is at the discretion of the enforcement agency, and only a handful of enforcement agencies currently participate in this program.\textsuperscript{1309}

Internal review

A person may apply to the enforcement agency for internal review of the decision to issue any infringement notice, except for particular offences (‘non-reviewable offences’):

- a traffic infringement notice issued in respect of a drink driving infringement, a drug driving infringement, or an excessive speed infringement under the Road Safety Act 1986 (Vic);
- a safety work infringement under the Transport (Compliance and Miscellaneous) Act 1983 (Vic); or
- offences involving alcohol or other drugs in relation to marine transport under the Marine (Drug, Alcohol and Pollution Control) Act 1988 (Vic).\textsuperscript{1310}

The application for internal review can be made at any time before details of the infringement penalty are registered with the Infringements Court.\textsuperscript{1311}

\textsuperscript{1305.} Infringements Act 2006 (Vic) ss 46(1), 46(3).
\textsuperscript{1306.} Department of Justice (2006), above n 145, 5.
\textsuperscript{1307.} Infringements Act 2006 (Vic) ss 46(1), 46(4).
\textsuperscript{1308.} Infringements Act 2006 (Vic) ss 42, 23.
\textsuperscript{1309.} Saunders et. al. quoted one stakeholder who commented that the Central Payment Plan Facility was only used by ‘three out of 150’ enforcement agencies: Saunders et al. (2013), above n 194, 84.
\textsuperscript{1310.} Infringements Act 2006 (Vic) ss 21(a)–(c).
\textsuperscript{1311.} If the infringement offence is not a lodgeable offence, an internal review may be requested at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates: Infringements Act 2006 (Vic) s 22(2)(ii).
The application for internal review may be on the grounds that the person believes:

- the decision to issue the infringement notice:
  - was contrary to law; or
  - involved a mistake of identity; or
- that special circumstances apply to the person; or
- there were exceptional circumstances that excuse the conduct for which the infringement notice was issued.\(^{1312}\)

'Special circumstances' are defined as:

- a mental or intellectual disability, disorder, disease or illness that results in the person being unable to understand that the conduct constitutes an offence, or being unable to control such conduct;
- a serious addiction to drugs, alcohol, or a volatile substance that results in the person being unable to understand that the conduct constitutes an offence, or being unable to control such conduct; or
- homelessness that results in the person being unable to control the conduct that constitutes the offence.\(^{1313}\)

'Exceptional circumstances' are not defined by the *Infringements Act*.

The enforcement agency must consider a person’s application for an internal review within 90 days of receipt of the application, or within 125 days if further information is requested from the applicant.\(^{1314}\)

After reviewing a decision, the enforcement agency may:

- confirm the decision to serve an infringement notice;
- withdraw the infringement notice and serve an official warning;
- withdraw the infringement notice;
- withdraw the infringement notice and refer the matter to court;
- waive all or any prescribed costs;
- approve a payment plan; or
- do any combination of these actions (where compatible).\(^{1315}\)

If the application for review is based on the ground of special circumstances, after reviewing a decision the enforcement agency may:

- confirm the decision to serve an infringement notice;
- withdraw the infringement notice and serve an official warning; or
- withdraw the infringement notice.\(^{1316}\)

If the enforcement agency confirms the decision to serve the infringement notice after a review on the ground of special circumstances, the matter must be referred to the court for hearing.\(^{1317}\)

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\(^{1312}\) *Infringements Act* 2006 (Vic) ss 22(1)(a)–(c).

\(^{1313}\) *Infringements Act* 2006 (Vic) s 3.

\(^{1314}\) *Infringements Act* 2006 (Vic) ss 24(3)(a)–(i); *Infringements (Reporting and Prescribed Details and Forms) Regulations 2006* (Vic) r 10.

\(^{1315}\) *Infringements Act* 2006 (Vic) ss 25(1)(a)–(h).

\(^{1316}\) *Infringements Act* 2006 (Vic) ss 25(2)(a)–(c).

\(^{1317}\) *Infringements Act* 2006 (Vic) s 25(3).
If the enforcement agency confirms the decision to serve the infringement notice after a review on grounds other than special circumstances, the person must pay the infringement penalty amount and any prescribed costs by the later of:

- the due date specified on the infringement notice;
- the due date specified on the penalty reminder notice; or
- 14 days after receiving notice of the outcome of the review.

**Elect to hear in court**

When a person receives an infringement notice, the person may elect to take the matter to court.\(^{1319}\) The time in which a person may elect to take the infringement matter to court is:

- within 28 days for those offences described above for which internal review is not available; and
- at any time before an enforcement order is made for all other offences.\(^ {1320}\)

**Stage 2 – penalty reminder notice**

If none of the options above (other than ‘do nothing’) has been exercised, the enforcement agency may:

- refer the matter to court;\(^ {1321}\) or
- send the person a penalty reminder notice.\(^ {1322}\)

The penalty reminder notice provides the person with a further 28 days to pay the infringement penalty amount.

**Options at this stage**

If the agency sends the person a penalty reminder notice, the person may exercise any of the options listed at Stage 1 above.

**Stage 3 – final reminder collection notice**

Many enforcement agencies, including the Department of Transport and Victoria Police, also issue a final reminder collection notice after the penalty reminder notice.

This process is administrative rather than prescribed by legislation.

The final reminder collection notice provides the person with a further 28 days in which to pay the infringement penalty amount.

**Options at this stage**

If the agency sends the person a final reminder collection notice, the person may exercise any of the options listed at Stage 1.

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\(^{1318}\) Infringements Act 2006 (Vic) ss 26(1)(a)–(c).

\(^{1319}\) Infringements Act 2006 (Vic) ss 16(1)(a)–(b).

\(^{1320}\) Infringements Act 2006 (Vic) ss 16(1)–(2). In the case of an infringement notice that is not lodgeable under the Infringements Act 2006 (Vic), the person may elect to take the matter to court at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates: Infringements Act 2006 (Vic) s 16(1)(b).

\(^{1321}\) Infringements Act 2006 (Vic) s 17(1).

\(^{1322}\) Infringements Act 2006 (Vic) s 29.
Stage 4 – agency may lodge details with Infringements Court

If none of the options listed at Stage 1 (other than ‘do nothing’) has been exercised, the enforcement agency may:

- refer the matter to court;\(^{1323}\) or
- lodge details of any outstanding penalty amount with the infringements registrar at the Infringements Court.

The enforcement agency can only lodge details of the outstanding infringement penalty amount if:

- it has not already filed a charge sheet or referred the matter to court;
- the recipient of the infringement notice has been served with a penalty reminder notice;
- the period in the notice for payment has passed; and
- full payment has not been received.\(^{1324}\)

The enforcement agency must lodge details of the infringement penalty no more than six months after:

- the offence is alleged to have been committed;
- the date of service of the infringement notice for an offence under section 166(1) of the Electoral Act 2002 (Vic), section 40(1A) of the Local Government Act 1989 (Vic), section 204 of the EastLink Project Act 2004 (Vic), or section 73 of the Melbourne City Link Act 1995 (Vic);
- default in, or removal of the infringement from, payment under a payment plan;
- cancellation of a payment plan;
- an enforcement order is revoked;
- the cancellation of an infringement notice if a new infringement notice is then issued;
- the date of service of the outcome of an internal review;
- the nomination, or cancellation of a nomination, of a person in respect of an offence under the Road Safety Act 1986 (Vic), the Melbourne City Link Act 1995 (Vic) or the EastLink Project Act 2004 (Vic).

Stage 5 – enforcement order

Once the agency has lodged details of the unpaid infringement penalty with the Infringements Court, the infringements registrar may make an enforcement order requiring the person to pay:

- the outstanding amount of the infringement penalty; and
- additional costs incurred (for example, costs associated with making the enforcement order).\(^{1325}\)

At any time before an Infringements registrar makes an enforcement order, the enforcement agency may request the Infringements registrar to not make the order.\(^{1326}\)

An enforcement order is deemed to be an order of the court.\(^{1327}\)

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\(^{1323}\) Infringements Act 2006 (Vic) s 17(1).
\(^{1324}\) Infringements Act 2006 (Vic) s 54.
\(^{1325}\) Infringements Act 2006 (Vic) s 59(1).
\(^{1326}\) Infringements Act 2006 (Vic) s 58.
\(^{1327}\) Infringements Act 2006 (Vic) s 59(2).
The imposition and enforcement of court fines and infringement penalties in Victoria

Options at this stage
If the Infringements Court makes an enforcement order, the person may:

- pay the infringement penalty in total;
- apply for a payment order;
- apply for revocation of the enforcement order;
- do nothing (in which case the Infringements Court will proceed to issue a ‘Notice to Issue an Infringement Warrant’).

