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 infringement 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 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).