Criminal Justice Research Consortium

An Examination of the Impact of Unpaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System –

Towards a Best Practice Model

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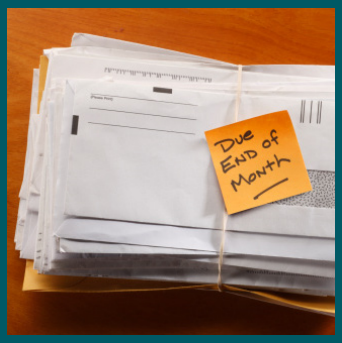

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Executive summary

Infringement notices or on-the-spot fines are used extensively in all Australian jurisdictions as an expedient way to address minor law breaking. For people who are able to pay the fixed penalty, the matter is typically settled quickly and efficiently with minimal financial or emotional impact – neither a criminal record nor further contact with the criminal justice system eventuate. In Victoria, over 120 agencies are authorised to issue infringement notices and approximately 4.97 million were issued in the period 2010–11. This represents a 7 per cent increase on the previous year, when 4.65 million were issued (Victorian Attorney-General, 2010-11:9). From 2007 to 2008, approximately 4.1 million notices were issued, a figure which was similar to that of the previous year, when the *Infringements Act 2006* (Vic) was introduced (Victorian Attorney-General, 2007-08:2). The 2006 introduction of the *Infringements Act* established a uniform model for the issue, management and enforcement of infringement notices, and importantly also introduced provisions for vulnerable people with 'special circumstances' to ensure that those suffering from mental illness, intellectual disability, substance addiction or homelessness are not unfairly embroiled in the system and can be filtered out of the system at various stages (Explanatory Memorandum Infringements Bill, 2005). While this was a positive step, there are weaknesses in the system that require amendment, as certain disadvantaged groups do not fall within the criteria, and those who do often find that establishing their 'special circumstances' poses a significant challenge. The infringements system is incredibly complex. Consequently, without legal representation, many people who do meet the criteria are unable to take advantage of these concessions. In turn, this places a significant burden on the resources of community legal centres (CLCs) and Victoria Legal Aid (VLA).

A key objective of this research was to develop a preventative response by working towards law reform that prevents socially disadvantaged people from unnecessarily coming into contact with the criminal justice system as a result of unpaid fines, and avoids the expenditure of unnecessary resources on resolving this issue. The qualitative component of the research included 95 semi-structured interviews conducted from 2010 to 2012 with various stakeholders including those who enforce the Infringements Act, those who have been subject to infringements, and legal and financial representatives who assist fine recipients (clients). The quantitative component involved collecting data on 182 fine recipients from 10 CLCs and five financial counsellors during the 2009–10 financial year. The researchers also completed 26 hours of court observations at the Melbourne Magistrates' Court Special Circumstances List hearings.

Key findings

- *The complexity of the system and lack of public knowledge of the infringements process*

The infringements system is confusing and convoluted, especially for disadvantaged groups such as those who have a mental illness, intellectual disability, substance addiction, or who are caught in a cycle of poverty. Expiation options are reduced as time passes. Hence, people need to be educated about the system and warned to act quickly.

- *Confusing language and excessive paperwork*

The clients in our research often experienced difficulty dealing with the volume of technical paperwork that they received, especially clients who did not speak English or those who had low literacy levels. The misleading nature of the terminology used in the paperwork compounded this issue. For example, when clients received a notice from the Infringements Court that their enforcement order had been 'revoked' they often reasonably assumed that this was the end of the matter, whereas it actually means that the enforcement order has been temporarily cancelled while the matter is referred back to the enforcement/issuing agency for consideration.

- *Inconsistent internal review procedures*

While the Internal Review Provisions of the Infringements System Oversight Unit (ISOU) state that 'if the agency finds that there are special circumstances, the agency should withdraw the infringement notice' (2008:11), it was evident that this policy was not consistently adhered to across all agencies.

- *Imprisonment for non-payment of fines and lack of appeal rights*

Clients may be placed on payment orders with imprisonment in lieu (IIL) orders attached where defaulting on one payment results in imprisonment. There is no right of appeal against imprisonment with infringement matters, in contrast to any other matter for which imprisonment is a possible consequence.

- *Net-widening*

The ease of issuing infringement notices has led to concerns that, paradoxically, infringements systems may cause more people to come into contact with the criminal justice system. This is due to the fact that officers are now issuing infringement notices in instances where they might have previously only given a warning or taken no action at all.

- *Criminal record*

Those who do not pay their fines have this noted in a criminal record, while those who pay do not. Furthermore, those who appear in the Special Circumstances List are required to admit guilt as a prerequisite to appearing in court, despite the fact that their condition or situation means that they may be unable to control the offending behaviour or they may be unable to fully comprehend that they have committed an offence.

- *Increased burden on legal services providers*

The expansion of the infringements system places a significant burden on CLCs and VLA as increasing numbers of disadvantaged people seek assistance to deal with infringement matters.

- *Enforcement agencies and discretion*

Our research found that enforcement agencies demonstrated minimal use of discretion when issuing a warning in lieu of a fine, and many agency staff were insufficiently trained to deal with special circumstances.

- *Some behaviours subject to infringements involve subjective judgements*

Offences that involve subjective judgements or standards of reasonableness increase the possibility that disadvantaged people will be drawn into the criminal justice system for conduct that would not withstand judicial scrutiny. Managing these offences by way of the infringements system opens up the possibility of discrimination and selective enforcement.

- *The inequity of fixed-rate fines*

The infringements system does not take individuals' incomes into account, which may produce grossly disproportionate outcomes.

- *Disproportionate fine amounts*

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. Infringement amounts are sometimes more than a court would impose. For example, the on-the-spot fine for being drunk in public exceeds $500, yet several of the professional interview participants advised that the fine would rarely be this high if it were imposed by a court.

- *Inability to access community work or other alternative methods of expiation in the first instance*

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.

- *Payment and technology issues*

Late payment of infringement notices results in excessive late fees, which further diminishes the likelihood of expiation. Clients in our research were often placed on payment plans (by enforcement agencies) and payment orders (by the courts) simultaneously, making the system more difficult for many clients to understand, and increasing their risk of unintentionally defaulting on their payments. A client's infringement matters cannot be consolidated, and the multitude of reference numbers attached to each client leads to confusion for both clients and their advocates. Additionally, some clients were unable to have payments taken out via Centrepay, which increased their likelihood of defaulting.

- *Narrow special circumstances criteria*

The legislative definition of special circumstances does not include domestic violence or long-term, extreme financial hardship.

- *Special circumstances evidence requirements*

Clients regularly experienced difficulty obtaining medical reports to substantiate special circumstances claims due to the costs that are often involved. Moreover, many disadvantaged clients had not been in long-term, regular, ongoing contact with a medical professional, making it more difficult for a general practitioner or psychiatrist to assess their status. Homeless clients had difficulty obtaining the required documentation if they were not linked to a crisis accommodation agency. Furthermore, they were often asked to provide a medical report when the primary ground for their application was homelessness.

- *Infringements Court staff issues*

The number of fines and infringement offences has increased in recent years, yet the number of infringement registrar staff apparently has not. The number of matters dealt with by the Infringements Court has almost doubled since 2006. For example, in 2006–07 the court issued approximately 838,000 enforcement orders, while approximately 1,599,000 were issued in the period 2010–11 (Victorian Attorney-General, 2010-11:22). Among staff there was inadequate training, a lack of overall understanding of the system, and a lack of consistency in the information given to clients and their advocates.

- *No early exit for those with special circumstances*

Often people had to wait until their matter reached a later stage before they had the option to appear in the Special Circumstances List, consequently accruing additional penalties and risking enforcement action. Furthermore, there is no system in place to 'flag' repeat offenders whose special circumstances mean that they may not be able to control their behaviour, and who therefore repeatedly appear in court.

- *Enforcement agencies revocation procedures*

Enforcement agencies are currently required to 'opt out' if they wish to withdraw the fine at the revocation stage and, if they do nothing, the matter is automatically referred to the Special Circumstances List.

- *Delays at the Special Circumstances List*

There is a lengthy delay between the commission of the offence and the court resolution. There was on average a four to six month wait before a matter could be heard in the Special Circumstances List, which often caused further stress for clients. Importantly, many legal representatives reported that they lost contact with transient clients during these protracted waiting periods.

- *Appearing in court*

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.

- *Lack of ongoing support services*

Letters from support services and medical professionals are required to substantiate a special circumstances claim. Hence, ideally the defendants need evidence from long-term, ongoing support networks. However, many of these people are unwell, frequently change address, and may not have steady relationships. While the Melbourne Magistrates' Court provides access to support services via 'once-off', brief interventions, it does not appear to provide ongoing access to services.

- *Regional access to the Special Circumstances List*

Clients who live in rural or regional Victoria have to travel to Melbourne if they want to have their matters heard in the Special Circumstances List which, for many clients, is an issue in terms of cost, time and ability.

- *CityLink $40 administration fee*

CityLink charges a $40 fee on each infringement that is proven. This applies even if the matter is heard in the Special Circumstances List, meaning that disadvantaged people may be left owing thousands of dollars in fees to a private corporation, even if the magistrate or judicial registrar dismisses their fines.

Recommendations

- Internal review processes are inconsistent and often not conducted in accordance with the provisions of the Infringements System Oversight Unit (ISOU, 2008). Hence, **internal review applications should be assessed by a central, independent agency**.

- The Infringements Court should **remove the confusing terminology** used in its correspondence. For example, instead of saying that the enforcement order has been 'revoked', it might be better to say that 'the matter has been "referred back" to the enforcement agency for consideration' or is being "reassessed" or "reconsidered" by the enforcement agency.

- **Infringement notices should contain clearer and more specific information about obtaining legal advice**. Further, there should be a **community education campaign** about infringements. This could involve a print media campaign, a televised advertisement and/or advertising at train stations and along tollways informing people of their options and the consequences of not taking immediate action.

- **Section 160 of the *Infringements Act 2006* (Vic) should be amended to include a right of appeal** to the County Court for those who receive an imprisonment in lieu order as a result of unpaid infringement fines.

- The Attorney-General's Guidelines to the *Infringements Act 2006* (Vic) should specify that issuing officers (including police) must consider whether issuing multiple infringement notices simultaneously is justifiable and proportionate, particularly in relation to people with special circumstances. **The *Infringements Act 2006* (Vic) should include a provision for the automatic withdrawal at the internal review stage of additional notices that are incurred as a reaction to the original notice (such as being fined for swearing after receiving a fine for having one's feet on a train seat) .**

- **Those who appear in the Special Circumstances List should not be burdened with a criminal record** and infringement offences should not be included in a criminal record check, irrespective of how they are resolved. People who are able are able to pay their fines are not forced to carry this burden, while those who are unable to pay are criminalised. In line with this, it is also recommended that those who appear in the Special Circumstances List should not be required to plead guilty. Indeed, the Infringements System Oversight Unit's Internal Review Provisions state that 'special circumstances are those situations in which a person should not be *criminally liable* for his or her conduct' (2008:11).

- The increasing use of infringement notices has placed a significant burden on community legal centres and Victoria Legal Aid as increasing numbers of disadvantaged people seek assistance to deal with infringement matters. We recommend that **funding for these entities should be increased by the allocation of a small percentage of infringements revenue.** We also recommend that **a percentage of infringements revenue should be allocated to funding the Special Circumstances List at the Melbourne Magistrates' Court** to ensure that the clients who appear in the list are provided with the option of accessing ongoing support services.

- **Victoria Police officers should exercise the discretion available to them** by not issuing infringement notices to people who have clearly identifiable special circumstances. This may require more extensive training in certain areas, including mental illness, intellectual impairment and poverty.

- **Department of Transport Authorised Officers require additional education and training** in the use of discretion, particularly with regard to issuing a warning in lieu of an infringement notice for people who clearly fall under the special circumstances category.

- **Behaviours** that are **open to subjective interpretation**, such as offensive language or conduct, **should not be included in the infringements system, or alternatively, should be subject to cautions and warnings in the first instance,** to reduce the likelihood of discrimination and selective enforcement.

- Infringement amounts should be much less than the amount one would receive for the same offence if the matter were to proceed to court, as stipulated in the Attorney-General's Guidelines. **Fine amounts should also be proportionate** to the seriousness of the offence**.**

- Fixed-rate infringement penalties disproportionately impact on those who are financially disadvantaged. Therefore, **provisions should be implemented that allow those in financial hardship to apply for a standard concession rate**. Those who have a concession card and receive their fine in person should be immediately issued with a concession fine amount**.**

- **Community work or other alternative expiation methods should be available in the first instance for those suffering from financial hardship**. Alternative methods, such as those that are available under the Work and Development Order scheme in New South Wales (which includes poverty as a criterion), may include attending counselling, self-development or education courses.

- **The option to pay by instalments should be available in the first instance and should be managed by one central agency.** A central payment plan would allow all of a person's fines to be rolled into one plan, irrespective of which agency they came from and what stage in the process they are at. This would ensure that clients are not placed on multiple payment plans. The central agency should also have the capacity to deduct payments through Centrepay to minimise the chance of default. Additionally, each client should have one unique identifying number under which all of his or her infringement matters are listed.

- **Clients who fulfil their payment plan obligations should have their late fees automatically waived** once payment of the original amount is finalised.

- **The special circumstances criteria should be broadened** to include victims of domestic violence and people who are experiencing long-term, extreme financial hardship , as these people are often as equally disadvantaged as those who meet the legislated 'special circumstances' criteria.

- The documentation requirements to prove special circumstances should be less stringent and easier to meet. **Reports should be accepted from a broader range of service providers, including AASW (Australian Association of Social Workers) eligible social workers,** and a statutory declaration should be acceptable evidence (in the absence of other documentation) for those who apply on the grounds of homelessness. Additionally, the Infringements Court should design a template letter for use by practitioners.

- **The number of infringements registrars should be increased** and they should receive **further education and training in relation to special circumstances** and the evidence deemed acceptable to establish these circumstances**.** The Department of Justice should also consider establishing satellite areas where infringements registrars can work periodically, such as the Justice Centre at Moorabbin, instead of only being located in Melbourne's central business district.

- People with serious, permanent conditions, such as acquired brain injury or intellectual disability, should be provided with an **early exit from the system**. If they have previously appeared in the Special Circumstances List, and their condition is a contributing factor to the continued offending, they should have their infringement notices automatically withdrawn immediately after issuing. To facilitate this, these individuals or their carers would need to provide their consent to be registered on a database**.**

- **Enforcement agencies should be required to 'opt in' at the revocation stage if they wish to pursue matters through special circumstances hearings**. This would avoid the wastage of resources that the current procedure allows. Certain enforcement agency prosecutors, particularly those who represent local councils, often fail to attend court. Requiring agencies to opt in would also reduce the unnecessary stress and anxiety experienced by clients who have taken the time to make their application and to attend court.

- **There should be an option of a closed hearing** or non-appearance for those who are intimidated by the court process, particularly those who are suffering from anxiety-related mental illness. A request for non-appearance should be considered in these cases, irrespective of the number of fines incurred.

- People who appear in the Melbourne Magistrates' Court Special Circumstances List should be provided with the **option of accessing ongoing support services at court**, as they do at the Neighbourhood Justice Centre in Collingwood. This would ensure that they have the best chance of adhering to both therapeutic and non-therapeutic undertakings**.**

- People living in regional or remote areas should have easier access to the Special Circumstances List. **The Melbourne Magistrates' Court should establish video-conferencing links to regional courts** and consider establishing satellite lists in these areas to hear special circumstances matters on a monthly basis.

- **CityLink should not enforce its fee costs ($40 cost on each fine) upon people with special circumstances,** and clients should be notified of this immediately rather than at the end of their undertaking.

Abbreviations

Abbreviation	Meaning
AASW	Australian Association of Social Workers
ABI	Acquired Brain Injury
ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
ALRC	Australian Law Reform Commission
AO	Authorised Officer
ASBO	Anti-Social Behaviour Order
ATODA	Alcohol, Tobacco and Other Drugs Association
CASO	Court Advice and Support Officer
CIN	Criminal Infringement Notice
CISP	Court Integrated Services Program
CLC	Community Legal Centre
CWP	Community Work Permit
DOJ	Department of Justice
DOT	Department of Transport
FCLC	Federation of Community Legal Centres
GP	General Practitioner
IIL	Imprisonment In Lieu
ISOU	Infringements System Oversight Unit
LRC	Law Reform Commission
MHLC	Mental Health Legal Centre
MUHREC	Monash University Human Research Ethics Committee
NJC	Neighbourhood Justice Centre

NSW	New South Wales
NSW LRC	New South Wales Law Reform Commission
NZ	New Zealand
PBO	Prohibited Behaviour Order
PILCH	Public Interest Law Clearing House
PIN	Parking Infringement Notice
PND	Penalty Notice for Disorder
RONC	Report of non-compliance
SDRO	State Debt Recovery Office
SKLS	St Kilda Legal Service
UK	United Kingdom
US	United States
VLA	Victoria Legal Aid
VPHREC	Victoria Police Human Research Ethics Committee
WA	Western Australia
WDO	Work and Development Order

1.0 Introduction

The infringements system is often viewed as an administratively effective and profitable way to maximise civic compliance by simultaneously reducing the burden on Magistrates' Courts and increasing state revenue. Penalties are applied to specific offences, irrespective of any aggravating or mitigating circumstances (O'Malley, 2010), and criminal justice system expenditure is minimised by eliminating the need for minor offenders to appear in court. The ease of administering infringement notices has also reduced the amount of time police are required to spend on minor matters. Those who are able to pay the fine typically pay much less than they would if the fine were imposed in a court. They typically avoid being convicted of the offence and consequently do not acquire a criminal record (New South Wales Sentencing Council, 2006). It is for this reason that infringement notices have been referred to as a 'coercive penalty' as they provide the accused with the chance to 'make the problem go away' by paying the fine (Australian Law Reform Commission, 2002b:426).