Payment
The Infringements Court (through Civic Compliance Victoria) can accept the following payment methods.

Table A9: Payment methods accepted by Civic Compliance Victoria

<table>
<thead>
<tr>
<th>Payment Method</th>
<th>Availability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash (in person)</td>
<td>Yes</td>
</tr>
<tr>
<td>Cheque</td>
<td>Yes</td>
</tr>
<tr>
<td>Money order</td>
<td>Yes</td>
</tr>
<tr>
<td>Credit card</td>
<td>Yes</td>
</tr>
<tr>
<td>EFTPOS</td>
<td>Yes</td>
</tr>
<tr>
<td>Centrepay</td>
<td>Yes (if on a payment order)</td>
</tr>
<tr>
<td>BPay</td>
<td>Yes</td>
</tr>
<tr>
<td>Credit card by phone</td>
<td>Yes</td>
</tr>
<tr>
<td>Credit card online</td>
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<td>Australia Post Office</td>
<td>Yes</td>
</tr>
<tr>
<td>Direct debit</td>
<td>No</td>
</tr>
</tbody>
</table>

Apply for a payment order
After an enforcement order is made, a natural person, other than a director subject to a declaration under section 91 of the Infringements Act, may apply to the Infringements Court for a payment order.\(^{1328}\)

An application can be made at any time until:

- a property or a motor vehicle has been seized under an infringement warrant;
- an attachment of earnings or attachment of debt order has been made;
- an order charging land has been made; or
- the applicant has been arrested.\(^{1329}\)

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1328. Infringements Act 2006 (Vic) s 76(1). An applicant for a payment order can also apply for variation of the prescribed costs or fees: Infringements Act 2006 (Vic) s 76(1A).
1329. Infringements Act 2006 (Vic) ss 76(1)(a)–(e).
After considering the application, the Infringements Court may:

- make an order allowing additional time to pay;
- make an order for payment by instalments, or at times specified;
- make an order varying the costs or fees;
- adjourn the application;
- approach any relevant financial institution to enquire about the applicant’s financial circumstances.1330

While a payment order is in force, the enforcement order is stayed.1331

Apply for revocation of the enforcement order

After an enforcement order has been made, an application to the Infringements Court to revoke that order can be made by:

- the enforcement agency;
- the person against whom the order has been made;
- a person acting on behalf of a person to whom special circumstances are thought to apply; or
- an authorised company representative.1332

The Infringements Court registrar cannot consider any application for revocation (including on the ground of special circumstances) in relation to the non-reviewable offences.1333

Grounds for revocation

The Infringements Act does not specify the grounds on which a person may seek revocation. The Act provides that the infringements registrar must revoke an enforcement order when ‘satisfied there are sufficient grounds for revocation’.

The Infringements Court website elaborates that revocation will only be granted:

where mitigating circumstances or social justice issues are identified by the Infringements Court Registrar as worthy of consideration by the issuing agency of a Magistrate in an open court.1335

An application for revocation may be made on the basis of special circumstances, as defined under the Infringements Act.1336 This is the same definition used to determine applications for internal review on the basis of special circumstances.

The test for special circumstances creates a nexus between the offending behaviour and the special circumstance. Therefore, a person with special circumstances occurring after the commission of the offence cannot apply for revocation. For example, a person cannot apply for revocation on the ground that he or she has become homeless or has acquired a brain injury since the offence was committed.

1330. Infringements Act 2006 (Vic) ss 77(1)(a)–(e).
1331. Infringements Act 2006 (Vic) ss 77(5)(b)(i)–(ii).
1332. Infringements Act 2006 (Vic) s 65.
1333. Infringements Act 2006 (Vic) ss 63A(1)(a)–(c).
1335. Magistrates’ Court of Victoria (2012), above n 403.
1336. Infringements Act 2006 (Vic) s 3.
The application must outline the grounds on which the applicant is seeking revocation. An application on the ground of special circumstances must be accompanied by evidence of the special circumstances, such as a medical report from a doctor.1337

Outcomes of application to revoke

After considering an application for revocation, the Infringements Court registrar may:

- revoke the enforcement order;
- refuse the application; or
- refuse the application but vary costs.1338

Revocation of an enforcement order means that the order ceases to have effect;1339 however, the Infringements Court Registrar does not have the power to withdraw or dismiss the infringement penalty.

If the infringements registrar revokes the enforcement order the Infringements Court must:

- send a copy of the application to the enforcement agency for consideration; and
- advise the applicant that the order has been revoked.1340

Options after revocation

If the infringements registrar revokes the enforcement order, the enforcement agency then has 21 days to file a request for non-prosecution,1341 or the matter will automatically proceed to be listed for hearing in the Magistrates’ Court.

Options after revocation – special circumstances list

If the infringements registrar revokes the enforcement order on the ground of special circumstances, and the agency does not file a request for non-prosecution within 21 days, the matter will be listed for hearing on the Special Circumstances List of the Enforcement Review Program at the Magistrates’ Court.1342

A person listed on the Special Circumstances List must attend court and be prepared to plead guilty to the offence, unless there are exceptional circumstances (such as the person being institutionalised). The magistrate or judicial registrar will take into consideration the ‘special circumstances’ outlined in the application when determining an appropriate outcome to the matter. Magistrates and judicial registrars have full discretion as to what type of order can be imposed under the Sentencing Act.

Options after refusal to revoke

If the infringements registrar refuses to make an order for revocation, the infringement penalty will continue to be enforced.

1337. Infringements Act 2006 (Vic) s 65(3)(b).
1338. Infringements Act 2006 (Vic) ss 66(1)–(4).
1340. Infringements Act 2006 (Vic) ss 66(5)(a)–(b).
1341. Infringements Act 2006 (Vic) s 69(1).
At this stage, the person may:

• pay the infringement penalty in total;
• apply for a payment order;
• make a second revocation application (or application to the Magistrates’ Court for leave to make a third or subsequent revocation application);\footnote{Infringements Act 2006 (Vic) s 65(4).}
• lodge a written objection to the refusal, within 28 days of the refusal notice (in which case the objection to the refusal of revocation will be listed for hearing in the Magistrates’ Court);\footnote{Infringements Act 2006 (Vic) ss 68(1)–(3); if the application is made more than 28 days but less than 3 months after a refusal to revoke, the infringements registrar may still refer the matter to court; however, an application for objection cannot be made more than 3 months after the refusal to revoke.}
• do nothing (in which case the Infringements Court will proceed to issue a ‘Notice to Issue an Infringement Warrant’).

Stage 6 – objecting to refusal to revoke enforcement order

Upon hearing an objection to a refusal of revocation, the court may:

• accept the person’s objection to the refusal to revoke, revoke the enforcement order, and proceed to hear the matter;\footnote{Infringements Act 2006 (Vic) ss 72(1)(a)–(b). The court may proceed to hear the matter in the absence of the infringement offender: Criminal Procedure Act 2009 (Vic) ss 85(1)–(2).} or
• refuse the objection to the refusal to revoke and return the matter to the Infringements Court to continue enforcement.\footnote{Infringements Act 2006 (Vic) s 72(2).}

Stage 7 – Notice of Intention to Issue a Warrant

Although it is not prescribed under the Infringements Act, if none of the options at Stage 1 has been exercised, the Infringements Court will send to the person a ‘Notice of Intention to Issue a Warrant’ 28 days after the date on which an enforcement order is made.

Options at this stage

At this stage, the person may exercise any of the options at Stage 1 above.

Stage 8 – issue of infringement warrant

The Infringements Act provides that, if an enforcement order is made by the Infringements Court and the person:

• does not pay the outstanding penalty amount; or
• defaults on a payment under a payment order;

(and does not exercise any of the options at Stage 1) the infringements registrar must issue an infringement warrant.\footnote{Infringements Act 2006 (Vic) ss 80(1)(a)–(b).}

In practice, the Infringements Court will issue a warrant if the person remains in default and has not exercised any of the options at Stage 1 within 28 days of the date of the ‘Notice of Intention to Issue a Warrant’ above.

1343. Infringements Act 2006 (Vic) s 65(4).
1344. Infringements Act 2006 (Vic) ss 68(1)–(3); if the application is made more than 28 days but less than 3 months after a refusal to revoke, the infringements registrar may still refer the matter to court; however, an application for objection cannot be made more than 3 months after the refusal to revoke.
1345. Infringements Act 2006 (Vic) ss 72(1)(a)–(b). The court may proceed to hear the matter in the absence of the infringement offender: Criminal Procedure Act 2009 (Vic) ss 85(1)–(2).
1346. Infringements Act 2006 (Vic) s 72(2).
1347. Infringements Act 2006 (Vic) ss 80(1)(a)–(b).
Actions by the Sheriff

At this stage, after the issue of a warrant and regardless of whether or not a seven-day notice has been served, the Sheriff may detain or immobilise a vehicle belonging to the person.\textsuperscript{1348}

Detain or immobilise vehicle

The Infringements Act provides that, once an infringement warrant has been issued, the Sheriff or a police officer may detain or immobilise a vehicle belonging to a person against whom the infringement warrant has been issued.\textsuperscript{1349}

The vehicle will not be released unless within seven days of immobilisation of the vehicle:

- the person has paid the outstanding amount in full;
- the person has become subject to a payment order;
- the person has become subject to an attachment of earnings or attachment of debts order;
- the person has applied for and received a grant of revocation from the Infringements Court of the Magistrates’ Court;
- the person has had personal property to the value of the warrant seized by the Sheriff;
- the person has been arrested by the Sheriff;
- the infringements warrant has been recalled or cancelled;
- the infringements warrant has expired; or
- the Sheriff, in his discretion, considers it appropriate to release the vehicle.\textsuperscript{1350}

If no action is taken by the person, the Sheriff may serve a further notice (and publish a notice in a newspaper) that the vehicle will be sold unless within 14 days the person makes full payment of the outstanding infringement warrant.\textsuperscript{1351}

Options at this stage

After the issue of an infringement warrant, prior to the service of a seven-day notice, the person may exercise any of the options at Stage 1.

Stage 9 – seven-day notice

After an infringement warrant has been issued, the person will be personally served with a seven-day notice.

The notice advises that an infringement warrant has been issued and that the Sheriff will execute the warrant if the person does not take any action within seven days of receipt of the notice.

Actions by the Sheriff

At this stage, after service of the seven-day notice, and during the period of the notice, the Sheriff may:

- seize property that the Sheriff suspects may be disposed of or removed; and/or
- detain or immobilise a vehicle belonging to the infringement offender.

Options at this stage

After the issue of an infringement warrant the person has seven days in which to exercise any of the options at Stage 1.

\textsuperscript{1348}. Infringements Act 2006 (Vic) ss 95–107.

\textsuperscript{1349}. Infringements Act 2006 (Vic) ss 95–107.

\textsuperscript{1350}. Infringements Act 2006 (Vic) ss 100(1)(a)–(j).

\textsuperscript{1351}. Infringements Act 2006 (Vic) ss 101(1)–(3).
Stage 10 – execution of warrant by the Sheriff

If the person does not exercise any of the options at Stage 1 within seven days of receiving a seven-day notice, enforcement action may be taken by the infringements registrar and the Sheriff.

Enforcement action by the infringements registrar

At this stage, the infringements registrar may make:

- an attachment of earnings order in respect of the infringement offender;
- an attachment of debts order in respect of the infringement offender; or
- a payment order.

The infringements registrar may also issue a summons for the oral examination of a person if the infringements registrar has not been provided with sufficient information regarding the person’s financial circumstances in order to make one of the orders at Stage 1 above.

Attachment of earnings and attachment of debts orders

Once an infringement warrant has been issued and a seven-day notice served, the infringements registrar may make an attachment of earnings order or an attachment of debts order if:

- the seven-day notice period has expired and the person has not:
  - paid the outstanding amount;
  - applied for a payment order; or
  - applied for a revocation of the enforcement order; and
- the amount outstanding is not less than $1,000.

The warrant is stayed if an attachment of earnings order or an attachment of debts order is made.

In practice, due to limitations of the Victorian Infringement Management System, the infringements registrar does not currently have the capacity to make an attachment of earnings order or an attachment of debts order.

Payment order

The infringements registrar may make a payment order in the same terms as at Stage 5 above unless:

- property has been seized;
- a notice of sale of vehicle has been served;
- an attachment of earnings order or attachment of debts order has been made;
- a charge against land has been made; or
- the person has been arrested.

The warrant is stayed while the payment order is in force.

1352. Infringements Act 2006 (Vic) s 123(1).
1353. Infringements Act 2006 (Vic) s 129(1).
1354. Infringements Act 2006 (Vic) ss 123(1)(c)(i)–(iii), 129(1)(d)(i)–(iii).
1355. Infringements Act 2006 (Vic) ss 94A(b), 128B(1).
1356. Infringements Act 2006 (Vic) ss 94A(1)(c), 133B(1).
1357. Infringements Act 2006 (Vic) ss 76(4)(a)–(e).
1358. Infringements Act 2006 (Vic) ss 76(5)(e)–(f).
**Enforcement action by the Sheriff**

At this stage, the Sheriff may:

- detain or immobilise a vehicle belonging to the infringement offender;
- serve upon the infringement offender a notice of intention to suspend the infringement offender’s driver licence; or
- serve upon the infringement offender a notice of intention to suspend the vehicle registration of a vehicle belonging to the infringement offender.

If enforcement using the suspension of the infringement offender’s driver licence or vehicle registration is unsuccessful or unsatisfactory, is not possible, or is not appropriate, the Sheriff may apply to the court for a charge to be placed on any land belonging to the infringement offender.

**Suspension of licence or vehicle registration**

After the issuing of an infringement warrant, the Sheriff may commence action to suspend a defaulter’s driver licence or vehicle registration.\(^{1360}\)

This action is pre-empted by the issuing of a ‘Notice of Intention to Suspend’ (NOITS). The NOITS provides a defaulter with notice of the Sheriff’s intent to instruct VicRoads to suspend the defaulter’s driver licence or vehicle registration, and it provides seven days for the defaulter to clear his or her outstanding infringement debt to avoid this action being taken.\(^{1361}\)

If no payment is made and the NOITS is actioned, the Sheriff will inform VicRoads, which subsequently advises the offender that his or her driver licence or vehicle registration has been suspended. As a consequence, the offender cannot lawfully drive any vehicle, in the case of a driver license suspension, or the specific vehicle in the case of a vehicle registration suspension, until the relevant suspension is lifted.

It is an offence to drive a vehicle while the driver licence is suspended. The maximum penalty for an individual is 10 penalty units or $1,408.\(^{1362}\)

It is an offence to drive a vehicle while its registration is suspended. The maximum penalty for a first offence for an individual is 25 penalty units or $1,443.60, and 50 penalty units or $7,218 for a second or subsequent offence.\(^{1363}\)

**Charge against land**

The Sheriff can only apply to the court for a charge to be placed on land owned by the person against whom the infringement warrant has been issued, if suspension of the infringement offender’s driver licence or vehicle registration is unsuccessful or unsatisfactory, is not possible, or is not appropriate.\(^{1364}\)

The charge is registered against the certificate of title of the land and prevents the property from being dealt with under the *Transfer of Land Act 1958* (Vic) until:

- the amount is recovered;
- the person dies; or
- the charge expires or is removed.\(^{1365}\)

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\(^{1360}\) Infringements Act 2006 (Vic) s 110.

\(^{1361}\) Infringements Act 2006 (Vic) s 110(2).

\(^{1362}\) Road Safety Act 1986 (Vic) s 30AA.

\(^{1363}\) Road Safety Act 1986 (Vic) ss 9AA, 7(1)–(3).

\(^{1364}\) Infringements Act 2006 (Vic) ss 134(a)–(c).