The relative ease with which the infringements system can be extended, also increases the amount and types of behaviours that are being regulated (O'Malley, 2010). Graycar highlighted this aspect of the system by stating: 'new technologies make detection easier and there are continual demands for new infringements to come under the expiation system, thus widening the areas of criminality' (in Fox,1995a:1). This is exemplified by the infringements system's extension from car-related offences to a wider variety of areas of regulation including public order offences. However, when 'we buy freedom from the disciplinary apparatuses' by paying the financial penalty there is nothing to prevent recidivism (O'Malley, 2010:804). Furthermore, the strict liability status of many infringement offences means that the person who receives and pays the penalty may not be the offender (Fox, 1995a). Arguably, this suggests that the system's architects may be more concerned with efficiency and revenue than it is with deterrence and lasting behavioural change. In any event, there does not appear to be any empirical evidence on the efficacy of the infringement notice system in promoting behavioural change.

There are many other disadvantages associated with the use of infringement notices. These include a lack of scrutiny by the courts; the possibility that innocent people will pay the fine to avoid the expenses associated with contesting; the potential for vulnerable members of society to be subjected to selective enforcement; and the possibility of 'net-widening', whereby behaviours that would otherwise have been managed by way of a warning or caution result in the issuing of an infringement notice (Australian Law Reform Commission, 2002a). The New South Wales (NSW) Sentencing Council (2006) echoed these concerns, and also highlighted the risk that infringement notices may be issued to raise revenue rather than for the purpose of behaviour modification aimed at enhancing community safety. It also identified a propensity for marginalised groups to be disproportionately represented among those issued with penalty notices for behaviour that they may be unable to control.

Victorian legislation implemented in 2006 under the *Infringements Act* established a revised model for managing the issuing, expiation and enforcement of infringement notices. The new legislation

aimed to provide a fairer system, by providing more avenues by which to expiate (make amends without conviction) and for firmer enforcement through a range of measures where expiation has not occurred. In the second reading speech of the Infringements Bill, former Attorney-General Mr Hulls made the following statement in relation to the then new Act:

> *Its primary purpose is to improve the community's rights and options in the process and to better protect the vulnerable who are inappropriately caught up in the system. A second objective is to provide additional enforcement sanctions to motivate people to pay their fines in order to maintain the integrity of the system. Broadly, the new elements of the system are: overarching legislation to cover infringements law and processes; a fairer infringements process based on early intervention and improved information to the public; process improvements which include a right to internal review by the issuing agency; and measures at various stages, including internal review, to filter people out of the system who cannot understand or control their offending behaviour (e.g. people with mental or intellectual disabilities, the homeless, people with serious addictions)… (Parliament of Victoria, 2005:2186)*

However, in practice there are weaknesses in the current system. While there are special circumstances provisions in place to ensure that those suffering from an intellectual disability, diagnosed mental illness, substance addiction or homelessness are not unfairly caught up in the system, special circumstances are difficult to prove and they do not protect socially isolated groups including new migrants, young people, Indigenous people, those experiencing financial hardship and victims of domestic violence. CLCs in Victoria report that the current process for dealing with unpaid infringements is lengthy and complex. The processes entailed in notice objection, Infringements Court applications, issuing of enforcement orders and warrants, and sentencing through the Magistrates' Court can take many months, and by the time a warrant is issued, debts have often accumulated to tens of thousands of dollars.

An infringement notice can have a disproportionate impact on disadvantaged groups compared to other groups in society and can thus entrench and perpetuate a state of poverty. Factors that contribute to the accrual of fines that some people may never be in a position to pay include: no fixed address to receive fines, mental health issues, substance abuse issues, intellectual disability, low literacy levels, financial hardship, social isolation, and exposure to domestic violence. Fines can lead to a downward spiral that may contribute to cyclical or long-term homelessness. Financially disadvantaged individuals may have no means of paying an accumulated fine and, as a result, the infringements system draws upon a disproportionate amount of resources from CLCs.

Our research project, the results of which are presented in this report, commenced as a response to concerns raised by CLCs about the disproportionate and negative impact the infringements system has on disadvantaged populations in Victoria. The research team are all members of the Criminal Justice Research Consortium at Monash University.

The network was approached in 2010 by lawyers at the SKLS and PILCH Homeless Persons' Legal Clinic who requested that this research be undertaken. The Legal Services Board funded the project for 2010–12, under its Major Grant scheme. The project offered an integrated response to the topic as it was based on a unique partnership between academics, CLCs and working groups who have

experience in the area of unpaid infringements. The research methodology was formed in close consultation with lawyers and financial counsellors who work with people subject to unpaid infringements, ensuring that the research approach proposed was the best possible to meet the needs of those who work in the area. While CLC lawyers and financial counsellors reported anecdotal evidence of the adverse impact of the infringements system on disadvantaged people, there was insufficient qualitative and quantitative research to form a sound evidence base from which to effect law reform and policy change. This report presents evidence obtained through consultations with both people who issue, review and enforce infringements and people who represent vulnerable groups subject to infringements. It also documents the voices of people who fit 'special circumstances' criteria (as defined in the *Infringements Act 2006* (Vic), and people from other similarly disadvantaged groups, all of whom have been disproportionately embroiled in the infringements system.

Aims of the research

Our research sought to establish the profile of groups affected by unpaid infringements, their experiences of the framework for unpaid infringements, and the experiences of those who work with them. While there have been positive changes in the Victorian legal landscape to minimise the possibility of disadvantaged people becoming unfairly drawn into the infringements system, this is the first Victorian study to reflect on the impact of those changes.

In particular, the research aimed to:

- investigate the impacts of the infringements system on disadvantaged groups
- identify key areas for law reform to provide better outcomes for disadvantaged groups
- promote positive change to the Victorian legal environment, reducing the time and resources spent on dealing with unpaid infringements.

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2.0 The Victorian infringements system

The introduction of parking fees through the *Parking of Vehicles Act 1953* (Vic) laid the foundation for the modern infringements system in Victoria. Later, the combination of local government legislation (*Local Government Act 1958* [Vic]) and road traffic legislation (*Road Traffic [Infringements] Act 1959* [Vic]), focusing essentially on parking meters, introduced the infringement notice (Fox, 1995b). Similar developments were replicated in other Australian jurisdictions at varying times.[1] From the 1960s onwards, the application of the infringements system in Victoria (in common with other jurisdictions) steadily escalated. Initially its primary purpose was to cover a wide range of driving and vehicle-related offences where the sanction was monetary and where it was deemed unnecessary to implement the full prosecutorial or trial processes.[2]

From the mid-1980s there was a further expansion in Australian jurisdictions of the infringements system to include public transport offences.[3] Further extensions transpired in Victoria from July 2008 with the introduction of the so-called infringements trial. The offences that formed part of this trial included: offensive behaviour, s 17 (1) (d) *Summary Offences Act 1966* (Vic); indecent language, s 17 (1) (c) Summary Offences Act; failure to leave licensed premises when asked to do so, s 114 (2) *Liquor Control Reform Act 1998* (Vic)*;* shop theft of goods valued up to $600, s 74A *Crimes Act 1958* (Vic); and, wilful damage of property valued at less than $500, s 9 (1) (c) *Summary Offences Act*. What was initially a three-year trial period was extended in 2011 on an ongoing basis by the *Justice Legislation Amendment (Infringement Offences) Act 2011* (Vic)*.* However, the offences of shop theft and damage to property were still subject to an additional one-year trial period. These provisions were due to sunset on 1 July 2012, yet the trial period for these two offences was extended under the *Courts and Sentencing Legislation Amendment Act 2012* (Vic), and the provisions are now due to end on 1 July 2014 (*Courts and Sentencing Legislation Amendment Bill* 2012 Explanatory Memorandum, 2012:2). This further demonstrates the continuing extension of the use of infringement notices for an ever-increasing number of offences, beyond the range suggested by Fox in 1995, who cautioned against the application of infringement notices for offences other than summary offences. The Australian Law Reform Commission (ALRC) reinforced this view in 2002, when it stated that such notices were only suitable to deal with 'high-volume, low penalty criminal offences of strict or absolute liability' (2002b:440).

Throughout Victoria, over 120 enforcement agencies are authorised to issue infringement notices under the Infringements Act. These include Victoria Police, the Department of Transport (DOT), local governments, hospitals and universities. There were approximately 4.97 million infringement notices issued in Victoria during 2010–11. The majority (over 90 per cent) were issued for traffic and

[1] *Transport Act 1930* (NSW); *Traffic Act 1949* (Qld); *Police Act Amendment Act 1938* (SA); *Hobart Corporation Act 1954* (Tas); *Traffic Act 1919* (WA) by way of a 1955 amendment.
[2] *Road Traffic (Infringements) Act 1965* (VIC); *Traffic Act 1909* (NSW) by a 1961 amendment; *Traffic Act (Amendment) Act 1960* (Qld); *Traffic Act 1925* (Tas) by way of a 1971 amendment; *Road Traffic Act 1972* (WA).
[3] *Transport Act 1893* (VIC); *Transport Administration Act 1988* (NSW); *Transport Operations (Passenger Transport) Act 1994* (QLD); *Metropolitan Transport Act 1954* (Tas) by way of a 1988 amendment; *Public Transport Authority Act 2003* (WA); *Expiation of Offences Act 1987* (SA).

parking-related offences and this pattern was consistent with previous years (Victorian Attorney-General, 2010-11:9-10). Victoria Police issued 2,901,618 infringement notices in 2010–11, amounting to 58.33 per cent of all notices issued, with the most common offence type being traffic-related (for example, related to speeding, tolls or red lights) (Victorian Attorney-General, 2010-11:9-10). This reflects the fact that Victoria Police is empowered to issue infringements under a broader variety of legislation than other agencies. Local governments issued 34.67 per cent of all infringements from 2010 to 2011, amounting to 1,724,359 individual notices (Victorian Attorney-General, 2010-11:9). Parking offences made up the vast majority (96.71 per cent), followed by animal-related and local law infringements (Victorian Attorney-General, 2010-11:13). Public transport infringements accounted for 2.92 per cent of all infringements issued in the 2010–11 period, amounting to 145,240 individual infringements (Victorian Attorney-General, 2010-11:10). In 2011, fare evasion on public transport resulted in the largest number of fines, with 132,178 people infringed for failing to have a valid ticket or evidence of concession. A further 17,592 people were fined for having their feet on the seats (Holroyd, 2012:4). The rapidity with which technology is advancing will arguably ensure that many more people become caught up in the infringements system. Indeed, as Fox suggested, 'expediency in disposing of offenders encourages greater efficiency in detecting them' (Fox, 1995b:284). For example, sheriff's officers now have access to automatic number plate recognition technology, allowing them to patrol car parks and identify fine defaulters (Victorian Attorney-General, 2010-11).

The ISOU is a part of the Infringement Management and Enforcement Services Unit within the Department of Justice (DOJ). Established in 2006, the ISOU is responsible for monitoring the operation of the infringements system and providing advice to the government and the Attorney-General with regard to infringements policy. The ISOU also provides infringements system stakeholders with information and advice about their responsibilities and rights under the Infringements Act. In addition, it advises on infringement penalty levels and assesses the suitability of offences for inclusion in the infringements system (Victorian Attorney-General, 2010-11). The ISOU has published an information paper titled, *Internal Review Provisions*, to assist enforcement agencies 'in developing internal review processes to carry out their obligations under the *Infringements Act 2006*' (2008:2). The paper summarises the internal review provisions, a defendant's rights and obligations, an agency's powers and obligations, the grounds for requesting an internal review and the options available after an internal review.

In 2009 the Victorian Auditor-General published an audit report detailing enforcement agencies' withdrawal of infringement notice practices in the period 2006–08. While the ISOU has produced guidance literature to assist agencies to meet their requirements under the Infringements Act, the review of enforcement agencies found 'several fundamental areas of non-compliance'. This highlighted a need for the ISOU 'to adopt a more systematic and planned approach to both identifying agency needs and assisting them to meet their obligations' (2009:2). The Auditor-General stated:

> *The Department of Justice's Infringements System Oversight Unit should put more focus on monitoring the infringements system and assessing whether internal review[4] and withdrawal activities are leading to a fairer system. Greater engagement with agencies*

[4] See following section for an explanation of the internal review process.

is required to identify systemic and operational issues and to facilitate legislative compliance. (2009:V)

In response, the DOJ announced that it had established an enforcement agency working group to facilitate communication between the agencies and the ISOU. By way of response, the DOJ commenced publishing a regular ISOU newsletter for enforcement agencies, held information sessions for enforcement agencies, and established a 'schedule of individual meetings with enforcement agencies' (Victorian Attorney-General, 2008-09:6). However, our research suggests that further work is needed in this area. This is discussed in our findings.

After reviewing the Auditor-General's report, the Public Accounts and Estimates Committee commented:

The Committee concludes that progress has been made by the Department of Justice and the enforcement agencies reviewed by the Auditor-General on the recommendations made in the report however, greater effort is needed across all enforcement agencies to ensure that their infringement systems operate in compliance with the legislation, regulations and guidelines governing the withdrawal of infringement notices. The Committee also emphasises the need for the Department of Justice to continually monitor compliance by enforcement agencies with the relevant legislative and regulatory requirements. (2012xxvi)

Table 1 The infringements procedure

Stage	**Time limit**	**Options and results**

1. Infringement notice (penalty set by legislation)	As specified on notice (usually 28 days but may be longer)	• Pay penalty:
		  • payment completed on time – no further action
		  • payment not completed – go to stage 2
		• Ask agency to waive the fine:
		  • application granted – no further action
		  • application rejected – either pay the penalty within 14 days of receiving notice of this decision, or go to stage 3
		• Ask for more time to pay or payment by instalments:
		  • application granted and payment completed on time – no further action
		  • application rejected or payment not completed – go to stage 2
		• Do nothing – go to stage 2
		• Nominate other driver (motor vehicle offence):
		  • agency has 12 months to act against other driver
		  • if agency cancels nomination, it may recommence action within six months of cancellation – go to stage 3
		• Take matter to Magistrates' Court

2. Penalty Reminder	28 days	• Pay penalty and costs:
		  • payment completed on time – no further action
		  • payment not completed – go to stage 3

notice
(penalty;
extra costs)
		• Ask agency to waive the fine:
		  • application granted – no further action
		  • application rejected – either pay the penalty within 14 days of receiving notice of this decision, or go to stage 3
		• Ask for more time to pay or payment by instalments:
		  • application granted and payment completed on time – no further action
		  • application rejected or payment not completed – go to stage 3
		• Do nothing – go to stage 3
		• Nominate other driver:
		  • agency has 12 months to act against other driver
		  • if agency cancels nomination, it may recommence action within six months of cancellation – go to stage 3
		• Take matter to Magistrates' Court

3.
Registration with Infringements Court –
notice of enforcement order
(penalty and costs; further costs added)
	28 days	• Pay penalty and all added costs:
		  • payment completed on time – no further action
		  • payment not completed – go to stage 4
		• Ask Infringements Court for extension of time to pay, variation of costs and/or payment by instalments:
		  • application granted and payment completed on time – no further action
		  • application rejected or payment not completed – go to stage 4
		• Do nothing – go to stage 4
		• Apply to Infringements Court for revocation of enforcement order:
		  • revocation granted and infringement notice withdrawn by agency – no further action
		  • revocation granted but notice not withdrawn – matter referred to Magistrates' Court
		  • revocation not granted – appeal decision or go to stage 4

4.
Infringement warrant –
notice of seizure of assets
(penalty and costs; further costs added)
	Seven days	• Pay penalty and all added costs:
		  • payment completed on time – no further action
		  • payment not completed – go to stage 5
		• Ask Infringements Court for extension of time to pay, variation of costs and/or payment by instalments:
		  • application granted and payment completed on time – no further action
		  • application rejected or payment not completed – go to stage 5
		• Do nothing – go to stage 5
		• Apply to Infringements Court within seven days for revocation of enforcement order:
		  • revocation granted and infringement notice withdrawn by agency – no further action
		  • revocation granted but notice not withdrawn – matter

		referred to Magistrates' Court • revocation not granted – appeal decision or go to stage 5

5. Execution of warrant: infringement action (including seizure and sale of assets, licence suspension and cancellation, wheel clamping)	Immediate	• Pay penalty and all added costs before seizure:
		  • payment completed – no further action
		• Allow goods to be seized and sold by auction:
		  • proceeds from sale enough to settle debt – no further action
		  • no assets or proceeds from sale not enough to settle debt – go to stage 6
		• Other enforcement measures including:
		  • detention, immobilisation and sale of motor vehicles
		  • suspension of driver's licence and registration of motor vehicle or trailer
		  • attachment of earning and debt orders
		  • charges over and sale of real property

6. Arrest	Immediate or after asset sale	• If eligible, agree to conditions of Community Work Permit (CWP) (intensively supervised community work):
		  • complete CWP to settle debt
		  • breach conditions of CWP – go to Magistrates' Court
		• If ineligible for, or not willing to accept CWP, appear in Magistrates' Court
		  • sentenced in Magistrates' Court under section 160 of the Infringements Act.

(Used with the permission of Fitzroy Legal Service, 2012)

2.1 The complexity of the infringements system process

While expiating an infringement notice is a relatively simple process for those who are able to pay, challenging the matter or dealing with enforcement procedures can be extremely confusing, especially for those who are experiencing the aforementioned types of disadvantage. The infringements process relies heavily on written correspondence, which is problematic for those who are illiterate, have limited English skills; are suffering from a mental illness, intellectual disability or substance addiction; and/or have no permanent address (New South Wales Law Reform Commission, 2010a). Indeed, research has shown that people who are experiencing homelessness often miss their court appearances due to poor literacy and/or not receiving their correspondence (Forell, McCarron, & Schetzer, 2005).