\(^{1365}\) Infringements Act 2006 (Vic) ss 134(a)–(c).
Execution of the warrant by the Sheriff

In addition to the enforcement measures against driver licences, vehicle registrations, and land, the Sheriff may also execute the warrant by:

- seizing and selling the personal property of the infringement offender; or
- if there is insufficient property to satisfy the warrant, arresting the infringement offender and
  - releasing the infringement offender on a community work permit; or
  - bailing the infringement offender to appear in the Magistrates’ Court for an infringement warrant hearing; or
  - taking the infringement offender to a prison or a police jail until the person can be brought before the Magistrates’ Court for an infringement warrant hearing.

Seizure of personal property

The infringement warrant authorises the person executing the warrant to break, enter, and search any residential or business property occupied by the infringement offender and seize personal property belonging to the offender to the value of the warrant.\(^{1366}\)

The infringement offender must not be arrested unless there is insufficient property to pay the outstanding amount.\(^{1367}\)

Arrest and release on community work permit

After arrest, the Sheriff may release an infringement offender on a community work permit,\(^{1368}\) unless:

- the amount of outstanding fines under the infringement warrant exceeds an amount equivalent to the value of 100 penalty units;\(^{1369}\) or
- the Sheriff is not satisfied that the offender has the capacity to perform community work and is not satisfied that the offender is reasonably unlikely to breach the conditions of a community work permit.\(^{1370}\)

Arrest and bail to appear in court

The infringement warrant authorises the Sheriff to arrest the person named in the warrant and bail the person to appear in court if:

- there is not sufficient property to pay off the outstanding amount; and
- the infringement offender is not released on a community work permit.

Arrest and hold in custody to be brought before court

The infringement warrant authorises the Sheriff to arrest the person named in the warrant and take him or her to a prison or a police jail so that he or she can be brought before the court, if:

- there is not sufficient property to pay off the outstanding amount; and
- the infringement offender is not released on a community work permit; and
- the person refuses to enter into bail or cannot be bailed to appear in court.

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\(^{1366}\) Infringements Act 2006 (Vic) ss 82(1)(a)–(b).

\(^{1367}\) Infringements Act 2006 (Vic) s 82(3).

\(^{1368}\) Infringements Act 2006 (Vic) ss 147, 148.

\(^{1369}\) Infringements Act 2006 (Vic) s 147(2).

\(^{1370}\) Infringements Act 2006 (Vic) s 147(3).
Options at this stage
At this stage, prior to arrest, the person may:

- pay the amount in full;
- apply for a payment order, if no property has been seized; or
- satisfy the warrant through the seizure of personal property.

At this stage, if the person has been arrested, the person may:

- pay the outstanding amount; or
- consent to a community work permit (if offered by the Sheriff).

If none of the options at this stage is exercised, the person will be bailed to appear in court or taken into custody to be brought before the court on an infringement warrant hearing.

Stage 11 – infringement warrant hearing
After a person is bailed to appear in court, or brought before the court on an infringement warrant hearing, the court may impose different orders depending on the circumstances of the person.

The court may only make an order at an infringement warrant hearing if the infringement offender:

- is not eligible for a community work permit;
- was not issued with a community work permit within 48 hours of being arrested;
- fails to comply with a community work permit; or
- has a community work permit cancelled. 1371

If the court is satisfied that special circumstances 1372 apply, the court may:

- discharge the outstanding fines in full;
- discharge up to two-thirds of the outstanding fines;
- discharge up to two-thirds of the outstanding fines and order that the infringement offender be imprisoned for a period that is up to two-thirds less than one day in respect of each penalty unit, or part of a penalty unit, of the number of penalty units to which the undischarged amount of the outstanding fines is an equivalent amount; or
- adjourn the further hearing of the matter for a period of up to 6 months. 1373

If the court is satisfied that, having regard to the infringement offender’s situation, imprisonment would be excessive, disproportionate, and unduly harsh, the court may:

- order the infringement offender to be imprisoned for a period that is up to two-thirds less than one day in respect of each penalty unit, or part of a penalty unit, of the number of penalty units to which the amount of the outstanding fines is an equivalent amount;
- discharge the outstanding fines in full;
- discharge up to two-thirds of the outstanding fines;
- discharge up to two-thirds of the outstanding fines and order that the infringement offender be imprisoned for a period that is up to two-thirds less than one day in respect of each penalty unit,

1371. Infringements Act 2006 (Vic) ss 158(a)–(e).
1372. Infringements Act 2006 (Vic) s 3.
1373. Infringements Act 2006 (Vic) ss 160(2)(c)–(e).
or part of a penalty unit, of the number of penalty units to which the undischarged amount of
the outstanding fines is an equivalent amount;

• adjourn the further hearing of the matter for a period of up to 6 months; or
• make a fine default unpaid community work order under the Sentencing Act.1374

If neither circumstance applies, the court may order that the infringement offender be
imprisoned for a period of one day in respect of each penalty unit (or part unit) equivalent to the
outstanding amount.1375

If the court makes any order for imprisonment, a warrant for imprisonment may be issued and the
court may also make an instalment order under the Sentencing Act.1376

Options at this stage
The offender must comply with the orders of the court.

If the court orders a term of imprisonment subject to an instalment order under the Sentencing Act,
the offender may be arrested and imprisoned without further hearing if the offender defaults under
that order.

If the court imposes a fine default unpaid community work order under the Sentencing Act, the offender:

• can apply for variation of the order under the Sentencing Act;1377 and
• on breach of the order, will be liable to the offence of contravention of a fine default unpaid
community work order under the Sentencing Act.1378

Further options at this stage
The Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic)
amended the Infringements Act to provide that, following an infringement warrant hearing, a person can
apply to the court to vary an instalment order made under section 160(4)(b) of the Infringements Act if:

• the circumstances of the infringement offender have materially altered since the order was made
and, as a result, the offender is unable to comply with the order; or
• that the circumstances of the infringement offender were wrongly stated or were not accurately
presented to the court.1379

Under the new provisions, an infringement offender can also apply for a rehearing of the matter if:

• at the time of the hearing, the infringement offender had a mental or intellectual impairment,
disorder, disease or illness, or special circumstances, and this was not taken into account or was
not before the court at the time of the hearing; or
• at the time of the infringement warrant hearing, evidence was not taken into account or before
the court so as to make the decision to imprison the offender excessive, disproportionate, and
unduly harsh.1380

1374. Infringements Act 2006 (Vic) ss 160(3)(a)–(e).
1375. Infringements Act 2006 (Vic) s 160(1).
1376. Infringements Act 2006 (Vic) ss 160(4)(a)–(b).
1377. Sentencing Act 1991 (Vic) ss 63A(2); from 1 September 2014, if not before: Sentencing Act 1991 (Vic) s 69I, 69J (amended by
Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic), provisions not yet in operation).
1378. Infringements Act 2006 (Vic) ss 160A(1)–(2).
1379. Infringements Act 2006 (Vic) ss 160A(1)–(2).
1380. Infringements Act 2006 (Vic) ss 160A(1)–(2).
Enforcement of infringement penalties – children

CAYPINS

The Children and Young Persons Infringement Notice System (CAYPINS) is a process by which the Children’s Court enforces unpaid infringement penalties issued to children. The Children’s Court performs similar functions in respect of children as the Infringements Court does in respect of adults.

Prior to the introduction of the CAYPINS scheme, when an enforcement agency issued an infringement notice to a child and the penalty was not paid, the agency could only enforce the infringement penalty by withdrawing the infringement notice and then filing a charge against the child in the Children’s Court. The charge was then heard in open court by a magistrate of the court.

The CAYPINS procedure allows the Children’s Court to enforce the infringement penalty.

Stage 1 – infringement notice issued

A child served with an infringement notice has a minimum of 28 days from receipt of the notice to pay the infringement penalty to the enforcement agency.1381 Any infringement notice posted to a child (and not handed directly to the child) will be deemed served 14 days from the date of the notice.1382

Options at this stage

At this stage, the child may:

• pay the infringement penalty in total;
• apply for a payment plan;
• request the infringement penalty amount be consolidated under the Central Payment Plan Facility (if offered by the enforcement agency);
• apply for internal review;
• elect that the matter be heard in the Children’s Court; or
• do nothing (in which case the matter will proceed to the next stage).

Payment

Different enforcement agencies will accept different methods of payment.

Request a payment plan

Enforcement agencies manage their own payment plan arrangements; however, the Infringements Act provides that an enforcement agency must1383 offer a payment plan to a person who applies, if that person meets the eligibility requirements in the Attorney-General’s Guidelines. The eligibility requirements in the Attorney-General’s Guidelines do not include children.1384

The Infringements Act provides that the Act applies to infringement notices issued against children subject to anything contrary in the Children, Youth and Families Act 2005 (Vic).1385 As a consequence, children and young people can be considered for a payment plan.

1381. Infringements Act 2006 (Vic) s 14; Infringements (Reporting and Prescribed Details and Forms) Regulations 2006 (Vic) r 8(1)(k).
1382. Infringements Act 2006 (Vic) s 162(6).
1383. Infringements Act 2006 (Vic) ss 46(1), 46(3).
1385. Infringements Act 2006 (Vic) s 7(3).
If a child applies for a payment plan, the enforcement agency may, in its discretion, offer a payment plan to the child.\footnote{Infringements Act 2006 (Vic) ss 46(1), 46(4).}

**Request consolidation with Central Payment Plan Facility**

Consolidation with the Central Payment Plan Facility is generally unavailable.\footnote{Saunders et al. quoted one stakeholder who commented that the central payment facility was only used by ‘three out of 150’ enforcement agencies: Saunders et al. (2013), above n 194, 84.}

**Internal Review**

The child may apply to the enforcement agency for internal review of the decision to issue any infringement notice.

**Elect to hear in court**

When a child receives an infringement notice, the child may elect to take the matter to court.\footnote{Infringements Act 2006 (Vic) ss 16(3)(a)–(b).}

The time in which a person may elect to take the infringement matter to court is:

- within 28 days for the non-reviewable offences; and
- at any time before an enforcement order is made for all other offences.\footnote{Infringements Act 2006 (Vic) s 16(1)–(2). In the case of an infringement notice that is not lodgeable under the Infringements Act 2006 (Vic), the person may elect to take the matter to court at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates: Infringements Act 2006 (Vic) s 16(1)(b).}

**Stage 2 – penalty reminder notice**

If none of the options above (other than ‘do nothing’) has been exercised, the enforcement agency may:

- refer the matter to the Children’s Court;\footnote{Infringements Act 2006 (Vic) s 17(3).} or
- send the child a penalty reminder notice.\footnote{Infringements Act 2006 (Vic) s 29.}

The penalty reminder notice provides the child with a further 28 days to pay the infringement penalty amount.

**Options at this stage**

If the agency sends the child a penalty reminder notice, the child may exercise any of the options listed at Stage 1.

**Stage 3 – registration of penalty infringement notice**

If the infringement notice remains unpaid after the further 28 day period (and the child has not objected), the enforcement agency may register the infringement notice for the unpaid amount with the Children’s Court.

The Children’s Court will then schedule a court date and send a ‘Notice of Court Case (CAYPINS)’ advising the child of the registration of the infringement penalty, the court date, and the child’s options.
Options at this stage

At this stage, the child may:

- pay the outstanding amount of the infringement penalty;
- apply to the Children's Court registrar for an order:
  - for more time to pay the penalty;
  - to pay the penalty by instalments;
  - that the infringement penalty be reduced; or
  - that the penalty not be enforced;
- request that consideration of the matter be adjourned to a later date;
- decline to be dealt with by the registrar and request that the infringement notice be dealt with in open court;
- appear before a Children's Court registrar on a date specified in the letter; or
- do nothing, in which case the registrar will consider the matter on the date stipulated in the letter.

Application for a payment arrangement order

A child may apply under the Children, Youth and Families Act 2005 (Vic) for time to pay, an instalment plan, or a variation of an instalment plan.\(^{1392}\) As part of that application, the child may provide written information (such as details about the child's employment, education, or financial circumstances) for the consideration of the Children's Court registrar in making an order.\(^{1393}\)

Electing to have the matter heard in open court

If the child advises the court that he or she wishes to have the matter dealt with in open court or wishes to contest the matter, the registrar remits the infringement notice to the issuing agency. The agency may then file a charge with the Children's Court and a summons is issued, or the agency may choose not to pursue the matter.\(^{1394}\)

Stage 4 – consideration by registrar

If the child has not exercised one of the alternative options, the registrar will consider the matter on the date stipulated on the letter.

Upon considering the matter, the Children's Court registrar may:

- remit the infringement notice to the issuing agency. The agency may then choose to file a charge or to not pursue the matter;
- adjourn the matter (for instance to consolidate the matter, to allow a child's parent to attend with the child, or for the issue of a caution);
- strike the matter out on the request of the issuing agency;
- confirm or reduce the infringement penalty; or
- order that payment of the infringement penalty not be enforced.\(^{1395}\)

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\(^{1392}\) Children, Youth and Families Act 2005 (Vic) sched 3 cls 6(2), 7(1)(a)–(c).

\(^{1393}\) Children, Youth and Families Act 2005 (Vic) sched 3.

\(^{1394}\) Children, Youth and Families Act 2005 (Vic) sched 3.

\(^{1395}\) Children, Youth and Families Act 2005 (Vic) sched 3, cl 8(3).
Stage 5 – review of registrar's decision

If the registrar confirms or varies the infringement penalty, the child may, within 28 days, elect to have the decision reviewed by a judicial officer of the Children's Court.

If the registrar makes an order that the infringement penalty should not be enforced, the enforcement agency may, within 14 days, elect to have the decision reviewed by a judicial officer of the Children's Court.1396

**Options at this stage for the court**

Upon review, the court may make an order:

- confirming the registrar's order;
- requiring the child to pay an amount not exceeding 1 penalty unit (if the child is under 15) or 5 penalty units if the child is 15 or older;1397 or
- that the payment of the registered amount that remains unpaid not be enforced.1398

Stage 6 – enforcement hearing

If the child has not complied with the extension of time, paid the penalty specified by a registrar, or paid the amount imposed by the court, the court will issue a notice to the child to appear before an enforcement hearing on a specified date.1399

**Options at this stage for the court**

If the child appears on the specified date, the court will consider the matter and may:

- determine that payment of the amount of the infringement penalty that remains unpaid not be enforced;
- adjourn the further hearing of the matter for up to 6 months;
- vary the amount of the penalty or vary an instalment order;
- issue a warrant to seize property to satisfy the infringement penalty amount; or
- release the child on probation or a youth supervision order for up to 3 months.1400

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1397. If the maximum fine that may be imposed on an adult is less than these amounts, then that amount will be the maximum for the child.
1398. *Children, Youth and Families Act 2005 (Vic)* sch 3, cl 10(5).
Enforcement of infringement penalties – corporations

Stage 1 – corporation issued with infringement notice

A corporation served with an infringement notice has a minimum of 28 days from receipt of the notice to pay the infringement penalty to the enforcement agency.\(^{1401}\)

Any infringement notice that is posted (and not directly served on an officer of the corporation) will be deemed served 14 days from the date of the notice.\(^{1402}\)

Options at this stage

At this stage, the corporation who received the infringement notice may:

- pay the infringement penalty in total;
- apply for internal review;
- elect that the matter be heard in court; or
- do nothing (in which case the matter will proceed to the next stage).

Payment

Different enforcement agencies will accept different methods of payment. Infringements that are managed by Civic Compliance Victoria (including most infringements issued by state government agencies and Victoria Police) may be paid using the following methods.

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\(^{1401}\) Infringements Act 2006 (Vic) s 14; Infringements (Reporting and Prescribed Details and Formal) Regulations 2006 (Vic) r 8(1)(k).

\(^{1402}\) Infringements Act 2006 (Vic) s 162(6).
No payment plan
Payment plans are not available for corporations, unlike for natural persons.

Internal review
A corporation may apply to the enforcement agency for internal review of the decision to issue any infringement notice, except for the following particular offences (non-reviewable offences):

- a traffic infringement notice that is issued in respect of a drink driving infringement, a drug driving infringement, or an excessive speed infringement under the *Road Safety Act 1986* (Vic);
- a safety work infringement under the *Transport (Compliance and Miscellaneous) Act 1983* (Vic); or
- offences involving alcohol or other drugs in relation to marine transport under the *Marine (Drug, Alcohol and Pollution Control) Act 1988* (Vic).1403

The application for internal review can be made at any time before details of the infringement penalty are registered with the Infringements Court.1404

The application for internal review may be on the grounds that the corporation believes:

- the decision to issue the infringement notice:
  - was contrary to law; or
  - involved a mistake of identity; or
- there were exceptional circumstances that excuse the conduct for which the infringement notice was issued.1405

‘Exceptional circumstances’ are not defined by the *Infringements Act*.