There are a number of different expiation options available at various stages of the infringements process. Fine recipients may write to the enforcement agency (for example, Victoria Police or DOT) to request an internal review of the fine. Section 22 of the *Infringements Act 2006* (Vic) stipulates that an internal review may be requested on four grounds:

- when there was a case of mistaken identity
- when the decision to issue the fine was contrary to law
- when the fine recipient has 'special circumstances'
  or
- when there were exceptional circumstances (such as an accident or emergency).

This application must be in writing and must be made prior to the enforcement agency referring the matter to the Infringements Court, which is an administrative body of the Magistrates' Court that processes and enforces unpaid infringement notices (Infringements System Oversight Unit, 2008). Upon receipt of a request for internal review, enforcement agencies may:

- confirm the decision to issue the notice (if this is done in the case of special circumstances the matter must be referred to the Magistrates' Court)
- withdraw the notice and refer the matter to the Magistrates' Court
  or
- withdraw the notice, with or without issuing an official warning.

In the second reading speech of the Infringements Bill 2005, the former Attorney-General stated:

> *…in a just society, the response to people with special circumstances should not be to issue them with an infringement notice… this bill goes a step further to try and prevent special circumstances matters flowing to the court by having notices withdrawn by the issuing agency. (Parliament of Victoria, 2005:2187)*

Similarly, the ISOU's Internal Review Provisions state: 'if the agency finds that there are special circumstances, the agency should withdraw the infringement notice' (2008:11). However, it was evident in our research that this policy was not consistently adhered to, a point which is elaborated on in our findings.

The Victorian Attorney-General's 2010–11 Annual Report on the Infringements System found that special circumstances applications accounted for 1.91 per cent of all internal review applications (2010-11:19). Seemingly a small number, in reality this represented 7678 individuals. These applications resulted in 37.92 per cent being withdrawn, 21.46 per cent being withdrawn and replaced with an official warning, and 40.62 per cent being confirmed and referred to court (2010-11:21). The vast majority of internal review applications (81.66 per cent) for 2010–11 were made on the grounds of exceptional circumstances. Of the 401,219 internal review applications, which represented approximately 8 per cent of all infringements issued, 52.34 per cent resulted in the confirmation of the infringement, 23.48 per cent resulted in the withdrawal of the infringement with no further action, 24.08 per cent resulted in the withdrawal of the infringement and the issuing of an official warning, while only 0.11 per cent were referred to court for determination (Victorian Attorney-General, 2010-11:20).

The accused can also request to have the matter determined in the Magistrates' Court. However, very few people choose this option. In 2010–11, fewer than 38,000 people elected to have the matter determined in the Magistrates' Court. This figure equates to 0.76 per cent of all infringements issued during that period – a percentage that has remained relatively unchanged over

the past five years (Victorian Attorney-General, 2010-11:18). Indeed, Fox suggested that this right to attend court is 'little more than rhetoric', as the courts would grind to a halt if all fine recipients chose this option. Consequently, fine recipients are deterred from exercising this right 'by a powerful set of disincentives', including inconvenience and increased costs (Fox, 1995b:283).

If no action is taken within 28 days after receiving an infringement notice (see details of Stage 1 in Table 1 for available options), the fine recipient is sent a penalty reminder notice and additional costs are incurred. If no action is taken within 28 days after receiving the reminder notice (see details of Stage 2 in Table 1 for available options) the matter is registered with the Infringements Court. The fine recipient is sent a notice of enforcement order, and further costs are added to the original fine amount. There were 1,559,261 enforcement orders issued in 2010–11, representing a significant increase on the 1,226,665 that were issued in the previous year (Victorian Attorney-General, 2010-11:22). At this point the fine recipient still has several options (see details of Stage 3 in Table 1), including applying to the Infringements Court for a revocation of the enforcement order on the grounds of special circumstances (under s 65 of the *Infringements Act*). The application must be in writing and must be supported by documentation from a treating doctor outlining the nature of the disability or addiction and how this contributed to the offending behaviour (Victorian Attorney-General, 2009-10:14). At this point, the enforcement agency has 21 days to decide whether or not to withdraw the fine. If the agency withdraws the fine, that is the end of the matter. If the enforcement agency chooses not to withdraw the fine, the Infringements Court refers the matter to the Special Circumstances List (Fitzroy Legal Service, 2012). If the Infringements Court does not grant the revocation, and the fine recipient does not elect to appeal this decision in the Magistrates' Court, the Infringements Court issues an infringement warrant. If the matter is not settled within seven days (see details of Stage 4 in Table 1 for available options), the sheriff executes the infringement warrant. If immediate payment is not made the sheriff may impose a variety of sanctions including:

- selling the recipient's property to cover the fine
- wheel clamping the recipient's vehicle
- suspending the recipient's driver's licence and registration
- selling the recipient's house or land (Fitzroy Legal Service, 2012).

The sheriff can also offer the option to convert the fine into a community work permit. However, this option is not available in the first instance. Furthermore, it is only available to those who do not have sufficient property to seize and sell, and those whose fines amount to less than 100 penalty units (one penalty unit currently equates to $140.84) (s 147 *Infringements Act*). Recipients who refuse these options will be required to attend the Magistrates' Court where they may be put on a community-based order, have their fines reduced or discharged, be put on a payment order which allows them more time to pay or, in certain circumstances, be incarcerated (s160 (1) *Infringements Act*). Table 1 above outlines this process in more detail.

2.2 The Special Circumstances List at the Melbourne Magistrates' Court

In 2002, a Special Circumstances List (also known as the Enforcement Review Program) was established in the Melbourne Magistrates' Court to deal with the high numbers of disadvantaged

individuals presenting before Magistrates' Courts with unpaid fines for minor offences. Brisbane followed suit in 2006 with the establishment of a Special Circumstances Court to deal with the high volume of marginalised individuals charged with public order offences (Walsh, 2007). However, despite the positive outcomes associated with the Brisbane SC Court, it was recently abolished on the grounds of 'cost cutting' (Foley, 2012:24). There are currently only two Victorian locations where clients may have their matters heard in a Special Circumstances List. The Melbourne Magistrates' Court List sits on a weekly basis, while the Neighbourhood Justice Centre (NJC) in Collingwood hears special circumstances matters on two afternoons each month. However, access to the NJC list is strictly limited to clients who reside in the City of Yarra. Hence, this report primarily focuses on the Special Circumstances List at the Melbourne Magistrates' Court.

The *Infringements Act 2006* (Vic) stipulates that individuals with special circumstances should be flexibly treated to ensure that they are not unfairly and disproportionately drawn into the infringements system (Victorian Attorney-General, 2006). The special circumstances criteria is set out in s 3(1) of the *Infringements Act 2006* (Vic) and people deemed eligible include those who are experiencing homelessness, and those who have a mental illness, intellectual disability or substance addiction. While the legislation aims to divert these 'special' groups from the infringements system, this is only possible where they admit guilt and their condition means that they are unable to:

(i) understand that their conduct constitutes an offence
or
(ii) control conduct that constitutes an offence.

Magistrates or judicial registrars with considerable experience in dealing with disadvantaged people consider the links between the accused's special circumstances and their offending. Their fines may be proven and dismissed or they may be placed on an undertaking of good behaviour, including compliance with a treatment regime (Popovic, 2006a). Conversely, those who do not meet the special circumstances criteria and elect to challenge their fine in court will appear at the Magistrates' Court under the standard procedure.

For the period 2010–11, 1762 matters were finalised in the Special Circumstances List. Mental illness was the primary ground relied upon, with 1456 cases finalised on that ground, while 179 applications were made on the grounds of substance addiction and 126 on the grounds of homelessness. However, the statistics only reflect the primary reason for the application 'as the accused may fit multiple criteria' (Magistrates' Court of Victoria, 2011:118).

2.3 The public's perceptions of the Victorian infringements system

For most members of society, contact with the infringements system will be their 'main exposure' to the criminal justice system (Fox, 1995b:281). Hence, it is important to examine the community's perceptions of the infringements system and the factors that may enhance or, conversely, diminish compliance. Traditional criminal justice policies which are based on the premise that punishment deters non-compliance fall under the 'instrumental model' (Fox, Humphreys, Thomas, Bourke, & Dusseyer, 2003b:36). This model suggests that individuals who adhere to the law do so to avoid punishment, while those who deviate from the law do so because they believe the threat of

detection is unlikely and the benefits of offending outweigh the costs of compliance. While the threat of punishment and the probability of apprehension ensure compliance to a degree, the instrumental perspective has several drawbacks. When applied to the infringements system, these include the cost of enforcement, the possibility that non-compliance may continue when the 'mechanism of coercion (or reward)' is removed, and the fact that a significant proportion of fine recipients do not pay their infringement notices despite the threat of punishment (Fox et al., 2003b:36).

Psychological research suggests that motivation to comply with the law is determined by much more than personal loss or gain and is instead more dependent on perceptions of fairness (Lind & Tyler, 1988; Tyler, 2006a). The public is more likely to comply with the law if the procedures and processes surrounding its enforcement are perceived to be 'fair' and 'legitimate'. Conversely, compliance is less likely if these procedures are perceived to be unfair (Tyler, 2006a). In the context of the infringements system, processes that are frequently perceived by the public as unfair include the issuing officer's failure to both consider the financial situation or special circumstances of alleged offenders and to treat marginalised people with dignity, the absence of cautions, and the imposition of the same fine amount on people with widely differing incomes (Fox, Humphreys, Thomas, Bourke, & Dusseyer, 2003a). Hamilton (2004) raised this latter issue maintaining that penalties should impact equally on all offenders. However, this is not the case with the fixed-rate fine system in Australia, as offenders on minimal incomes and more affluent offenders are disproportionately affected.

There are many other aspects of the infringements system that may influence perceptions of procedural justice and subsequent compliance. These include the methods of detection, the options available for expiating infringements and the proportionality of fine amounts to the seriousness of the offence (Fox et al., 2003b). With regard to this last point on proportionality, 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). The infringements system's lack of transparency and its automated, administrative nature may also reduce perceptions of procedural fairness. The opportunity to talk to a person face to face is often impossible in this system, unless of course the matter proceeds to court. The administrative nature of the system means that people will often receive their infringement notices in the mail, thereby eliminating the possibility to 'state one's case' at the time of the alleged offence (Fox et al., 2003b:47). Hence, it is critical to provide a credible avenue for appeal that does not necessitate a court appearance in order to maximise the public's perceptions of procedural fairness. It is also critical that police, other issuing officers, sheriffs and court staff are polite and respectful to offenders throughout all stages of the infringements process (Fox et al., 2003b). In 2002, the Australian Law Reform Commission was mindful of the fact that an infringement notice 'reflects a 'presumption of guilt' within a system where accountability is questionable when a wide range of persons (not limited to officers and the court) can issue such notices (2002b:445). The concern was expressed that 'persons may suffer penalty in circumstances where, if the authority were required to prove the elements of the offence, it would be unable to do so' (2002b:445).

Thus, it is suggested that compliance may be more readily achieved if the public perceives the system as fair and legitimate. This is particularly relevant in the context of the infringements system where compliance may best be achieved by increasing levels of procedural justice instead of implementing harsher penalties and increased surveillance. Based on this, it is likely that issuing a warning or caution in lieu of an infringement notice could encourage future compliance with the law. Furthermore, the use of cautions is one way to increase the public's perception that fines are utilised to exert compliance and behavioural change, rather than to merely raise revenue (New Zealand Ministry of Justice, 2006). However, the Victorian State Government's decision to raise infringement penalties by 15 per cent in an effort to balance the state budget will arguably add weight to the public's perception that fines are primarily a revenue-raising tool (Gardiner, 2012:1). Moreover, the increase in fine amounts will likely further disadvantage those who are experiencing financial hardship or other forms of marginalisation, as the government's determination to achieve a budget surplus through the infringements system is likely to result in fewer cautions and more fines.

2.4 Problematic aspects of the Victorian infringements system

This section discusses some of the problematic aspects of the infringements system, including:

- the ease of issuing infringement notices and the consequent potential for net-widening
- the blurring of civil and criminal processes
- the impact of disproportionate fine amounts .

We refer back to these issues and expand on this discussion in the findings section of the report where we present some of the qualitative data obtained from our interviews.

Net-widening

The ease of issuing infringement notices has led to concerns that, paradoxically, infringements systems may cause more people to come into contact with the criminal justice system. This is due to the potential for officers to issue an infringement notice in instances where they may have previously only given a warning or taken no action at all. Evidence of net-widening with regard to infringements has been found in international jurisdictions, including the United Kingdom (UK) and New Zealand (NZ). Morris (2005) suggested that the Penalty Notice for Disorder (PND) scheme in the UK has created a new class of 'semi-criminals' whereby many people, including children, who would previously have escaped with a warning are now being brought into the criminal justice system. PNDs may be issued for a variety of minor offences, yet the majority have been issued for 'causing harassment, alarm or distress' and being 'drunk and disorderly' (Grover, 2008:193). There was a steady escalation in the issuing of these notices in the UK between 2001 and 2006. For example, over 180,000 PNDs were issued in 2006, representing a 38 per cent increase in the number of notices issued in the previous year (Grover, 2008:195). However, there has been a decrease in the use of PNDs since 2008, which coincided 'with the replacement in April 2008 of a target to increase offences brought to justice, with one placing more emphasis on bringing serious crimes to justice'. Moreover, the number of cautions issued in lieu of PNDs has also steadily decreased since March 2007, when the use of cautions peaked (Ministry of Justice UK, 2012:1).

In 2009, the Scottish Government reviewed penalty notices issued for anti-social behaviour. Surveys and interviews with police revealed that notices were issued in cases where they would have previously only issued a warning or where no action would have previously occurred. Of the police surveyed, 83 per cent claimed that police time was saved as a result of their ability to issue penalty notices. However, this time saving would seem to be negated if police are issuing notices in instances when they previously would only have issued a warning or ignored the behaviour altogether (2009:3). Evidence of net-widening has also been found in NZ as the growth of the infringements system, facilitated by its ease and efficiency, has meant many more people have entered the lower end of the criminal justice system. During 1993, 210,681 notices were issued and by 2001 this figure had grown to 654,970 notices. The fact that court-imposed fines remained steady suggests that net-widening was occurring as presumably such fines would decrease if infringement notices were being used as an *alternative* sanction (Wilson, 2001:73). More recent figures from NZ Parliamentary readings indicate that the system has continued to grow, as approximately 2.7 million infringement notices are now issued annually (New Zealand Parliament, 2010:3).

The expansion of infringements systems in other Australian jurisdictions has raised similar concerns about net-widening. An evaluation of the 2009 12-month trial for the issuing of infringement notices for public nuisance offences in Queensland found trial areas recorded a 20 per cent increase in public nuisance offending on the 2008 rates (Mazerolle et al., 2010:132). This increase may be partially 'attributable to a greater detection of offences resulting from an increased police presence'. However, this increase could also have been due to 'tickets being issued for minor incidents of public nuisance offending which would have previously been overlooked' (Mazerolle et al., 2010:132). Similarly, the NSW Sentencing Council examined the effectiveness of fines and identified a potential net-widening effect due to the ease of issuing notices, and the automatic detection of some offences. The Sentencing Council also suggested that 'penalty notices may be issued for conduct that could be more appropriately dealt with by a warning or caution and which was previously dealt with on that basis' (2006:86). Four years later, a NSW Law Reform Commission (NSW LRC) consultation paper highlighted the net-widening that had resulted from the use of Criminal Infringement Notices (CINs). CINs are issued by NSW police for certain offences such as offensive language, offensive behaviour and theft of goods valued at less than $300. CINs are supposed to be an alternative to appearing in court. However, in certain cases they were issued where no formal legal action would have previously taken place, other than perhaps a formal warning. Net-widening was most prevalent with regard to the offences of offensive behaviour and offensive language. These two offences accounted for 43 per cent of all CINs issued during the trial period, and this escalated to 70 per cent of all CINs issued during the first year in which they were rolled out state-wide (New South Wales Law Reform Commission, 2010a:149). Indeed, the NSW Ombudsman stated:

> *The initial state-wide data indicates that CINs are contributing to a significant net increase in legal action taken on offensive language and offensive conduct incidents. That is, some offenders are being diverted from court, but the early data indicates that the decreases in court appearances are being eclipsed by the very high numbers of minor offenders being fined for those offences (New South Wales Law Reform Commission, 2010a:150).*

Of further concern is the fact that the inappropriate use of police discretion could lead to CINs being issued for language that a court would not deem offensive. The NSW Ombudsman's 2005 review of the CINs trial examined a sample of CINs issued for offensive language and found that 'if those matters were brought before a Magistrate, the defendants would have been acquitted in about 60 per cent of cases' (New South Wales Law Reform Commission, 2010a:153). The effect of net-widening in relation to these two offences has been most prevalent with regard to Aboriginal people who – reflecting a particularly disturbing trend – rarely elect to challenge their CINs in court (Spiers Williams & Gilbert, 2011).