While the *Infringements Act* does not limit the grounds of internal review on the basis of special circumstances to natural persons only, the nature of the circumstances are unlikely to apply to a corporation.

The enforcement agency must consider a corporation’s application for an internal review within 90 days of receipt of the application, or within 125 days if further information is requested from the applicant.1406

After reviewing a decision, the enforcement agency may:

- confirm the decision to serve an infringement notice;
- withdraw the infringement notice and serve an official warning;
- withdraw the infringement notice;
- withdraw the infringement notice and refer the matter to court;
- waive all or any prescribed costs; or
- do any combination of these actions (where compatible).1407

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1403. *Infringements Act 2006* (Vic) ss 21(a)–(c).
1404. If the infringement offence is not a lodgeable offence, an internal review may be requested at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates: *Infringements Act 2006* (Vic) s 22(2)(d).
1405. *Infringements Act 2006* (Vic) ss 22(1)(a)–(c).
1406. *Infringements Act 2006* (Vic) ss 24(3)(a)(i)–(ii); *Infringements (Reporting and Prescribed Details and Forms) Regulations 2006* (Vic) r 10.
1407. *Infringements Act 2006* (Vic) ss 25(1)(a)–(h).
If the enforcement agency confirms the decision to serve the infringement notice after a review on grounds other than special circumstances, the corporation must pay the infringement penalty amount and any prescribed costs by:

- the due date specified on the infringement notice;
- the due date specified on the penalty reminder notice; or
- 14 days after receiving notice of the outcome of the review;

whichever is the later.\(^{1408}\)

**Elect to hear in Court**

When a corporation receives an infringement notice, it may elect to take the matter to court.\(^{1409}\)

The time in which the corporation may elect to take the infringement matter to court is:

- 28 days for non-reviewable offences; and
- at any time before an enforcement order is made for all other offences.\(^{1410}\)

**Stage 2 – penalty reminder notice**

If none of the options above (other than ‘do nothing’) has been exercised, the enforcement agency may:

- refer the matter to court;\(^{1411}\) or
- send the corporation a penalty reminder notice.\(^{1412}\)

The penalty reminder notice provides the corporation with a further 28 days to pay the infringement penalty amount.

**Options at this stage**

If the agency sends the corporation a penalty reminder notice, the corporation may exercise any of the options listed at Stage 1.

**Stage 3 – final reminder collection notice**

Many enforcement agencies, including the Department of Transport and Victoria Police, also issue a final reminder collection notice after the penalty reminder notice.

This process is administrative rather than prescribed by legislation.

The final reminder collection notice provides the corporation with a further 28 days in which to pay the infringement penalty amount.

**Options at this stage**

If the agency sends the corporation a final reminder collection notice, the corporation may exercise any of the options listed at Stage 1 above.

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\(^{1408}\) *Infringements Act 2006* (Vic) ss 26(1)(a)–(c).

\(^{1409}\) *Infringements Act 2006* (Vic) ss 16(1)(a)–(b).

\(^{1410}\) *Infringements Act 2006* (Vic) ss 16(1)–(2). In the case of an infringement notice that is not lodgeable under the *Infringements Act 2006* (Vic), the person may elect to take the matter to court at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates: *Infringements Act 2006* (Vic) s16(1)(b).

\(^{1411}\) *Infringements Act 2006* (Vic) s 17(1).

\(^{1412}\) *Infringements Act 2006* (Vic) s 29.
Stage 4 – agency may lodge details with Infringements Court

If none of the options listed at Stage 1 (other than ‘do nothing’) has been exercised by the corporation, the enforcement agency may:

- refer the matter to court; or
- lodge details of any outstanding penalty amount with the infringements registrar at the Infringements Court.

The enforcement agency can only lodge details of the outstanding infringement penalty amount if:

- it has not already filed a charge sheet or referred the matter to court;
- the recipient of the infringement notice has been served with a penalty reminder notice;
- the period in the notice for payment has passed; and
- full payment has not been received.

The enforcement agency must lodge details of the infringement penalty no more than six months after:

- the offence is alleged to have been committed;
- the date of service of the infringement notice for an offence under section 166(1) of the Electoral Act 2002 (Vic), section 40(1A) of the Local Government Act 1989 (Vic), section 204 of the EastLink Project Act 2004 (Vic), or section 73 of the Melbourne City Link Act 1995 (Vic);
- an enforcement order is revoked;
- the cancellation of an infringement notice if a new infringement notice is then issued;
- the date of service of the outcome of an internal review; or
- the nomination, or cancellation of a nomination, of a person in respect of an offence under the Road Safety Act 1986 (Vic), the Melbourne City Link Act 1995 (Vic), or the EastLink Project Act 2004 (Vic).

Stage 5 – enforcement order

Once the agency has lodged details of the unpaid infringement penalty with the Infringements Court, the infringements registrar may make an enforcement order requiring the corporation to pay:

- the outstanding amount of the infringement penalty; and
- additional costs incurred (for example, costs associated with making the enforcement order).

At any time before an Infringements registrar makes an enforcement order, the enforcement agency may request the infringements registrar to not make the order.

An enforcement order is deemed to be an order of the court.

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1413. Infringements Act 2006 (Vic) s 17(1).
1414. Infringements Act 2006 (Vic) s 54.
1415. Infringements Act 2006 (Vic) s 59(1).
1416. Infringements Act 2006 (Vic) s 58.
1417. Infringements Act 2006 (Vic) s 59(2).
Options at this stage
If the Infringements Court makes an enforcement order, the corporation may:

- pay the infringement penalty in total;
- apply for revocation of the enforcement order; or
- do nothing (in which case the Infringements Court will proceed to issue a ‘Notice to Issue an Infringement Warrant’).

Payment
The Infringements Court (through Civic Compliance Victoria) can accept the following payment methods:

<table>
<thead>
<tr>
<th>Payment Method</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Cash (in person)</td>
<td>Yes</td>
</tr>
<tr>
<td>Cheque</td>
<td>Yes</td>
</tr>
<tr>
<td>Money order</td>
<td>Yes</td>
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<td>Credit card</td>
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<tr>
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<td>Yes (if on a payment order)</td>
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<td>Credit card online</td>
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<td>Australia Post Office</td>
<td>Yes</td>
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<tr>
<td>Direct debit</td>
<td>No</td>
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</table>

Apply for revocation of the enforcement order
After an enforcement order has been made, an application to the Infringements Court to revoke that order can be made by:

- the enforcement agency; or
- an authorised company representative.\(^{1418}\)

The Infringements Court registrar cannot consider any application for revocation (including on the ground of special circumstances) in relation to the non-reviewable offences.\(^{1419}\)

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\(^{1418}\) Infringements Act 2006 (Vic) s 65.

\(^{1419}\) Infringements Act 2006 (Vic) ss 63A(1)(a)–(c).
Grounds for revocation

The *Infringements Act* does not specify the grounds on which a corporation may seek revocation. The Act provides that the infringements registrar must revoke an enforcement order when ‘satisfied there are sufficient grounds for revocation’.1420

The Infringements Court website elaborates that revocation will only be granted:

where mitigating circumstances or social justice issues are identified by the Infringements Court Registrar as worthy of consideration by the issuing agency of a Magistrate in an open court.1421

An application for revocation may be made on the basis of special circumstances, as defined under the *Infringements Act*; however, this is unlikely to apply to an infringement against a corporation.1422

An application on the ground of special circumstances must be accompanied by evidence of the special circumstances, such as a medical report from a doctor.1423

Outcomes of application to revoke

After considering an application for revocation, the Infringements Court registrar may:

- revoke the enforcement order;
- refuse the application; or
- refuse the application but vary costs.1424

Revocation of an enforcement order means that the order ceases to have effect;1425 however, the Infringements Court registrar does not have the power to withdraw or dismiss the infringement penalty.

If the infringements registrar revokes the enforcement order, the Infringements Court must:

- send a copy of the application to the enforcement agency for its consideration; and
- advise the applicant that the order has been revoked.1426

Options after revocation

If the infringements registrar revokes the enforcement order, the enforcement agency then has 21 days to file a request for non-prosecution,1427 or the matter will automatically proceed to be listed for hearing in the Magistrates’ Court.

Options after refusal to revoke

If the infringements registrar refuses to make an order for revocation, the infringement penalty will continue to be enforced.

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1421. Magistrates’ Court of Victoria (2012), above n 403.
1422. *Infringements Act 2006 (Vic)* s 3.
1423. *Infringements Act 2006 (Vic)* s 65(3)(b).
1424. *Infringements Act 2006 (Vic)* ss 66(1)–(4).
1426. *Infringements Act 2006 (Vic)* ss 66(5)(a)–(b).
1427. *Infringements Act 2006 (Vic)* s 69(1).
At this stage, the corporation may:

- pay the infringement penalty in total;
- make a second revocation application (or application to the Magistrates’ Court for leave to make a third or subsequent revocation application);¹⁴²⁸
- lodge a written objection to the refusal within 28 days of the refusal notice (in which case the objection to the refusal of revocation will be listed for hearing in the Magistrates’ Court);¹⁴²⁹ or
- do nothing (in which case the Infringements Court will proceed to issue a ‘Notice to Issue an Infringement Warrant’).

**Stage 6 – objecting to refusal to revoke enforcement order**

Upon hearing an objection to a refusal of revocation, the court may:

- accept the corporation’s objection to the refusal to revoke, revoke the enforcement order, and proceed to hear the matter;¹⁴³⁰ or
- refuse the objection to the refusal to revoke and return the matter to the Infringements Court to continue enforcement.¹⁴³¹

**Stage 7 – Notice of Intention to Issue a Warrant**

Although not prescribed under the Infringements Act, if none of the options at Stage 5 has been exercised, the Infringements Court will send to the corporation a ‘Notice of Intention to Issue a Warrant’ 28 days after the date on which an enforcement order is made.

**Options at this stage**

At this stage, the corporation may exercise any of the options at Stage 5.

**Stage 8 – issue of infringement warrant**

The Infringements Act provides that, if an enforcement order is made by the Infringements Court and the corporation does not pay the outstanding penalty amount (and does not exercise any of the options at Stage 5) the infringements registrar must issue an infringement warrant.¹⁴³²

In practice, the Infringements Court will issue a warrant if the corporation remains in default and has not exercised any of the options at Stage 5 within 28 days of the date of the ‘Notice of Intention to Issue a Warrant’ above.

**Actions by the Sheriff**

At this stage, after the issue of a warrant and regardless of whether or not a seven-day notice has been served, the Sheriff may detain or immobilise a vehicle belonging to the corporation.¹⁴³³

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¹⁴²⁸. Infringements Act 2006 (Vic) s 65(4).
¹⁴²⁹. Infringements Act 2006 (Vic) ss 68(1)–(3): if the application is made more than 28 days but less than 3 months after a refusal to revoke, the infringements registrar may still refer the matter to court; however, an application for objection cannot be made more than 3 months after the refusal to revoke.
¹⁴³⁰. Infringements Act 2006 (Vic) ss 72(1)(a)–(b). The court may proceed to hear the matter in the absence of the infringement offender: Criminal Procedure Act 2009 (Vic) ss 85(1)–(2).
¹⁴³¹. Infringements Act 2006 (Vic) s 72(2).
¹⁴³². Infringements Act 2006 (Vic) ss 80(1)(a)–(b).
Detain or immobilise vehicle

The *Infringements Act* provides that, once an infringement warrant has been issued, the Sheriff or a police officer may detain or immobilise a vehicle belonging to a corporation against which the infringement warrant has been issued.\(^\text{1434}\)

The vehicle will not be released unless within seven days of immobilisation of the vehicle:

- the corporation has paid the outstanding amount in full;
- the corporation has become subject to an attachment of debts order;
- the corporation has applied for and received a grant of revocation from the Infringements Court of the Magistrates’ Court;
- the corporation has had property to the value of the warrant seized by the Sheriff;
- the infringements warrant has been recalled or cancelled;
- the infringements warrant has expired; or
- the Sheriff, in his discretion, considers it appropriate to release the vehicle.\(^\text{1435}\)

If no action is taken by the corporation, the Sheriff may serve a further notice (and publish a notice in a newspaper) that the vehicle will be sold unless within 14 days the corporation makes full payment of the outstanding infringement warrant.\(^\text{1436}\)

**Options at this stage**

After the issue of an infringement warrant, prior to the service of a seven-day notice, the corporation may exercise any of the options at Stage 5.

**Stage 9 – seven-day notice**

After an infringement warrant has been issued, the corporation will be served with a seven-day notice.

The notice advises that an infringement warrant has been issued and that the Sheriff will execute the warrant if the corporation does not take any action within seven days of receipt of the notice.

**Actions by the Sheriff**

At this stage, after service of the seven-day notice and during the period of the notice, the Sheriff may:

- seize property that the Sheriff suspects may be disposed of or removed; or
- detain or immobilise a vehicle belonging to the corporation.

**Options at this stage**

After the issue of an infringement warrant, the corporation has seven days in which to exercise any of the options at Stage 5.

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\(^{1434}\) *Infringements Act 2006 (Vic)* ss 95–107.

\(^{1435}\) *Infringements Act 2006 (Vic)* ss 100(1)(a)–(j).

\(^{1436}\) *Infringements Act 2006 (Vic)* ss 101(1)–(3).
Stage 10 – execution of warrant by the Sheriff

If the corporation does not exercise any of the options at Stage 5 within seven days of receiving a seven-day notice, enforcement action may be taken by the infringements registrar and the Sheriff.

*Enforcement action by the infringements registrar*

At this stage, the infringements registrar may make an attachment of debts order or (although it is unlikely to be used against a corporation) an attachment of earnings order in respect of the corporation.

The infringements registrar may also issue a summons for the oral examination of a person if the infringements registrar has not been provided with sufficient information regarding the corporation’s financial circumstances in order to make an attachment of earnings or attachment of debts order.

*Attachment of debts order*

Once an infringement warrant has been issued, and a seven-day notice has been served, the infringements registrar may make an attachment of debts order if:

- the seven-day notice period has expired and the corporation has not:
  - paid the outstanding amount; or
  - applied for a revocation of the enforcement order; and
- the amount outstanding is not less than $1,000.

While the *Infringements Act* does not expressly restrict the power of the infringements registrar to issue an attachment of earnings order to natural persons only, the plain meaning of ‘earnings’ suggests that this order is unlikely to apply to a corporation.

The warrant is stayed if an attachment of earnings order or an attachment of debts order is made.

In practice, due to limitations of the Victorian Infringements Management System, the infringements registrar does not currently have the capacity to make an attachment of earnings order, or an attachment of debts order.

*Enforcement action by the Sheriff*

At this stage, the Sheriff may:

- detain or immobilise a vehicle belonging to the corporation; or
- serve upon the corporation a notice of intention to suspend the registration of any vehicle belonging to the corporation.

If enforcement using the suspension of the corporation’s vehicle registration is unsuccessful or unsatisfactory, is not possible, or is not appropriate, the Sheriff may apply to the court for a charge to be placed on any land belonging to the corporation.

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1437. *Infringements Act 2006 (Vic)* s 129(1).
1438. *Infringements Act 2006 (Vic)* ss 123(1)(i)(ii)–(iii), 129(1) (c)(i)–(iii).
1439. *Infringements Act 2006 (Vic)* ss 123(1A), 129(1A); *Infringements (General) Regulations 2006 (Vic)* r 23.
1440. *Infringements Act 2006 (Vic)* ss 94A(b), 128B(1).
1441. *Infringements Act 2006 (Vic)* ss 94A(1)(c), 133B(1).
Suspension of vehicle registration

After the issuing of an infringement warrant, the Sheriff may commence action to suspend the registration of any vehicle owned by the corporation. 1442

This action is pre-empted by the issuing of a Notice of Intention to Suspend (NOITS). The NOITS provides a corporation with notice of the Sheriff’s intent to instruct VicRoads to suspend the registration of any vehicle owned by the corporation, and it provides seven days for the corporation to clear the outstanding infringement debt to avoid this action being taken. 1443

If no payment is made and the NOITS is actioned, the Sheriff will inform VicRoads, which will subsequently advise the corporation that the registration of any vehicle owned by the corporation has been suspended. As a consequence, officers of the corporation cannot lawfully drive any unregistered vehicle until the relevant suspension is lifted.