A subsequent 2012 NSW LRC report further highlighted the net-widening effect of penalty notices. Stakeholders voiced their concerns 'about the use of secondary notices as punishment for an emotional response to the issue of a primary penalty notice', such as when a person begrudgingly swears when being issued with a penalty notice (2012:177). Hence, the NSW LRC recommended an amendment to the Attorney-General's guidelines to stipulate that issuing officers be required to consider whether the issuing of multiple notices on the one occasion would 'unfairly or disproportionately punish a person in a way that does not reflect the totality, seriousness or circumstances of the offending behaviour'. Furthermore, the Commission recommended that the Fines Act 1996 (NSW) be amended to state that 'an issuing agency must withdraw one or more penalty notices where it finds that multiple penalty notices have been issued in relation to a single set of circumstances, and that this unfairly punishes the recipient in a way that does not reflect the totality, seriousness and circumstances of the offending behaviour' (2012:179).

In the Victorian jurisdiction, several prominent groups have expressed concern about the potential for net-widening in the infringements system. The Federation of Community Legal Centres (FCLC) (2007) voiced concern about the relative ease of issuing infringement notices, as this could lead to people being fined for 'add-on offences'. For example, someone who is fined for travelling on a train without a valid ticket may also be fined for offensive behaviour. Similarly, Cashen and Adler suggested that while the proposed guidelines circulated by the ISOU maintain that an infringement notice should not be issued unless 'the matter would have otherwise been dealt with on charge and summons', net-widening persists, as these guidelines are not compulsory. Hence, there is no guarantee that issuing officers will take them into consideration (2007:4).

A 2011 article in the *Herald Sun* arguably highlighted the potential for net-widening. In the article, Mickelburough quoted Australian Bureau of Statistics (ABS) figures which showed that 12,000 people were infringed for public order offences in Victoria in the period 2009–10, amounting to 6315 more than in the previous year. A Victoria Police spokesperson quoted in the article suggested that one of the reasons for this increase was that the 2008 introduction of infringement notices for public order offences had increased the detection and processing capabilities of the system 'because of the efficiencies introduced by the infringement notices' (Mickelburough, 2011:13). Such net-widening effects are particularly worrying in relation to people with intellectual disability, mental health issues, or drug and alcohol dependency, and the homeless, since these groups become disproportionately and unfairly entangled in the

criminal justice system due to minor transgressions, with few available avenues out of the system.

From a theoretical perspective, this net-widening is evidence of a belief in a zero-tolerance approach to lower-level offending, and that formal intervention at such an early stage will prevent an escalation into more serious offending on the part of the fine recipient , thus sending a clear message to the wider public that such behaviour is unacceptable in any context . Net-widening also reflects a belief that if minor nuisance is addressed – such as graffiti, public drunkenness, people sleeping rough in public spaces, begging and minor shop theft – more serious crimes will also be prevented by a general 'cleaning up' of the neighbourhood (Cunneen, 1999). Such thinking is based on Wilson and Kelling's seminal article 'Broken windows: The police and neighborhood safety', published in *The Atlantic Monthly* (1982). Mayor Rudy Giuliani used this theory as a key argument for the zero-tolerance policing strategy implemented in New York City in 1993 (Dixon, 1998). The basic premise of this theory is as follows:

> *A stable neighborhood of families who care for their homes, mind each other's children, and confidently frown on unwanted intruders can change, in a few years or even a few months, to an inhospitable and frightening jungle. A piece of property is abandoned, weeds grow up, a window is smashed. Adults stop scolding rowdy children; the children, emboldened, become more rowdy. Families move out, unattached adults move in. Teenagers gather in front of the corner store. The merchant asks them to move; they refuse. Fights occur. Litter accumulates. People start drinking in front of the grocery; in time, an inebriate slumps to the sidewalk and is allowed to sleep it off. Pedestrians are approached by panhandlers … Such an area is vulnerable to criminal invasion. Though it is not inevitable, it is more likely that here, rather than in places where people are confident they can regulate public behaviour by informal controls, drugs will change hands, prostitutes will solicit, and cars will be stripped. That the drunks will be robbed by boys who do it as a lark and the prostitutes' customers will be robbed by men who do it purposefully and perhaps violently. (Wilson & Kelling, 1982:3)*

We do not provide a full account of the evaluations and critiques of this theory and its related policing practices here, but one key point that remains undisputed in the literature is instructive: policing aimed at such low-level offending disproportionately impacts minority populations and those characterised by severe social and economic disadvantage (Stewart, 1998). This approach may 'clean up the neighbourhood', but it does not deter crime, it merely displaces it. And when such 'civil' policing of low-level offending is met by criminal charges and the prospect of imprisonment, we need to think very carefully about motivations behind such legislation, who it targets, and what the consequences are for all groups in our society.

Blurring of civil and criminal processes

Behaviours that incur fines can be either a summary or an indictable offence yet the infringement notice is traditionally issued for offences arguably of a more regulatory than criminal nature. Infringement offences result in an administrative penalty as opposed to a court-imposed sanction as, unlike other criminal offences, the recipient is permitted to decide whether to pay the penalty and avoid contact with the criminal justice system or to elect to have the matter dealt with by a court.

However, criminal sanctions may result from a failure to pay arguably confusing and blurring the boundaries between civil and criminal processes (Lansdell, Eriksson, Saunders, & Brown, 2012). This blurring is exacerbated when the fine recipient fails to pay for travel on public transport or a tollway – considered essentially civil debts to private corporations such as CityLink or Metro – but where the debt due is managed by the criminal justice system. Fox encapsulates the civil/criminal dichotomy in this context in the following statement:

> *It is worth asking why should those who fail to pay fares or tolls be still considered grist for state enforcement rather than private enforcement. Why should the private sector be able to rely on threats of conviction, fine and imprisonment of its debtors, thus adding to the burden of the state sentencing system, rather than calling on private debt collecting services to enforce the outstanding debts using the more limited measures open to civil creditors. To the extent which the infringements system will be allowed to be called up by the private sector in support of payment of fares, tolls, or other matters affecting its commercial interests, breach of contract is being turned into crime and the sentencing system is being called in to pick up the tab. (1999:11)*

As noted by the NSW LRC, 'there is no bright-line distinction between offences that are clearly criminal offences and offences that are infringements or regulatory offences. Indeed the line is arguably becoming increasingly blurred' (2012:12). This blurring has also been found in international jurisdictions including the United States (US) and the UK. In the US, a number of cities have embraced a variety of civility laws to regulate the behaviour of those seen as 'disorderly'. Behaviours prohibited under these laws include otherwise legal activities such as 'sitting or lying on sidewalks or in bus shelters, sleeping in parks and other public spaces, placing one's personal possessions on public property for more than a short period of time, camping, urinating or drinking alcohol in public ... and begging' (Beckett & Herbert, 2008:9). There has also been a rise in the use of civil exclusion orders whereby police may 'trespass' people from public places, such as libraries, hospitals, public housing properties and schools, even if there is no evidence to suggest that any form of disorder or crime has taken place. This effectively bans these individuals from entering the public place where they have been 'trespassed' for a year or longer, and those who do not obey these civil orders may be incarcerated. Beckett and Herbert note that, 'these exclusions are defined as civil in nature, a construction that alleviates the authorities from an obligation to guarantee due process to those excluded' (2008:11). Similarly, 'parks exclusion' laws allow police to ban those who have committed minor incivilities, such as drinking alcohol in public and littering, from being in any or all of the city's parks for up to one year. The laws are based primarily on excluding undesirables from the public sphere and provide those who enforce them with an exceptional amount of discretion (Beckett & Herbert, 2008).

In the UK, the most telling example of the blurring between civil and criminal law can be seen in the enforcement of civil debt such as the non-payment of council taxes which can result in a Magistrates' Court action. The criminal enforcement of the Anti-Social Behaviour Order (ASBO, itself a civil order) is another example. UK legislation vaguely defines anti-social behaviour as 'behaviour that is likely to cause harassment, alarm or distress to others' (Crofts, 2011:402). Depending on subjective perceptions, context and public expectations, almost any behaviour could fall into this category. Individuals who have committed an anti-social offence can be placed on an ASBO, a civil

order, the breach of which results in criminal penalties.[5] However, there is concern that the civil nature of these proceedings was being used to circumvent the stricter standards of proof required in criminal proceedings (Crawford, 2009). Martin highlighted the inherent danger of blurring the boundaries between 'incivility and criminality', suggesting that this civil classification 'potentially introduces a lower standard of proof; effectively reverses the presumption of innocence and conflates criminality with incivility' (Martin, 2011:383).

At the same time that the UK Government announced plans to review and potentially abolish these orders due to their ineffectiveness and potential to criminalise legal behaviour, the Western Australian (WA) Liberal Government introduced Prohibited Behaviour Orders (PBOs). These are based on the UK's ASBOs and are legislated under the *Prohibited Behaviour Orders Act 2010* (WA) (Crofts & Witzleb, 2011*)*. A PBO may be made against people 16 years or older who have been convicted of an 'anti-social' offence more than once in a three-year period, and where the court suspects that they will commit further anti-social offences unless constraints are imposed. Constraints may be placed upon behaviour that is considered legal in any other circumstances if the court believes this behaviour increases the probability that an anti-social act will be committed. Such constraints may mean a person who has been convicted of an alcohol-related offence is prohibited from drinking alcohol, or a person who has acted in a threatening manner on a train is forbidden from using public transport. A breach of these orders is considered a criminal offence punishable by a maximum penalty of five years imprisonment, or two years for minors. Effectively, this means that a person can be jailed for travelling on a train or drinking alcohol. The terms of these orders generally apply for periods ranging from six months to two years. However, there are long-lasting consequences of this sanction, as people subjected to these orders have their details (name, suburb, constraints and photograph) published on a publicly accessible website (Crofts & Witzleb, 2011). The stigmatisation that inevitably ensues from this public shaming has the potential to seriously limit a range of future prospects that are critical to desistance, including the ability to obtain credit, accommodation or employment. These long-lasting consequences result in punishment that is often completely disproportionate to the seriousness of the offence.

Imprisonment in Lieu (IIL) orders and lack of appeal rights

In Victoria a person may be sentenced to Imprisonment in Lieu (IIL) of payment of their fines under s160 (1) of the *Infringements Act 2006*. If a magistrate places a fine recipient on a payment order with an IIL order attached, and the recipient subsequently defaults by missing one payment, they may be imprisoned for a period of one day for each penalty unit.[6] The *Infringements Act 2006* (Vic) does not allow a de novo appeal to the County Court against IIL orders, despite the fact that an appeal to the County Court can be made for all other criminal matters under part 3.3 of the *Criminal Procedure Act 2009* (Vic) (Victoria Legal Aid, 2011b:13*)*. An appeal may be made to the Supreme Court. However, this is a 'narrow appeal right' on a matter of law and may be costly. While those who appear in the Special Circumstances List do not face the prospect of imprisonment, it is apparent that some people who are eligible to appear in the list do not apply and are subsequently placed on payment orders with IILs attached. The recently decided case of *Taha v Broadmeadows*

[5] In May 2012, the government proposed replacing the ASBO with a 'criminal behaviour order', and a 'crime prevention injunction': Home Office, Putting Victims First, More Effective Responses to Anti-Social Behaviour, London, May 2012. At the time of writing, ASBOs have been replaced by Criminal Behaviour Orders (CRIMBOS) (see Dunn, 2012).
[6] One penalty unit is $140.84 in the 2012–13 financial year.

Magistrates' Court & Ors [2011] VSC 642 illustrates this issue. Taha is an intellectually disabled man who was placed on a payment order with an IIL attached. He defaulted and was sentenced to 80 days in jail (this jail term was stayed pending an appeal by VLA). Taha's duty lawyer was unaware of his client's intellectual disability and the magistrate who presided over the case did not enquire as to whether Taha had a disability. VLA initiated a lengthy application for judicial review to the Supreme Court, which resulted in the imprisonment order being set aside partially due to the fact that the Broadmeadows Magistrates' Court failed to enquire about 'the particular circumstances' (para 61) of the plaintiff in order to establish whether 'alternative orders under ss160 (2) or (3)' (which permit fines to be discharged either partially or in full if special circumstances exist) should be made (para 63). Emerton J held that under s160 of the legislation having regard to the rights to liberty, a fair hearing and equal protection before the law must be construed 'in a unified fashion so as to require the court before making an imprisonment order under subsection (1) to consider the availability of less draconian orders under sub-ss (2) and (3) and to have regard to the individual circumstances of the infringement offender' (para 66) (Supreme Court of Victoria, 2011b). The view was taken that the magistrate had failed to undertake the necessary enquiries prior to making the IIL order and hence the IIL order was set aside.[7]

More recently, VLA's advocacy has resulted in the successful recall of an imprisonment warrant made against a woman who was facing 60 days jail for missing one $40 payment. The woman made her first two payments but missed the third due to her significant personal issues. These included substance addiction, mental health problems, domestic violence and homelessness. Magistrate Holzer, of Frankston Magistrates' Court, recalled the warrant and made the first written finding in favour of VLA's argument that 'courts do have the power to recall and cancel imprisonment warrants' (Victoria Legal Aid, 2012b:1). Magistrate Holzer said the circumstances that should be considered when exercising this discretion included:

- 'the amount of the default,
- the period of the default,
- the reason for the default,
- any steps taken by the offender to address the default and the timing of any such steps; and
- any hardship or injustice that would result from the enforcement of the warrants'. (Holzer, 2012:5)

At the time of writing the lack of appeal rights from s160 was under review following a submission by VLA, inter alia, to the Attorney-General on this issue (2011b:13). It is important to consider that one of the objects of the legislation is to ensure that vulnerable people do not become caught up in the infringements system. Thus, individuals like Taha should be 'filtered' out of the system with s160 being the last filter in what is a highly automated and complicated process.

Proportionality

The proportionality principle, which is based on the premise that the punishment must fit the crime, is commonly accepted. The NSW LRC highlighted an example of disproportionate fine amounts by

[7] At the time of writing DOT had appealed against the decision of Emerton J in *Taha v Broadmeadows Magistrates Court & Ors*, with the appeal being heard on 13 November 2012 at which the decision was reserved.

comparing a $400 fine issued for spitting on a railway station with a $353 fine issued for running a red light (2012:XVII). 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 (Galtos & College, 2006:16). It is also apparent that some offences, such as travelling on a train without a ticket or drinking alcohol in public, may be 'offences of poverty', and 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 (New South Wales Law Reform Commission, 2012:118).

The Victorian Attorney-General's Guidelines to the *Infringements Act 2006* (Vic) state that 'an infringement penalty should generally be no more than approximately 20–25% of the maximum penalty for the offence' and should be 'set at an amount lower than a person might expect to receive were the matter to go to court' (2006:14). This lesser penalty provides the motivation for people to pay the amount instead of contesting it at court where they may incur a higher fine (Australian Law Reform Commission, 2002a). However, there is some evidence to suggest that particular infringement offences incur higher penalties than those a court would impose. For example, an evaluation of the ticketing for public nuisance trial in Queensland found that many people who received a ticket (infringement notice) for public nuisance offences incurred a higher penalty than what they would have received for the same offence if fined in the Magistrates' Court (Mazerolle et al., 2010). A similar discrepancy has been identified in Victoria, specifically in relation to the offence of being drunk in a public place, which incurs a $563 infringement penalty. This is discussed in detail in the findings section of our report.

Table 2 Infringement penalty amounts

Behaviour	Infringement amount ($)
DOT – travel without valid ticket	207
DOT – feet on seats	207
DOT – using offensive language	276
Exceed speed by 10–24 km/h	244
Fail to obey red light	305
Drunk in a public place	563
Disorderly behaviour	563

** Table 2 illustrates the disproportionality of some infringement penalties. Sources: Department of Transport (DOT) website, Victorian State Government website ('cameras save lives' campaign) and the Summary Offences Act.*

The inequity of fixed-rate penalties

A vast body of research has acknowledged that fixed-rate infringement penalties disproportionately impact the financially disadvantaged (see, for example, Galtos & College, 2006; Hamilton, 2004; Sullivan, 2010-11; Wilson, 2001). Conversely, the 'day-fine' system ensures that offenders who commit the same type of offence are equally punished, and it takes account of their financial situation (Zedlewski, 2010). Day-fine units rank the severity of offences on a sliding scale, with higher

figures representing the most serious offences. The fine is then calculated by multiplying the number of day-fine units by one-sixtieth of the fine recipient's average monthly income, which is determined by the court reviewing the offender's tax records (Zedlewski, 2010). Many European countries, including Sweden, Germany, Denmark, Finland, Greece and Portugal, have implemented this system to deal with criminal fines. These jurisdictions have reported a significant increase in the amount of fine payments, and consequently a decrease in the rate of imprisonment due to defaulting (Midgley, 2005).

Incorporating this system into the infringements system in Victoria may exacerbate an already complex process. However, several Australian jurisdictions have recommended the adoption of alternative concepts of income-based fines, such as concession rates for those on low incomes. The NSW Homeless Persons' Legal Service (2011) recommended the implementation of a flat-rate concession amount for those receiving Centrelink benefits and those who work but receive a low income. This would require fine recipients to provide the State Debt Recovery Office (SDRO) with their Centrelink card number or copies of their latest pay slips. Similarly, the Law Society of NSW suggested that those who receive a Centrelink benefit should pay a lower amount and recommended the introduction of 'an administrative method' to automatically reduce the penalty in these cases (Macken, 2010:6). The Tasmanian Social Policy Council (2006) also recommended the implementation of an income-based system, yet this has not eventuated. The push for a means-based system has recently resurfaced in Tasmania with Greens spokesman Tim Morris advocating for this change (Crawley, 2012). Similarly, the Alcohol, Tobacco and Other Drugs Association (ATODA) in the Australian Capital Territory (ACT) suggested that reforms to the ACT's infringements system should include fine amounts that are matched to an individual's capacity to pay. ATODA noted that the ACT Council of Social Service has been calling for an 'investigation of a tiered system of fines which would be in proportion to one's income' for over a decade (2012:3).