It is an offence for an officer of a corporation to drive a vehicle while its registration is suspended. The maximum penalty for a corporation is 125 penalty units or $18,045.00 for a first offence and 250 penalty units or $36,090.00 for a second or subsequent offence. 1444

Charge against land

The Sheriff can only apply to the court for a charge to be placed on land owned by the corporation against which the infringement warrant has been issued if suspension of the registration of any vehicles owned by the corporation is unsuccessful or unsatisfactory, is not possible, or is not appropriate. 1445

The charge is registered against the certificate of title of the land, and prevents the property from being dealt with under the Transfer of Land Act 1958 (Vic) until:

- the amount is recovered; or
- the charge expires or is removed. 1446

Execution of the warrant by the Sheriff

In addition to the enforcement measures against driver licences, vehicles, and land, the Sheriff may also execute the warrant by seizing and selling the property of the corporation.

Seizure of property

The infringement warrant authorises the person who is executing the warrant to break, enter, and search any residential or business property occupied by the corporation and seize personal property belonging to the corporation to the value of the warrant. 1447

Options at this stage

At this stage, the corporation may:

- pay the amount in full; or
- satisfy the warrant through the seizure of personal property.

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1442. Infringements Act 2006 (Vic) s 110.
1443. Infringements Act 2006 (Vic) s 110(2).
1444. Road Safety Act 1986 (Vic) ss 9A.A. 7(1)–(3).
1445. Infringements Act 2006 (Vic) ss 134(a)–(c).
1446. Infringements Act 2006 (Vic) ss 134(a)–(c).
1447. Infringements Act 2006 (Vic) ss 82(1)(a)–(b).
Figure A1: The infringement penalty enforcement system

Infringement Stage
- Issue Infringement Notice
- Give Warning
- Talk to Person

Agency Action
- No Action Taken
- Take to Court
- Pay in Full
- Apply for Internal Review (Excludes Special Circumstances)

Decision
- Confirm Decision
- Rejected
- Granted

Payment
- Made
- Not Made

Penalty Notice
- Withdraw Notice
- Withdraw Notice with Warning
- Automatic Referral to Court

Not Proven
- Not Proven

Sentenced

Enforcement Order
Figure A2: The Children and Young Persons Infringement Notice System (CAYPINS) enforcement system, adapted from ‘Overview of the system’ in Youthlaw, A Fairer Fines System for Children: Key Issues & Recommendations, Position Paper (Youthlaw, 2013) 10.
Appendix 2: Overview of the Fines Reform legislative amendment package

Department of Justice

PURPOSE
This document provides a brief overview of the Fines Reform legislative amendment package.

KEY OBJECTIVES OF FINES REFORM
The Fines Reform Bill 2014 (the Bill) will establish an administrative model for collecting and enforcing legal debts in Victoria. The new model combines legislative, organisational and operational reforms that will provide uniform debt payment and management methods for people with fines, common sanctions for enforcing infringement fines and court fines, and a central body as the contact point for the public to pay and manage fine debt.

NEW MODEL FOR THE COLLECTION AND ENFORCEMENT OF LEGAL DEBT
The key features of the new administrative model include the following:

New director to manage the recovery of legal debt
A director, to be known as the Director, Fines Victoria, to be appointed by the Secretary to the Department of Justice (the Department) and will be responsible for managing the collection and enforcement of legal debts. An administrative body with staff appointed by the Director will be established to assist the Director to perform core functions. The Director will have the power to delegate functions and powers to staff of the administrative body other than the power of delegation. The core functions of the Director will include:

- the collection of infringement fines and court fines imposed by Victorian courts
- recovering unpaid fines registered with the Director for enforcement
- oversight and reporting of enforcement agency internal review processes and outcomes, and
- determining enforcement review applications for fines that are in default and registered for enforcement.

More options for vulnerable people with infringement fines
Disadvantaged people including people in acute financial hardship, will have more options for dealing with fines with the establishment of the Work and Development Permit Scheme in Victoria. The scheme is modelled on a very successful scheme operating in New South Wales and will provide disadvantaged people with non-financial means to ‘pay-off’ fine debt through community work, treatment, courses and mentoring.
While the scheme will be administered by the Director, community agencies and treatment providers will have responsibility for determining appropriate fine mitigation actions for clients and monitoring compliance with approved permits. The benefit of the new scheme is that it will divert disadvantaged people from the infringements system at an early stage and provide access to services and treatment to reduce the incidence of re-offending.

**Common enforcement sanctions to recover fines**

Stronger and more automated sanctions will be applied closer in time to offending by the Director. Existing sanctions like driver licence and vehicle registration suspension will be rolled-out more widely together with new sanctions such as number plate removal, to encourage people to contact Fines Victoria so that the fine debt can be managed appropriately.

To mitigate the impact of driver licence and vehicle registration sanctions, the Director will have a power to direct VicRoads to remove a sanction where hardship is established. The Department will also undertake an extensive communications strategy to inform the public about sanctions and how to deal with fines. This will help to reduce the incidence of people driving unlicensed or unregistered vehicles and to enable the lifting of sanctions by the Director in appropriate circumstances.

**Availability of a single account for paying fines**

Under the new model, people will have access to simplified payment arrangements and will be able to include infringement fines and court fines into a single payment arrangement. The practical effect of the changes is that people with court fines will no longer have to travel to the venue of the court that imposed the fine to make payments. Rather, payments can be made to any court or to the administrative body in person, by telephone, by direct debit, and online.

**Oversight powers**

The Bill will reform processes for internal agency review of infringements by giving the Government the power to establish and enforce processes for review across Victoria’s 100 plus enforcement agencies to promote consistency and fairness. Further, the Bill will introduce more payment options for people who have been unsuccessful with internal review.

The Bill also abolishes the existing revocation scheme and replaces it with a scheme similar to internal review that will be available after an infringement fine is registered for enforcement with the Director. The new scheme will be known as ‘enforcement review’ and will have identical grounds for review to existing internal review grounds plus an additional ground to give people genuinely unaware of having received an infringement notice an opportunity to deal with the fine and not be at any disadvantage. The Director will be responsible for determining enforcement applications and will provide people with an additional avenue to have the appropriateness of an infringement notice reviewed.

The Director will have powers to monitor enforcement agency compliance with the Act generally and in particular in respect of internal review outcomes. There will be powers provided to the Director to make recommendations and to report outcomes to the Attorney-General.
## Appendix 3: Consultation – meetings and submissions

### Meetings/Roundtables

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<thead>
<tr>
<th>Number</th>
<th>Date</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>21 March 2012</td>
<td>The Sheriff’s Office and IMES staff</td>
</tr>
<tr>
<td>2</td>
<td>15 June 2012</td>
<td>Courtlink</td>
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<td>3</td>
<td>28 June 2012</td>
<td>The Sheriff’s Office and IMES staff</td>
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<td>4</td>
<td>29 June 2012</td>
<td>Victoria Legal Aid</td>
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<td>5</td>
<td>7 August 2012</td>
<td>Infringements working Group</td>
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<tr>
<td>6</td>
<td>28 August 2012</td>
<td>The Sheriff’s Office and IMES staff</td>
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<td>7</td>
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<td>12</td>
<td>24 June 2013</td>
<td>Meeting with Road Trauma Families Victoria</td>
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<td>26 June 2013</td>
<td>Dr Rory Gallagher</td>
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<td>Roundtable 1—Warnings, Review and Open Court</td>
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<td>ConnectEast – EastLink Operator</td>
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<td>23</td>
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<td>IMES and Infringements Court staff</td>
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<td>Mr Mark White (State Debt Recovery Office, NSW)</td>
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## Submissions

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<td>Dr Bernadette Saunders, Associate Professor Gaye Lansdell, Dr Anna Eriksson and Ms Meredith Brown</td>
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<td>11 October 2013</td>
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<td>Infringements Working Group, comprising:</td>
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<td>• Bendigo Community Health Services</td>
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<tr>
<td></td>
<td></td>
<td>• Brimbank Melton Community Legal Centre</td>
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