There have also been calls for means-based fines in Victoria. Grant, Moase and Smith (2005) suggested that the difficulty in assessing an offender's income prior to issuing the fine could be rectified by imposing the standard rate as a matter of course and allowing poorer defendants to provide evidence of their income, such as a tax assessment or Centrelink statement, in order to receive the reduced penalty. While this system may unfairly advantage those who are asset rich and cash-flow poor, this potentially negative consequence would not override the benefits for those in greater need. Similarly, the Victorian Council of Social Services (2004) argued that the impact on financially disadvantaged clients could be managed by implementing hardship provisions which would allow clients to apply for a reduced fine that is proportionate to their income.

Acknowledging the difficulty that those in financial hardship face, the NSW Government initiated a two-year trial under the *Fines Further Amendment Act 2008* (NSW) allowing those with special circumstances and those experiencing acute economic hardship to complete a Work and Development Order (WDO) in lieu of paying the fine. Eligible activities include unpaid work; financial or other counselling; drug and alcohol treatment; mental health or other medical treatment; or educational, life skills or vocational courses (New South Wales Government, 2008:13). An evaluation of the scheme found that it had helped to reduce reoffending and encouraged people to engage in educational courses and treatment. It was subsequently made permanent under the *Fines Amendment (Work and Development Orders) Act 2011* (NSW) (Gee, 2011:4602).

Concerns of Victorian CLCs

While the increasing use of infringement notices may minimise court expenditure and free up Victoria Police personnel's time, the burden is simultaneously shifted onto CLCs and VLA as rising numbers of marginalised people require assistance to deal with infringement matters. The FCLC reported that the expansion of the infringements system has impacted significantly on CLC caseloads. The Federation acknowledged that: 'we already cannot meet the existing need for advice and representations in this area. In the reporting year 2005–06, the amount of information provision from centres for infringements jumped three-fold' (2007:7). Hence, the FCLC suggested that increased Legal Aid funding should accompany the expansion of the infringements system in order to meet the demand for contesting infringement matters.

In 2007, the Public Interest Law Clearing House (PILCH) Homeless Persons' Legal Clinic reported that assisting clients with infringement matters formed approximately 30 per cent of its annual case load (Cashen & Adler, 2007:2). This involved applying to the Infringements Court to seek revocation of fines due to exceptional or special circumstances, such as homelessness, drug addiction, intellectual disability or mental illness. Cashen and Adler highlighted the limited funding of PILCH and other pro bono providers: 'In the Clinic's view it is inappropriate for the Government to decrease the burden on law enforcement agencies at the expense of pro bono providers, particularly without increasing funding to pro bono entities' (2007:5). PILCH's 2010–11 Annual Report revealed a significant increase in the clinic's case work with regard to infringement matters. In the 2009–10 period, 33 per cent of advice and representations were dedicated to fines/infringements, while in the 2010–2011 period, this increased to 49 per cent (2010-11:19).

Similarly, VLA's 2010–11 Annual Report showed that infringements were included in the top five matters in calls to their Legal Information Service, and the top five matters across all Legal Aid services. They were also one of the top five matters where a referral was made. VLA noted: 'Some 11,000 matters which would otherwise have proceeded as a summary prosecution have been initiated by an infringement notice over the past year' (2010-11:34). VLA suggested that the infringements system's expansion may have been responsible for a 37.8 per cent growth in the provision of grants for legal assistance through its Civil Justice Program (2010-11:9), as this increasing demand coincided with a reduction in grants for summary crime matters. In addition, in its submission to the Victorian Law Reform Commission (November 2011), VLA indicated that it needs two duty lawyers to service the Special Circumstances List each week. 'The entire process, from making the initial revocation application through to the hearing, is resource intensive' (2011b:12). The St Kilda Legal Service (SKLS) also spent a significant amount of time and resources on infringement matters. Its 2010–11 Annual Report stated that 'government and/or administrative issues relating to fines (infringements)' represented 11.6 per cent of its total annual caseload and was the 'second most common problem type for the service in 2010–11' (2010-11:30). Similarly, Youthlaw's 2010–11 Annual Report showed that '430 young people were assisted during that financial year and the most common problem type was fines' (2010-11:11).

VLA's 2011–12 Annual Report revealed that its grants of legal assistance have increased by 6 per cent over the past five years. This increase was partially attributed to a 'continued strong demand for assistance with infringement notice matters'. Indeed, VLA stated that, 'overall, the highest

increase in grants of legal assistance was for civil law matters' which has increased by 35.5 per cent (2012:11). Further, it reported that funding levels have not risen at the same rate as the demand for VLA services, leading to an 'unsustainable' situation (2012:13).

MONASH University

3.0 Methodology

In 2010, the SKLS and PILCH Homeless Persons' Legal Clinic approached Monash University to initiate this research project. In January 2011, the researchers contacted seven CLCs and Youthlaw to request their participation, along with PILCH and SKLS. CLCs were informed that the data collection would involve three stages: accessing their database to obtain clients' de-identified information, randomly extracting the details of clients to interview, and interviewing at least one of their lawyers, subject to clients' and lawyers' interest and consent to participate. A staff member at each of the venues extracted the names of clients who had accrued infringements in the designated period (July 2009 – July 2010), and contacted them to explain the planned research and to ask for their consent to engage in further case file analysis. Permission was sought from the selected clients to list their de-identified case details on a data collection proforma (the quantitative component) and they were asked whether they would later participate in a 45-minute, semi-structured interview with a researcher (the qualitative component). This client group was limited to those over 18 years of age, due to ethics requirements.

Data collection

A qualitative approach was used as the primary method of data collection, as the research sought to understand the participants' subjective experiences. The qualitative data was drawn from 95 semi-structured, face-to-face, 45–90 minute interviews conducted by at least one if not two members of the research team between 2010 and 2012. Participants were selected from a cross-section of geographical areas including: inner-city Melbourne; suburban areas such as Footscray; regional Melbourne areas including Dandenong and Lilydale; and regional Victorian areas including Bendigo, Geelong and Albury–Wodonga. Professional participants were recruited by contacting the relevant government departments (Financial and Consumer Rights Council, Sheriff's Office, Magistrates' Court of Victoria, Municipal Association of Victoria and DOT) to request their participation.

Table 3 Interview participants

Participants	**Number**
CLC clients	37 (randomly selected)
Legal representatives	19 CLC lawyers and four VLA lawyers
Financial counsellors	10
Local government representatives	7
DOT representatives	4
Infringements Court and Sheriff's Office staff	10
Judicial Registrars	3

Resourcing Health and Education in the Sex Industry representative	1

The Victoria Police Human Research Ethics Committee (VPHREC) and CityLink declined to participate.

Quantitative data obtained from the 10 CLCs and five financial counsellors was used for overview purposes, and to better understand the general profile of disadvantaged groups who contact CLCs regarding infringements. The de-identified data, related to 182 fine recipients, was collected during the 2009–10 financial year. The data included the:

- type of fine
- fine amount
- number of fines
- income source
- outcomes

We also completed 24 hours of court observations at the Melbourne Magistrates' Court Special Circumstances List from January to February 2012, and completed an additional two hours of observations on 6 September 2012. Data recorded included the:

- defendant's gender
- defendant's age (when mentioned)
- issuing agency
- type of fine
- fine amount
- type of special circumstance
- type of evidence presented to substantiate the claim
- outcomes

Data analysis

The researchers transcribed all interviews and analysed the data using NVivo qualitative data analysis software. Microsoft Excel was used to prepare graphs and charts depicting the aggregate quantitative data provided by financial counsellors and CLCs.

Research ethics

The Monash University Human Research Ethics Committee (MUHREC) approved all documents relating to the data collection (consent forms, explanatory statements and interview questions). The project was also approved by the Department of Justice Human Research Ethics Committee. All interview participants were provided with detailed information on the project's methodology and were sent explanatory statements outlining how the research would progress. Professional participants were also sent letters of permission which they were asked to sign and return to the Monash researchers prior to MUHREC approval.

All interview participants were assured that the information detailed in their interview transcripts would remain confidential and no information that could lead to their identification would be disclosed. Prior to all interviews taking place, participants were asked whether they would like a copy of their transcript. Those who did want a copy of the transcript were asked to read the document to check its accuracy, thereby increasing the reliability of the research.

Participants were informed that they could stop the interview at any time and could decline to answer any questions. Client participants were informed that to consent to being part of the research was voluntary, and that refusal to participate would have no impact on their ability to access CLCs in the future. They were also informed that the researchers would be unable to provide legal advice or assist in resolving their issues related to unpaid fines. Clients were provided with a $50 Coles/Myer voucher to compensate them for their time. The researchers were aware that for some of the client participants, discussing their unpaid infringement fines could generate some minor discomfort in discussing this issue. For this reason, the explanatory statement provided to all participants contained emergency contact and support telephone numbers that they could call if they experienced any distress after the interview.

Limitations

Many clients whom we had hoped to interview could not be contacted by either telephone or mail. CLCs reported that many phone numbers were disconnected and many letters were returned to them as clients had changed address. While the majority of clients who were contacted agreed to participate, some declined and indicated that they did not wish to discuss the situation because it caused them considerable stress. Sixteen clients who agreed to participate in an interview failed to attend on the designated dates. Lawyers confirmed that it was not unusual for clients to miss appointments as many are transient and live quite chaotic lives. In total, 46 client interviews were arranged and 30 were conducted on a face-to-face basis at the corresponding legal centres. On seven occasions the clients contacted the CLCs to inform them that they would be absent due to travel and/or family issues and asked the researchers to contact them to arrange a telephone interview. The graphs and tables below illustrate the descriptive information collected from the data on the client groups, providing a snap-shot profile of people who fall into the 'disadvantaged' group and who come into contact with CLCs seeking assistance with unpaid infringement notices.

3.1 Overview of descriptive data

Figure 1 below represents aggregate data collected from 10 CLCs detailing the income source of 115 of their clients. The majority of these clients were reliant on Centrelink[8] benefits (C/L) and were therefore classified as being in financial hardship. Sixty-seven per cent claimed Centrelink benefits as their sole source of income, while 4 per cent received no income at all.

[8] For more information on the specific types of Centrelink payments please go to www.centrelink.gov.au

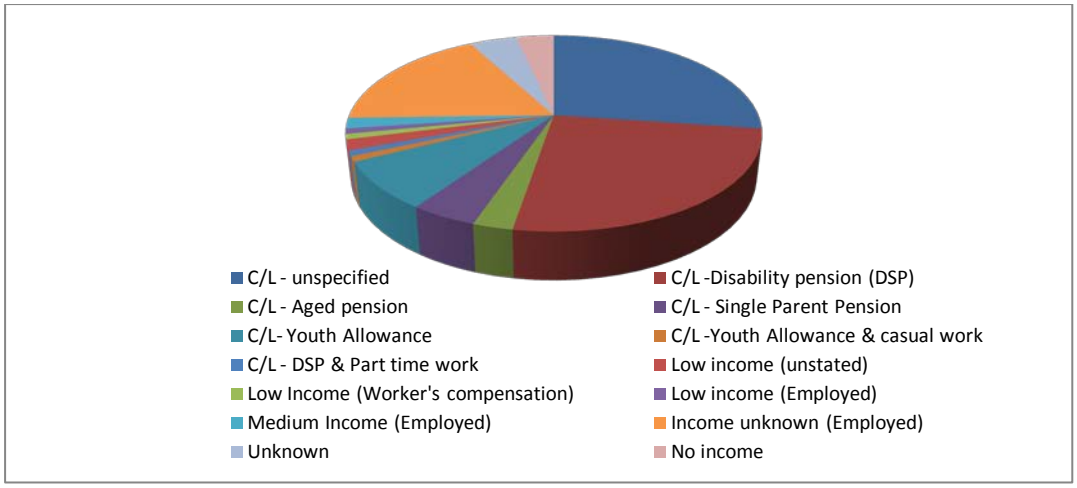


Figure 1 Income source of CLC clients

Figure 2 below represents the aggregate data collected from five financial counsellors detailing the income source of 67 of their clients. The majority of these clients were also reliant on Centrelink benefits. Seventy per cent relied on Centrelink benefits as their main source of income, while 9 per cent had no income at all.

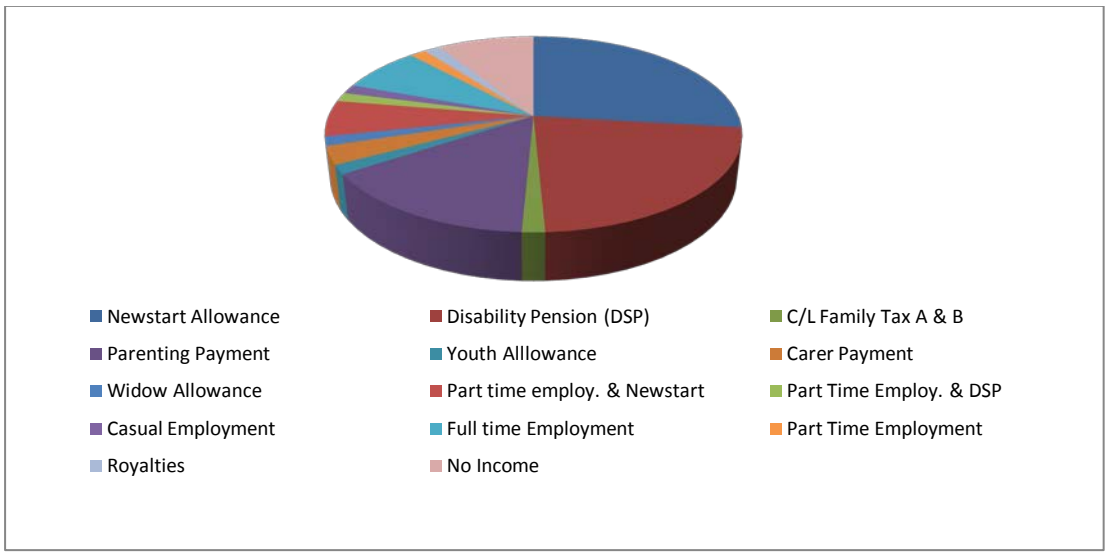


Figure 2 Income source of financial counselling clients

Figure 3 below represents aggregate data collected from 10 CLCs and details the profile of disadvantage of 115 of their clients. The two largest categories of disadvantage were financial hardship (F/H) (33 per cent) and homelessness and financial hardship (15 per cent). The x-axis in the figure represents number of clients.

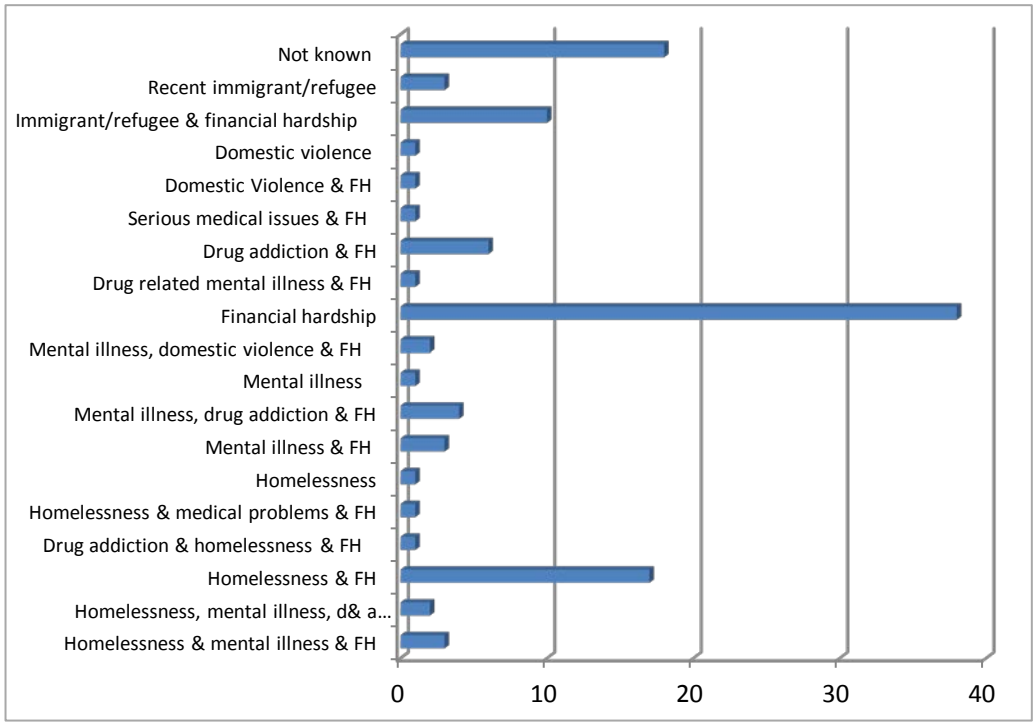


Figure 3 Profile of disadvantaged clients: CLCs

Figure 4 below represents aggregate data collected from five financial counsellors and details the profile of disadvantage of 67 of their clients. The two largest categories of disadvantage were financial hardship (59 per cent) and substance addiction and mental health (10 per cent).

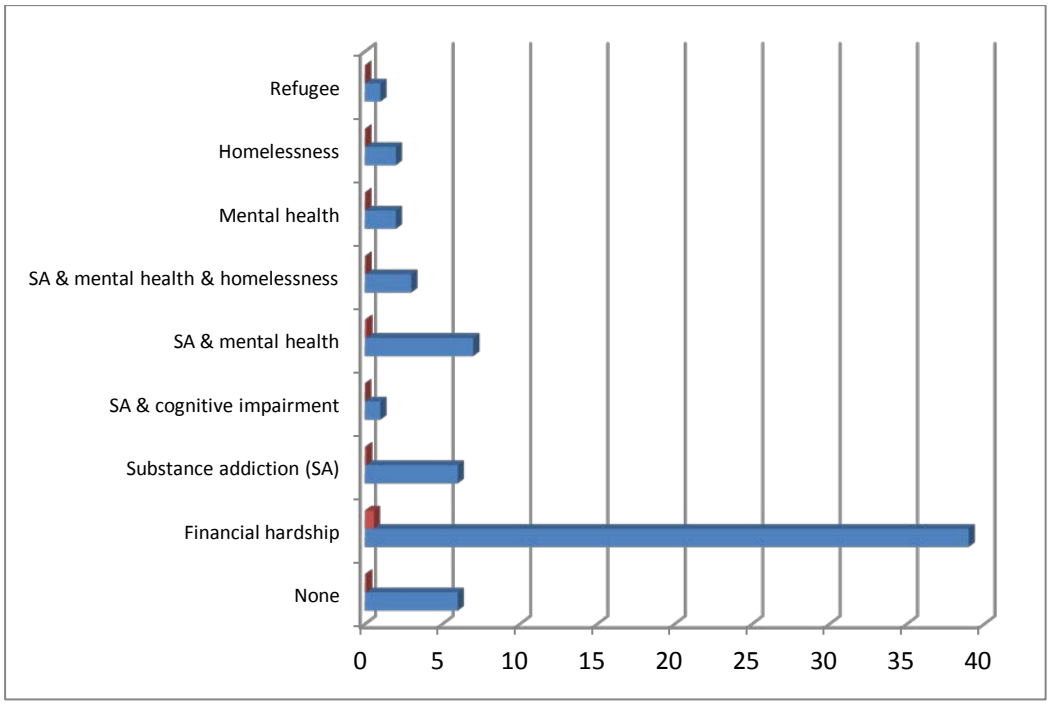


Figure 4 Profile of disadvantaged groups: financial counsellors

Figure 5 below depicts the aggregate data collected from five financial counsellors and details the infringement penalty amounts incurred by 67 clients. The x-axis represents the number of clients.

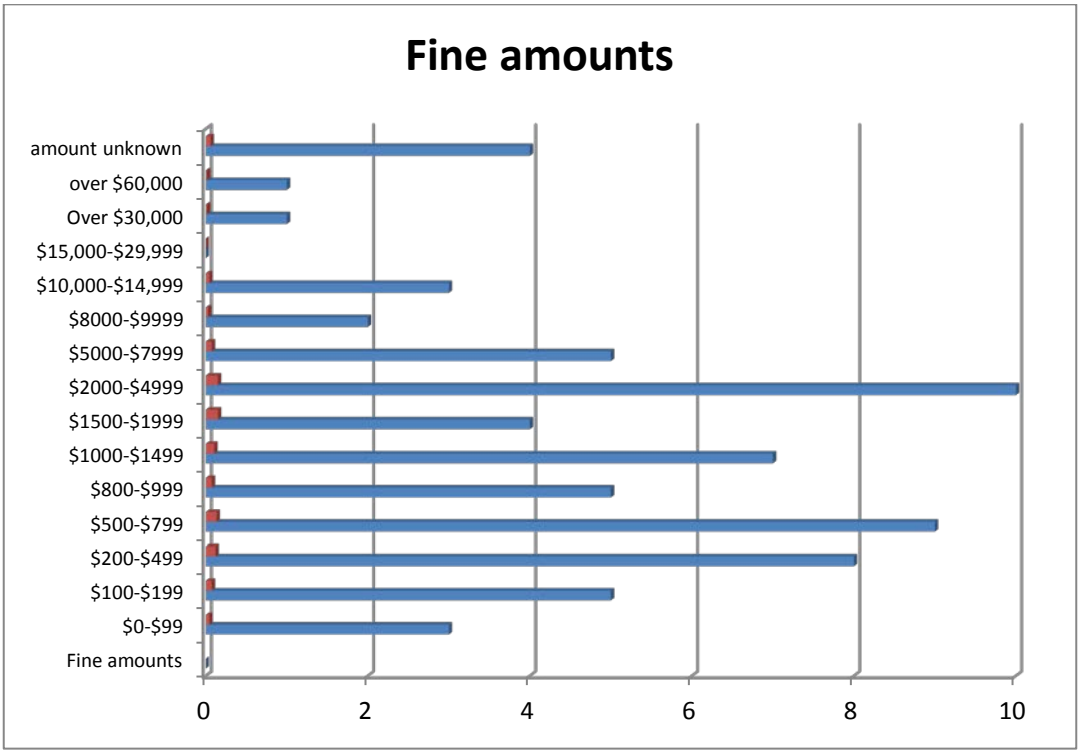


Figure 5 Infringement notice amounts: financial counselling clients

Figure 6 below depicts the aggregate data collected from 10 CLCs and details the infringement penalty amounts incurred by 115 of their clients.

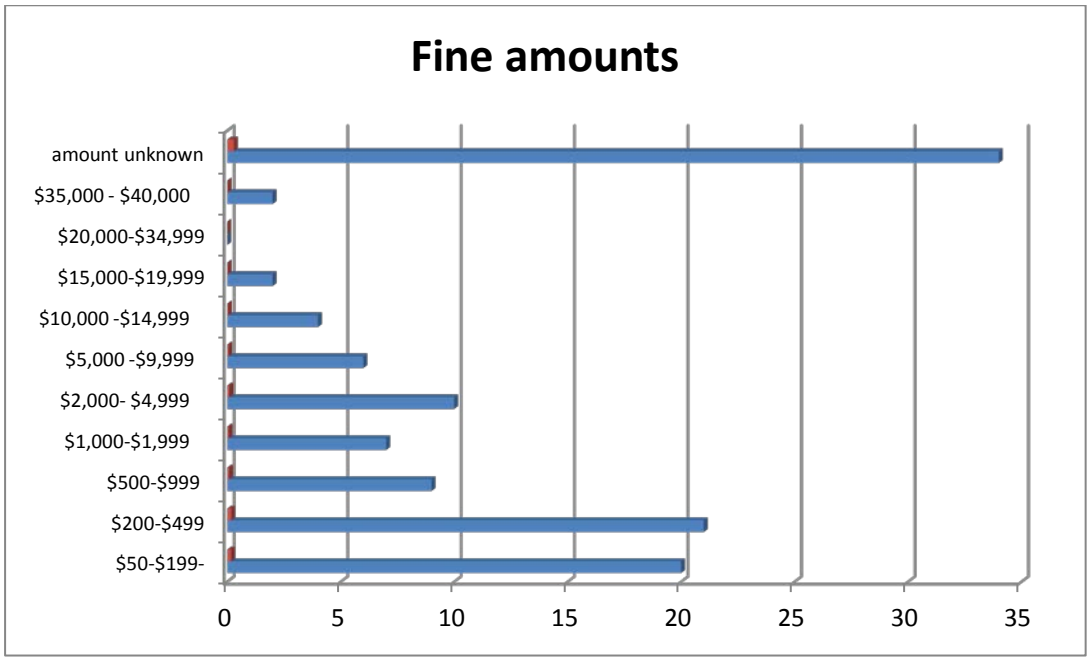


Figure 6 Infringement notice amounts: CLC clients

The quantitative data related to 182 fine recipients revealed that the majority were experiencing financial hardship and were therefore unable to pay their infringement fines. CLC clients' major form of disadvantage was financial hardship, followed by the combination of homelessness and financial hardship. Financial counselling clients' major form of disadvantage was financial hardship, followed by a combination of substance addiction and mental health, and then by substance addiction. CLC clients' infringement debts ranged from $50 to $40,000, while financial counselling clients' debts ranged from $99 to $68,000. The most common type of fines for both groups were vehicle related (CLC clients – 55 per cent and financial counselling clients – 41 per cent), and included failure to pay tolls and speeding, followed by DOT fines for failing to have a valid ticket (28 per cent and 7 per cent, respectively). In several cases the type of fine was unknown.

The outcomes of many CLC clients' matters were unknown (28 per cent). However, internal reviews resulted in the fine being withdrawn and replaced by an official warning in 11 per cent of cases, while in a further 11 per cent of cases the fine was not withdrawn at internal review, and in 12 per cent of cases the fine was withdrawn at internal review. In 9 per cent of cases a payment plan was negotiated. For financial counselling clients, the most common outcome was a payment plan (37 per cent), followed by a withdrawal of the fine at the internal review stage (12 per cent). In 16 per cent of cases the outcome was unknown. The next section of the report briefly discusses the insights from our court observations, while our interview data is discussed in greater depth in the Findings section.

3.2 Special Circumstances List court observations

The researchers attended the Special Circumstances List at the Melbourne Magistrates' Court and conducted the observations in two phases. The first phase ran from 19 January to 9 February 2012 and involved 24 hours of observations. More males (N=83) were scheduled to appear than females (N=47), and the most common type of special circumstance was mental illness (N=37), followed by the combination of mental illness and substance addiction (N=11), substance addiction (N=9), and homelessness and mental illness combined (N=6). There were several cases where the type of special circumstance was unknown and this was predominantly because the matters were adjourned due to the defendant's absence. Defendants were absent for a variety of reasons ranging from medical issues to incarceration to unknown. Occasionally the Judicial Registrar heard the case in the defendant's absence if there were only a small number of fines and there had been no subsequent offending, or if the defendant had previously provided sufficient medical reports that established special circumstances, and was currently in a treatment facility or incarcerated.

The most common type of evidence presented was a medical report, usually from a general practitioner (GP) or psychiatrist, and several defendants submitted both. Of those whose matters were heard, special circumstances were established in 74 cases and not established in 13 cases. In nine cases, defendants' matters were adjourned to allow them to obtain more relevant medical reports to establish their special circumstances. While most defendants had infringements from a variety of enforcement agencies, the most common type of fine was a tollway fine. The most common outcome was proven and dismissed, followed by six-month adjourned undertakings where the defendant would only need to reappear at the end of the term, if called. The researchers noticed

that several council prosecutors did not attend court, resulting in their matters being struck out[9].This point will be discussed further in the Findings section of the report. In total:

- five matters were struck out due to the Moonee Valley Council Prosecutor's absence
- two were struck out due to the City of Whitehorse Prosecutor's absence
- one matter for each council was struck out over the duration of the observations as a result of the absence of the Moreland, Darebin, Frankston and Dandenong Council Prosecutors.

The five matters related to Moonee Valley Council were not specified: the first matter involved an unspecified number and type of fines, the second matter related to two unspecified fines, while the final three matters concerned single unspecified fines. The two matters related to the City of Whitehorse involved one parking fine and one unspecified fine. The matter related to Moreland Council involved seven unspecified fines, while Darebin Council's matter involved one parking fine. Dandenong Council's matter was unspecified in number and fine type, while the Frankston Council matter related to one unspecified fine.

The researchers conducted the second phase of observations on 6 September 2012, amounting to two hours of observation. More males (N=8) appeared than females (N=5), and in three cases the client's gender was unknown. The most common outcome was for the fines to be proven and dismissed (N=11). The most common types of special circumstance were homelessness (N=4), and mental illness (N=4), followed by substance addiction (N=1), and substance addiction and intellectual impairment combined (N=1). In six matters, the type of special circumstance was not disclosed. Special circumstances were established in 12 cases, not established in two cases, and the remaining two matters were adjourned due to clients' non-attendance. However, in another six cases, clients who did not attend had the matters heard in their absence, some of which were proven and dismissed. Additionally, one City of Maribyrnong matter, related to an unspecified fine, was struck out due to the prosecutor's absence.

[9] This is defined as 'an order which is normally made by consent of the parties, or in the event the informant/applicant/plaintiff fails to prosecute the charge, claim or application. Finalises a proceeding, subject to application to re-instate' (Magistrates Court of Victoria, 2012). It is generally co-existent with the term 'withdrawn'.

MONASH University

4.0 Findings

This section discusses the key challenges and problematic aspects of the infringements system in relation to its impact on disadvantaged populations. Reference is made to qualitative data obtained from our interviews, the relevant literature, print media, and the procedures in place in other Australian and international jurisdictions. Importantly, our research revealed that disadvantaged groups often incur fines for four types of behaviours subject to infringements: public order offences, moving vehicle offences, parking offences and public transport offences. These are all discussed in detail below. This section also reports on the problematic aspects of the Victorian infringements system overall, as identified during the interviews, and considers how disadvantaged groups in Victoria are affected. The issues discussed include the:

- complexity of the infringements system
- potential for net-widening
- blurring of civil and criminal processes
- disproportionate fine amounts, recipients' inability to pay
- deterrent effect of fines and recipients committing crimes to pay their fines
- offenders' denial and insufficient knowledge of the infringements system
- staff issues related to the inadequate use of discretion, and reviewing and enforcing of infringements notices
- issues related to technology and payment.

4.1 The infringement offences that impact most significantly on disadvantaged groups

Public order offences

Many people who are experiencing homelessness feel that they are singled out by law enforcers, particularly the police and public transport authorised officers (AOs). The combination of targeting and the high visibility of these people in the public arena means that they are often more likely to be fined than other members of the public (Midgley, 2005). However, as noted by Waldron (2000), the regulation of public space cannot be construed as fair if there is no acknowledgement that some members of society have no choice but to live their lives in the public sphere. For those who have a private space to which to retreat, laws forbidding certain behaviours in public, such as sleeping, swearing, drinking or urinating, mean that the individual simply needs to relocate to perform the behaviour. However, for homeless people, these laws effectively prohibit behaviours that are perfectly legal when performed inside the safety of one's home. Hence, the differential impact on these two groups 'amounts almost to the application of a quite different set of laws' (Waldron, 2000:397). Similarly, Lynch suggested that people who are experiencing homelessness are disproportionately affected by laws that are meant to be 'formally equal laws' (2002:692). The financial and social inequity which makes them 'unequals' is not considered, and their behaviour is

criminalised purely due to the situational context in which it occurs. Therefore, the social context of these 'unequal' individuals must be considered to ensure the application of these laws is just.

People who are experiencing homelessness may also be more susceptible to being fined for offences that are vaguely defined and hence subjective in nature, such as offensive language or behaviour. Indeed, recent research conducted in NSW found that penalty notices for offensive language were often issued for behaviour where the test for offensiveness would not be met if the matter proceeded to court. Case law has established that 'for language or conduct to be considered offensive the prosecution must prove that it was calculated to wound the feelings, or arouse anger, resentment, disgust or outrage in the mind of a reasonable person' (New South Wales Law Reform Commission, 2012:297). Indeed, the NSW Ombudsman stated that with the current widespread use of words such as 'fuck', 'the capacity of the words to be regarded as offensive as they once were must come into question' (New South Wales Law Reform Commission, 2012:288). Furthermore, it was found that 'this offence has a particularly detrimental effect on the reputation of the justice system because those who issue the notices (in common with many other people) may use the same offensive language for which the penalty notices are issued' (New South Wales Law Reform Commission, 2012:xxiii).

While all Australian states and territories consider acting 'offensively' to be an offence, this behaviour must instigate a 'significant emotional reaction' in order to justify legal repercussions (Walsh, 2006:5). On this issue, the Australian High Court case of *Coleman v Power* [2004) HCA 39 set a precedent in September 2004. A man was charged with using 'insulting words' (para 2) after 'distributing pamphlets which contained charges of corruption against several police officers'(para 1). However, he challenged the matter and suggested that this charge restricted his freedom of speech. Four out of seven judges (McHugh, Gummow, Kirby and Hayne JJ) decided that the appellant's conviction should be set aside. The majority of these judges also felt that as long as there were no other aggravating circumstances, directing insulting language at a police officer should not warrant a criminal charge as '[b]y their training and temperament police officers must be expected to resist the sting of insults directed to them' (Gummow & Hayne JJ, para 200) and 'be thick skinned' (Kirby J, para 258).

People who suffer from a mental illness or intellectual disability may also be disproportionately and unfairly fined for public order offences due to behaviours associated with their conditions. For example, a person who is experiencing a psychotic episode as a result of a mental illness may be fined for disorderly conduct or offensive behaviour or language (Lynch, Nicholson, Ellis, & Sullivan, 2003). People with physical disabilities may also be singled out, as highlighted in a recent Victorian media article. A man was reportedly fined and detained in police cells for being drunk and disorderly when, in fact, he was sober and the police had misconstrued his cerebral palsy as drunkenness. The man reportedly said: 'I was very distressed to have been treated this way and I'm worried for other people with disabilities and how vulnerable they are to police jumping to the same sort of conclusions' (Craven, 2011:27).

International media articles have also highlighted how marginalised groups may be disproportionately impacted by public order policing. Archibold's (2006) article in *The New York Times* brought attention to a Las Vegas ordinance that criminalises those who feed homeless people

in public parks. The law was intended to discourage homeless people from gathering in parks that were frequented by families. While other cities in the US have placed restrictions on the distribution of meals in parks, Las Vegas reportedly was 'the first to explicitly make it an offence to feed "the Indigent"'. Similarly, the UK media reported that 'thousands of people are being consigned to a new class of semi-criminals' by the issuing of PNDs for minor anti-social offences such as littering and drinking in public (Morris, 2005).

(Roth, S. 2012, *Alternative Law Journal*, vol. 37 (1))

The impact of public order offences on disadvantaged populations in Victoria

The disproportionate fining of marginalised people for public order offences was also evident in our research. Indeed, several legal representatives highlighted the need for better practices when issuing fines to people who clearly fall into the special circumstances category. One legal representative said:

> *Some of my clients, as soon as you meet them you think they're not well, they have some sort of cognitive disability, or they're mentally ill and it's really obvious. And yet the police are continually fining them for things like littering, loitering, soliciting, handing out hand bills, putting their feet on the seats on the tram. All these things are offences of course, but it's whether or not the person understands that they're doing them and the police have got to be trained better so that they're not doing this. (Legal representative 1)*

One financial counsellor told of a client who was allegedly charged with being drunk in public after the police went to his house and called him outside to discuss an intervention order (financial counsellor 8). Legal representatives (19, 16, 13 and 12) also described clients being continually fined for offensive language directed only at police, despite a policy direction stipulating that where the offensive language was directed only towards the police officer, the infringement should not be issued because it would raise the possibility of bias. However, a legal representative in our study commented:

> *Pretty much every single occasion in which I've seen offensive language or offensive behaviour being issued as an infringement or even a charge it's because of the behaviour directed towards a police officer only. (Legal representative 13)*

Another legal representative echoed these concerns:

> *The police do become judge, jury and executioner and they make that call on subjective grounds. So an offensive language infringement – one police officer may hear some fairly innocuous language, some fairly harmless language, but if they take offence to it, it becomes offensive language. So all of a sudden you've got a $240 fine. (Legal representative 16)*

Moving vehicle offences

Research from the UK suggests that perceptions of the 'procedural justness' of criminal justice processes have a significant impact on compliance with regard to moving vehicle offences (Wells, 2008). In order to maximise compliance, these processes must be consistent, neutral and impartial. While 'techno-fixes' such as speed cameras exhibit these qualities in the sense that they do not discriminate on any basis other than the riskiness of behaviour, Wells' study participants expressed concern that the system was unjust. Many believed that the lack of opportunity to voice their reasons for speeding placed them at a disadvantage, as they could not convey the context in which the offending behaviour occurred. Furthermore, the fixed-penalty system was viewed as problematic because it displaced the determination of guilt from the court to the roadside. Many participants reported that they would prefer to be dealt with by a policeman than to be 'policed by robots' (Wells, 2008:812). While Wells' research has shown that an encounter with police does not guarantee a 'procedurally just' experience, many of Wells' participants preferred this option. Speed cameras eliminate any danger of discrimination, yet it is this discrimination repackaged as discretion that Wells' participants desired (Wells, 2008).

In the Victorian context, a significant amount of media attention has highlighted procedurally unjust practices with regard to moving vehicle offences. Toy (2011) reported the story of a man who was fined $397 for speeding while trying to reach his burning house to ensure the safety of his wife and children. The man contested the fine, yet observed: 'it is my understanding I will have to pay it eventually' (Toy, 2011:29). Dunn (2012) reported the circumstances of a man who received $26,000 worth of speeding, toll and unregistered vehicle fines, despite having sold the vehicles in which the fines were incurred. However, the vehicles were still registered in his name, and as a consequence he may lose the house he has lived in for 20 years, as 'tollway operators were seeking to put a caveat on his Cranbourne home' (Dunn, 2012:27). Gordon's article reported on the Auditor-General's plans to 'examine whether the use of cameras boosts road safety, or merely serves to raise revenue for the state government' (2011:3). These plans emerged after a large number of motorists' complaints about being inappropriately and incorrectly fined, suggesting that many speed and red light cameras may be inaccurate. More recently, Moor wrote a piece about a mobile camera that was 'wrongly set up over the brow of a hill to snap motorists going down a steep slope' (2012:4). Moor also reported that a VicRoads audit had identified eight red light camera sights that failed to show 'amber long enough before turning red', which resulted in several motorists being incorrectly fined for failing to stop at a red light (2012:4).

As a consequence of such reports, doubts about the integrity of Victoria's red light and speed cameras have necessitated the appointment of Australia's first Road Safety Camera Commissioner to provide oversight of the camera system. As of February 2012, former County Court Judge Gordon Lewis has been given the authority to investigate any parts of the system and to record public complaints about it (Premier of Victoria Ted Baillieu, 2012). On 9 November 2012, Lewis released his findings regarding the above-mentioned eight red light cameras. He concluded that the length of the yellow light phase was incorrect at eight intersections throughout Victoria. As a result, he recommended that people who had received infringement notices for red light offences at these locations should have their fines withdrawn and their demerit points reversed (Lewis, 2012). Police Minister Peter Ryan was subsequently reported as stating that the 6794 fines would be automatically refunded within three weeks and more than 20,000 demerit points would be reinstated (Harris, 2012:13).

Victorian journalists have also highlighted the hypocrisy of some of those who are empowered to issue fines. Petrie's article revealed that many police officers do not pay their traffic fines, leading the Head of the Police Ethical Standards Department to reportedly describe the situation as 'an embarrassment' (2004:5). *The Age* newspaper reported that Sheriff's Office records showed that 750 officers had outstanding fines for parking, speeding and unpaid CityLink tolls. Furthermore, an internal police email from the Assistant Commissioner revealed that 'some cases may have involved "improper conduct" by officers trying to avoid paying their fines'. Seven years later, Kaila's article (2011:1) revealed that over 100 police who were fined for vehicle-related offences were able to evade paying by refusing to acknowledge that they were driving. The offences included going through red lights and exceeding the speed limit by up to 40 km/h, and these officers were 'not actively pursuing criminals and not rushing to crime scenes' (Kaila, 2011:1). The fines were dismissed as Victoria Police was unable to identify the drivers, despite the fact that drivers sign a log book before taking out a vehicle. Documents obtained under Freedom of Information laws showed that police officers received 1477 infringements in the past five years and that 61 per cent of these were dropped. In contrast, 'ordinary members of the public who appeal against a fine are let off in only three per cent of cases' (Kaila, 2011:1).

The impact of moving vehicle offences on disadvantaged populations in Victoria

Just over half of the legal representatives, financial counsellors and DOJ representatives concurred that CityLink infringements represent the majority of all fines issued in Victoria. There was also some discussion among legal representatives around whether or not it is appropriate that 'taxpayers are subsidising these corporations by the Department of Justice collecting the fines on their behalf' (Legal representative 9). While there are undoubtedly some people who take a political stance and decide not to pay their fines because they believe they should be able to freely travel on the toll roads, others simply have no idea that they are incurring fines. This may be due to a lack of education about the requirement to pay, or it may be a manifestation of a mental illness, such as bipolar disorder, where sufferers often drive back and forth repeatedly on the same road without realising the consequences of their actions (Legal representative 6).

It is also apparent that some, perhaps many, people suffer the consequences of vehicle-related fines incurred by others. A financial counsellor told of a client who was left owing thousands of dollars

related to vehicle-related fines incurred by his ex-wife (Financial counsellor 10). The woman, who had a heroin addiction, hid the fines correspondence from her husband who was unaware of the problem until she moved out (the man was responsible for the fines as the car was registered in his name and the 12 months nomination period had expired). The man, who suffered from anxiety, was the sole carer for his two children both of whom had disabilities. He was struggling to pay off his ex-wife's debt, which at the time of the interview amounted to approximately $6000.

People who are experiencing homelessness are also often adversely impacted by vehicle-related fines. As one legal representative noted:

> *Driving offences are a big one. Our clients rely on their car, often sleeping in their car and to get around because they're frightened away from public transport and so [are] driving unregistered. (Legal representative 16)*

A client validated this perspective when he told of receiving many fines while homeless and living in his car:

> *I couldn't afford the rego but I had to live somewhere and I didn't really want to live in the gutter so I decided to sleep in my car. But because you're in the car and you have the keys on you, well you're driving an unregistered vehicle so bad luck. (Client 3)*

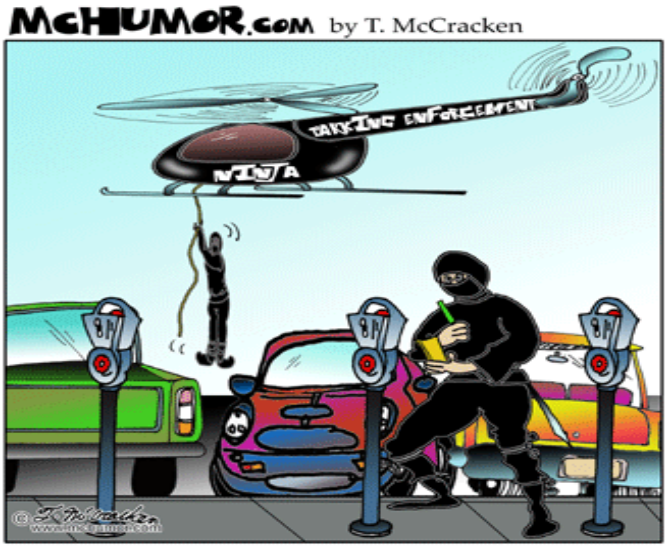
Parking offences

Inappropriate practices have also been identified among those who issue parking fines. In 2006 the Victorian Ombudsman initiated an investigation into Melbourne City Council's Parking and Traffic Branch, based on whistle-blower allegations. These allegations included inadequate management of traffic and parking services and mismanagement of funds in relation to the issuing of infringement notices. The investigation found that many Parking Infringement Notices (PINs) were not correctly registered with the PERIN Court (now known as the Infringements Court), many were issued for incorrect offences, and many were issued with incorrect penalty amounts. Several parking officers were not appropriately authorised, many PIN and courtesy letters that were sent to fine recipients contained misleading information, and withdrawal procedures for PINs were not administered appropriately. The report also identified that the issuing of PINs was driven by revenue-raising concerns. In the 2004–05 financial year, the City of Melbourne's projected revenue from PINs was $27.5 million and more than 466,000 PINs would have needed to be issued to reach this target. In order to achieve this, officers were required to issue approximately 30 PINs each day. This quota was used to gauge the officer's performance and those who failed to meet this target were 'counselled, warned and may face dismissal' (Victorian Ombudsman, 2006:21). It was also evident that parking officers refrained from reporting broken parking meters as a result of this pressure to issue the required number of PINs.

Recent media articles have raised ongoing concerns in relation to the issuing of parking infringements in Melbourne. Wright's article (2012:7) reported that Melbourne City Council parking inspectors have been accused of swearing at the public, damaging their cars and threatening them. Some customers complained that parking officers were 'rude and offensive' to them when they left their vehicles to obtain change for the parking meter, only to receive an infringement notice upon

their return. Others told of officers making inflammatory remarks such as 'That's the way it is, I need to book someone', and 'It's my word over yours'. McMahon's article referred to council documents which showed 'hundreds of parking fines have been handed out illegally over more than a decade due to bureaucratic bungling' (2011:3).

Melbourne City Council's new sensor technology, which is aimed at catching motorists who overstay their welcome by the briefest of margins, has also been the subject of negative media attention (Thom, 2012). The council has issued thousands of parking fines based on the new technology and continues to use it despite doubts about its accuracy. Council emails reportedly reveal that many fines would be dismissed if challenged in court because the sensors 'can be subject to interference', as passing cars or even shopping trolleys can mar the system's accuracy (Thom, 2012:1). The technology was estimated to be only 90 per cent effective. However, the council reportedly ordered parking inspectors to continue issuing infringement notices (Thom, 2012:1). Importantly, the combination of this flawed technology and poor staff practices may lead to a significant reduction in the public's already compromised respect for the infringements system. As mentioned previously, compliance with the law is more likely to transpire if the procedures and processes surrounding its enforcement are perceived to be 'fair' and 'legitimate'. Conversely, compliance is less likely if these procedures are perceived to be unfair (Tyler, 2006a). For most members of society, contact with the infringements system will be their 'main exposure' to the criminal justice system (Fox, 1995b:281). Hence, the legitimacy of the entire criminal justice system may be undermined.



Explanation #23 for why you seem to get a parking ticket the instant your meter expires.

The impact of parking offences on disadvantaged populations in Victoria

Clients in our study described their experiences of receiving parking fines and emphasised the importance of being treated with respect. Their comments included:

They don't communicate nicely, they don't care, [and] they don't look at you. It's important to speak with the people. I don't think they give them the right orientation and training. (Client 37)

I just think they should be a bit more reasonable – they're like vultures, you know? As soon as you walk away from your car they seem to run up and whack a sticker on your car. (Client 14)

Local government representatives said parking officers are often unable to exercise discretion when issuing notices as in most instances they are simply issuing to a car, not a person. However, one representative (Local government representative 1) said that they have a personal policy of voluntary compliance whereby a person who is parked in a no-stopping area (and is in the car), for example, will be asked to move on. If the person chooses not to comply, he or she will then be issued with an infringement notice. Another local government representative (local government representative 4) explained that warnings are issued for behaviours such as parking on nature strips and they only issue infringement notices for subsequent offences. Another (Local government representative 3) said that the council's policy is to routinely issue official warnings for animal-related and parking infringements when the person appears to have been negligent but has not necessarily fully understood the implications of their negligence (the council's database is cross-checked to ensure that a person has not previously been granted an official warning). He reported that people are usually very appreciative of being given a warning instead of an infringement, and rarely reoffend.

Public transport offences

The practice of issuing infringement notices for public transport–related offences has also come under scrutiny. During 2008–09 the Victorian Ombudsman received 189 complaints regarding infringement notices issued to public transport users. An analysis of these complaints raised several issues, including the inadequate training of AOs with regard to the use of discretion, and a lack of transparency with DOT's processing of AOs' reports. Furthermore, fine recipients who challenged their fine and requested an internal review were not 'provided with a specific response to address their concerns' (Victorian Ombudsman, 2010:6). Additionally, a review of CCTV footage found a number of instances where AOs behaved inappropriately towards commuters, such as using excessive force. Public outcry ensued as a result of this footage, and DOT claimed it would address this inappropriate conduct. However, 12 months later, the Ombudsman received another commuter complaint regarding excessive force used by AOs. Metro Trains' subsequent investigation into this case concluded that the AOs had 'acted appropriately'. However, the Ombudsman concluded that the AOs did in fact use 'unreasonable force against the passenger' and that 'Metro's investigation was flawed' (Victorian Ombudsman, 2012:22). However, it must be acknowledged that DOT has accepted 12 of the Ombudsman's 14 recommendations in his 2010 report and that 11 of these have been implemented (Victorian Ombudsman, 2012:62).

Public transport infringement notices are not directly issued at the time of the offence. Upon witnessing an offence, AOs make a report of non-compliance (RONC) which is sent to DOT, who subsequently issue the infringement notice. The department relies on the RONC to substantiate that an offence was committed and the matter is not usually reviewed until a fine recipient submits a

request for a review after receiving the fine notice in the mail. Until March 2010, only one administration officer was responsible for processing up to 200,000 RONCs per annum and deciding whether these should progress to an infringement notice. When interviewed, this officer stated that this process might take only 10–15 seconds per RONC. During 2009–10, there were 29,413 internal reviews and DOT withdrew the infringement notice in 49.4 per cent of cases. Similarly, in the 2008–09 period, appeals for internal review resulted in 52.4 per cent of infringement notices being withdrawn. The internal review process is crucial to ensuring that the infringements system is fair. However, the Ombudsman's report highlighted inadequacies in the department's information technology database which is used to record the details of decisions regarding requests for review (Victorian Ombudsman, 2010:9).

The Victorian media has also highlighted several issues that may undermine perceptions of procedural justice with regard to public transport infringements. O'Brien's article (2011:34) reported that many young people who were experiencing homelessness were fined for sleeping on trains, and indeed one person accrued $20,000 worth of fines for this 'offence'. Furthermore, Rolfe (2011:13) reported that 'one in three commuters who challenge fines are let off', leading the President of the Public Transport Users Association to reportedly suggest that 'these statistics may show that some are being fined unfairly – for genuine mistakes in buying the wrong ticket, or when ticketing equipment isn't working' (Rolfe, 2011:13). There has also been a significant amount of media attention dedicated to the Victorian State Government's decision to place Protective Services Officers on the railway network. The announcement that they would be granted powers similar to those held by police officers, including the ability to issue infringement notices, caused concern given their limited training (Gardiner, 2011:9).

The impact of public transport offences on disadvantaged populations in Victoria

A theme that emerged throughout our study was that AOs do not exercise sufficient or appropriate discretion at the point of issuing infringements. Financial counsellors and legal representatives said that clients are often advised by AOs that they will be let off with a warning, only to receive an infringement notice in the mail. Similarly, the Victorian Ombudsman's enquiry into the issuing of infringement notices on public transport also reported complaints from people who said that AOs had 'led them to believe that an infringement notice might not be issued against them' (2010:29). This misinformation and inadequate use of discretion has caused many people to question the integrity of the system. Several clients in our study also mentioned being treated aggressively by AOs and being quite frightened at times. Comments included: 'The ticket inspectors were very rude and aggressive towards me' (client 36); and 'they started heavying me for all my information and I felt very intimidated' (client 35); and 'they're always aggressive to everybody' (client 3). Indeed, one client (client 19), who was on crutches after having knee surgery, described being escorted off the tram by six overly assertive ticket inspectors. She said that her two-hour ticket had expired by 10 minutes and when this was pointed out she offered to purchase another ticket. She said that she was refused this option, told she would be fined, and was escorted off the tram. Another client said he was tying his shoelace when fined for having his feet on the seat. He tried to explain this to the AOs but 'they didn't want to know' (client 12). Another client described being fined for having his feet on the seat, yet 'a pretty girl sitting on the other side of the carriage who also had her feet on the seat' was not fined. He said:

Instead of giving her a ticket he let her off and he stood there and chatted to her for ages … fined me and let her off because he fancied her. (Client 11)

A DOJ representative (7) also revealed his daughter's experience with aggressive AOs. She was in the wrong zone when the AOs checked her ticket so she offered to purchase another one. She was issued with a $180 fine and allegedly told 'don't argue or I'll throw you on the ground'. This aggressive treatment was also noted in the aforementioned Victorian Ombudsman's investigation. Indeed, one of the Ombudsman's conclusions was that 'Officers' behaviour generally typifies an inability to handle confronting situations, using excessive force for what are misdemeanour ticket offences' (2010:26). However, representatives from DOT who participated in our study said:

Given the extensive training of AOs, the majority of RONCs forwarded to DOT are appropriate for progression to infringement status.

4.2 The complexity of the infringements system process

All of the 23 legal representatives in our research spoke about the unnecessary complexity of the infringements process. Their comments included:

Things like even the way the documentation is presented to people … the complexity of the paperwork is often beyond them. (Legal representative 16)

The system is ridiculously complicated. I'm fairly new to it. I only started dealing with it less than six months ago and as an educated, trained lawyer, getting my head around it was problematic. (Legal representative 19)

DOJ representatives also commented:

We pride ourselves on making government more accessible to the people but in fact what we've done is put a whole heap of these barriers in place and you need to be a skilled navigator to jump across them. (DOJ representative 7)

I mean if you want to pay it's relatively simple. But if it's gone beyond that it can be quite complex and complicated and not a lot of people know how the Infringements Court works. (DOJ representative 12)

Legal representatives also highlighted the complexity of internal review processes – a complexity that causes further stress and anxiety for many disadvantaged clients. While it may seem counterintuitive, it is often beneficial for those with special circumstances to wait until the matter has reached the Infringements Court stage before taking action – a fact that emerged clearly during our research. Yet this results in the accrual of late fees, the possibility of enforcement action and additional stress for the client. However, applying for an internal review is risky, as enforcement agencies often refer matters straight to the Magistrates' Court where the client will not receive the benefits of the Special Circumstances List. This problem with the system was highlighted by the majority of participants from both the financial and legal sectors and is an obvious weakness of the system. One legal representative said:

> *We don't apply for internal review of matters that are with the police – we'll wait for it to progress, including accruing more fees – until it gets to the Infringements Court and we can be confident of a sympathetic and understanding approach from the court as opposed to the approach that the police take. (Legal representative 16)*

Another legal representative suggested:

> *I see no reason why an independent, objective, trained person couldn't assess the internal reviews independent of the agency. So there's just one entity that everybody deals with no matter what their fine is and no matter what stage it's at. (Legal representative 19)*

As mentioned above, once the matter reaches the Infringements Court and an enforcement order has been made, the fine recipient or their representative can apply to the court for a revocation of the enforcement order on the grounds of special circumstances (s 65 *Infringements Act 2006*). However, enforcement agencies are currently required to 'opt out' if they wish to withdraw the fine. If they do nothing, the matter is automatically referred to court. This seems counterproductive as enforcement agency prosecutors, particularly those who represent local councils, often do not turn up to court. And if the prosecutor fails to appear, their matters are struck out (withdrawn). A legal representative (2) in our study noted this, saying that 'it's kind of a backwards system', because 'if the agency wants to revoke it they have to request non-prosecution'. She added that this may mean that 'clients end up in court just because they [the agency] can't be bothered requesting non-prosecution'.

Several legal representatives and financial counsellors also expressed their concern regarding the term 'revocation', as many clients believe this to mean that the fine has been withdrawn, and they therefore take no further action. In the context of the infringements system, the word 'revocation' actually means that the enforcement order has been cancelled and the matter has been referred back to the enforcement agency for further consideration (Victoria Legal Aid, 2011a:3). As mentioned previously, the enforcement agency then has 21 days to decide whether or not to withdraw the fine. If the agency withdraws the fine, that is the end of the matter. If the application was made on the grounds of special circumstances and the enforcement agency chooses not to withdraw the fine, the Infringements Court refers the matter to the Special Circumstances List (Fitzroy Legal Service, 2012).

4.3 Net-widening

As discussed above, the ease of issuing infringement notices may result in a net-widening effect whereby more people are drawn into the criminal justice system. This net-widening results from a diminution in the application of discretion in the form of formal cautions or warnings. Our study found significant evidence of net-widening. DOJ representatives commented:

It's a lot easier to issue an infringement than it is to prepare a brief for open court. (DOJ representative 11)

An infringement is much easier than waiting for a charge and summons to come through. (DOJ representative 12)

More people are getting them now and more people are getting more of them. (DOJ representative 7)

The legal representatives and financial counsellors in our research reported that many of their clients are fined for behaviours that would have previously seen no action taken, and that their clients are being fined for multiple offences on the one occasion. One financial counsellor said:

So you get three or four fines in one go and that happens too regularly … In the old system there was more discretion for a policeman to say, this isn't that serious, I'm going to scare this person and give them a warning and off they go. There's far less discretion with infringements. (Financial counsellor 8)

A legal representative commented:

So it's just a terrible system where I just think it is so open to abuse and police do routinely over-issue fines when they don't have the legitimate base to do so. But because the power imbalance is such that they know they can get away with it ... a lot of them [clients] would say, 'well, yes I'd rather do this than have to go to court'. But the reality is if it was left to summons the police would have to think very strongly about whether or not they could prove beyond a reasonable doubt that that offence was committed. A lot of them wouldn't proceed to court. (Legal representative 12)

A DOJ representative remarked:

With the young people … by the time they've got the 'not being able to produce a ticket', refusing to give their name and address, giving the transit official a bit of back chat and the finger and then jumping the gate they've ended up from a $5 ticket [that] they're not dealing with ... to a $1000 warrant. (DOJ representative 10)

Clients similarly told of their experiences of being fined multiple times on the one occasion.

The following case study is instructive.

Mark's story (Client 21):

Prior to becoming homeless, 'Mark' had just finished work and was having a 'knock-off' beer on a station platform in Ringwood. He said: 'it was just the one can you know and I took that one swig and put it in the bin and I wasn't swearing and I wasn't hurting anyone'. He was then allegedly confronted by several undercover police who accused him of drinking and asked to see his ticket. The ticket was not validated and Mark uttered a swearword under his breath to express his frustration at seemingly being targeted. No one else was around to hear this and take offence to it. Mark noticed that someone in the car park was listening to the radio loudly playing a song sung by the rap artist "Eminem", and every second word in the song was 'fuck'. He therefore felt it was an overreaction to take offence to his minor utterance. Mark ended up receiving three fines – one for drinking in public, one for not having a validated ticket while on a platform, and one for using offensive language.

4.4 Blurring of civil and criminal processes

Fox maintained that 'monetary penalties should be recoverable by civil enforcement [and] non-payment of an infringement penalty should not be punishable by imprisonment' (Fox, 1995b:293). As noted earlier in this report, infringement notices are dealt with by way of an administrative approach rather than a judicial one. However, the fact that criminal sanctions result from a failure to pay a pecuniary penalty arguably blurs the boundaries between civil and criminal processes (Lansdell et al., 2012). A legal representative in our study raised a number of questions:

> *See whether or not they're civil – this is actually where there is a very real problem. They're civil to the extent that the only outcome, for instance, for not having a ticket is a fine, but, it can be dealt with in the criminal system so it goes from being a civil matter to being able to be dealt with in the criminal system and it actually becomes, I think, quite mucky. Is it a civil debt that is owed to the transport company? Or is it actually a fine for a criminal offence which is not having a ticket? (Legal representative 2)*

It is also apparent, and extremely concerning, that failure to pay an infringement notice may result in imprisonment. Indeed, one legal representative told of a client who was facing 400 days in prison for unpaid tollway fines (Legal representative 19). As another legal representative highlighted:

> *The nature of the things which people get the fines for are low-level [summary] offences where they wouldn't normally receive imprisonment. If a person has something like $40,000 worth of fines, they can be looking at an excess of a year's imprisonment for offences of such a minor character that they wouldn't actually [otherwise] attract prison. If a person is a burglar or does an assault or a serious crime that we would see as serious, they'll receive a much lesser prison penalty. The driving force for fines being a problem is that with the introduction of CityLink, default fines are the way of enforcing payment of the tolls. (Legal representative 3)*

Similarly, a DOJ representative remarked:

> *You've racked up a debt, say, with a private toll road operator that the government has been given charge of through the Department of Justice, through the police force, the Infringements Court and the sheriff to enforce and you've gone to jail for that and you've got a record of having been in jail for essentially a private toll road operator – failure to pay the toll. (DOJ representative 7)*

IIL orders and lack of appeal rights

As mentioned previously, in Victoria a person may be sentenced to IIL of payment of their fines under s160 (1) of the *Infringements Act 2006* (Vic). If a magistrate places a fine recipient on a payment order with an IIL order attached, and they subsequently default by missing a payment, they may be imprisoned for a period of one day for each penalty unit.[10] Our research found examples of clients who were eligible to have their matters heard in the Special Circumstances List, yet ended up

[10] One penalty unit is $140.84 in the 2012–13 financial year.

being imprisoned for defaulting on payment orders with IILs attached. These unfortunate situations might have eventuated due to the clients' attempts to hide their disability (as occurred in the case of Tarni Brookes reported in *Brookes v Magistrates' Court of Victoria & Anor* [2011] VSC 642) (Supreme Court of Victoria, 2011a), because they did not seek legal advice, or possibly because their lawyer failed to recognise that they had a disability (Gray, Forell, & Clarke, 2009), as occurred in the case of *Taha* discussed earlier in this report. One legal representative told of a client who spent six months in jail as a result of unpaid infringements after defaulting on a payment plan, despite the fact that she was experiencing homelessness and battling heroin addiction and therefore fulfilled two special circumstances criteria (Legal representative 22). Another legal representative recounted the case of a 78-year-old man with significant mental and physical health issues who was sentenced to 28 days imprisonment after defaulting (Legal representative 11). DOJ representatives also commented on this issue:

> *You've got these people that have got special circumstances, but unless they've got the support of people that know and can point them in the right direction to put their matters before a court, or to the role of an authority, they will slip through the cracks and eventually they will, because they must do time under the current law. (DOJ representative 11)*

> *There was one person that again I started through the process and he ended up being arrested to serve an imprisonment term and I think he had 200 or so days and I remember his brother coming out as we were lodging him in the vehicle and said, 'Oh, he's got schizophrenia, he's got this, this and this, I have to give you all his medication'. So you know a lot of those people slip through the cracks. They don't know how to go through the process. (DOJ representative 5)*

This DOJ representative (5) confirmed that the man would have served the jail sentence as his disability was not noticed and it was too late to reverse the process. She suggested that the man was unlikely to have engaged with a legal representative and 'probably just agreed with whatever the magistrate said' because 'at the end of the day they just want to go home and get out of there'. An even more disturbing issue is the lack of a right to appeal such an order. The comments of one of the legal representatives reinforced this perspective:

> *There shouldn't really be decisions out there that aren't appealable, especially when you're talking about infringements and the fact that there are these people with special circumstances who at every other stage of the system are given consideration except for that stage, and it just seems illogical that once you get to this very end point you can't have your circumstances taken into account as you would have at any other stage of the system. (Legal representative 13)*

As noted earlier in this report, at the time of writing, the lack of appeal rights from IIL orders under s160 of the *Infringements Act 2006* (Vic) is under review.

4.5 Proportionality

As mentioned previously, respect for the infringements system may be undermined by fine amounts that are disproportionate to the seriousness of the offence (Fox et al., 2003b). Several clients in our study made comments related to the disproportionality of public transport fines. Their comments included:

> *Tickets are like $2.80 and the fines … go up to $180[11] for a $2.80 ticket. Common sense would be to buy a ticket and if I had the money I'd buy a ticket but it's very unjust the fine. (Client 25)*

> *I think they're a bit too much sometimes -$180 I think it is – why for a $2.80 ticket? I don't understand that. (Client 24)*

A financial counsellor's comments reinforce these clients' concerns:

> *The fines, for instance, the penalties in public transport for having a concession pass but not carrying it with you while having a valid ticket is a larger fine than if you were speeding up to 10 km over the speed limit and that's just crazy. That's a great example of an inequitable fine. (Financial counsellor 8)*

As previously discussed, being drunk in a public place incurs a $563 infringement penalty.[12] Several legal representatives, financial counsellors, local government representatives and DOJ representatives reported that a person would never be as heavily fined in court. A local government representative said: 'That's a lot of money and if it was $30 or $40 it might be more reflective of the offence' (local government representative 1). Similarly, a DOJ representative observed:

> *I think sometimes the amounts that are applicable, the infringement penalties that are applied, I know they're supposed to act as a deterrent but gee whiz when you get a drunk, for example, [who] gets an infringement penalty just under $500, wow, you know that's … most people that come to court for speeding offences won't get an initial fine of $500. It's out of kilter with what the penalty would be for a lot more serious offences. And also it encourages people to challenge. (DOJ representative 11)*

While this fine is already excessive, those who commit this 'offence' also often spend time detained in the police cells, effectively equating to double punishment – a point which several concerned legal representatives highlighted. They spoke about the procedure that used to be in place prior to this behaviour being classified as an infringeable offence. The person would be taken to the police cells to sober up and handed a charge and summons on the way out. The police would usually tell the 'offender' not to bother turning up to court because the matter would be dealt with ex parte, and would either be struck out (withdrawn) or proven and dismissed without conviction, as the person had already received his or her punishment by being held in custody. However, now people still

[11] Since this interview was conducted this fine amount has increased to $207 as a result of a recent rise in the penalty unit amount.

[12] At the time of the interviews (2011) the fine was $489, but at the time of writing (October 2012) it has been increased to $563.

spend time in the cells but are also handed an infringement notice on the way out. On this point the comments from legal representatives included:

> *Drunk in a public place also worries me in the sense that often the person has been taken and detained at the time anyway. So they've been in jail overnight, or whatever it is, so there's an issue with this double punishment and I think that's definitely a problem … I mean every client I've had who's been drunk in a public place has spent some time in jail and then they get an infringement when they leave. (Legal representative 8)*

> *I've got clients who have a significant alcohol problem getting chucked in the cells for four hours and then getting a $489 fine and they are getting two a week and they are getting, within a short period of time, $10,000 worth of police fines. (Legal representative 2)*

> *We've a lot of clients who are alcoholics and are homeless, so they're continuously getting fines for being drunk in public, which is almost a $500 fine … with the majority of them you get four hours in the lock-up as well for your own safety … so it's double punishment. (Legal representative 19)*

Inability to pay and income-based fines

As mentioned previously, a vast body of research has found that fixed-rate infringement penalties disproportionately affect the financially disadvantaged (see, for example, Galtos & College, 2006; Hamilton, 2004; Sullivan, 2010-11; Wilson, 2001). Acknowledging this, many legal representatives, financial counsellors and clients who participated in our study believed that fines should be proportionate to income. One legal representative remarked:

> *The basic problem is that it's not a particularly just system because the usual notion of a just system is that you'll vary the penalty according to the circumstances of the offender so that you don't give rich people the same fines as non-rich people. (Legal representative 3)*

Financial counsellors suggested:

> *If there was any possible way of means testing those then people would be able to address the issue within a 28-day period. (Financial counsellor 9)*

> *There should be an incentive for people on concession cards or healthcare cards to be able to apply to get a straight up straight away concession on it … so straight away there's an incentive to have contact. (Financial counsellor 1)*

Furthermore, this incentive to make contact and expiate the fine at an early stage would have the effect of reducing enforcement costs. One financial counsellor highlighted the fact that other organisations, such as gas and fuel companies and VicRoads, offer concession rates for people on low incomes. She stated:

When you get your VicRoads notice, it's got this is your registration cost, concession this amount, so it could have that and then when you go to pay it [the fine] you show your concession card and you get a cheaper rate. (Financial counsellor 3)

Many clients suggested that they would be much more likely to pay their fines if the fines were proportionate to their income. Their comments included:

They really don't understand that $130 is a lot for somebody that's not earning a lot of money. Even $20 is a lot of money. (Client 32)

When it's not achievable that's when you push it aside and not deal with it. (Client 31)

I think if people are on Centrelink benefits obviously they don't have the same amount of money as everybody else does, so I think there should be concessions on fines for those people … people are willing to pay the fines but they just become so overwhelming when you're talking thousands. (Client 21)

Late fees

The disproportionality of fixed-rate infringement penalties is exacerbated by the excessive amount of fees that are added to the debt for late payment. Indeed, Chapman, Freiberg, Quiggin and Tait (2003:10) suggested that 'a paradox of fine enforcement is that enforcement action may steeply increase the amount required to be paid, which, in turn, may render it more probable that the fine will not be paid'. If a fine is not paid within the allocated time period, a reminder notice is issued and the fine accrues an additional cost of $22.60. If the fine is not expiated at this point, an enforcement order is made and a further $75.20 is added to the original debt. If the recipient still takes no action, a warrant is issued which accrues a further $55.10 (State Government of Victoria, 2012). This effectively means that a fine that started at $200 has the potential to reach close to $350 once late fees are added. On this issue, the legal representatives in our study said:

It's hard sometimes to think it's anything other than a revenue-raising exercise, given the really steep amount of penalties that are added on to each stage. (Legal representative 18)

The amount of fees that they add on at each stage, I mean for a basic fine when you get towards the end point you've effectively doubled the fine for what? Sending out another letter basically. It's a bit ridiculous. (Legal representative 15)

Similarly, a DOJ representative remarked:

The people you're researching with social disadvantage, they're caught up in the system and there's no end. Firstly the fine was so punitive to them that they couldn't afford to pay it [and] the added-on costs make it twice as punitive for them because they can't afford to pay. (DOJ representative 7)

A client encapsulated this issue:

> *I've attempted to pay my fines off a few times, but things happen – you get evicted, or you have a fallout and you've got to move or your car breaks down and it's like following up with the doctor – you don't follow it up and it gets bigger and they add on all these costs when it's just paper sitting there. (Client 17)*

Section 67 of the *Infringements Act 2006* (Vic) does allow for a variation of these costs if there are insufficient grounds to revoke an enforcement order. The infringements registrar may vary these costs by reducing the amount payable to the amount of the original fine. However, financial counsellors reported that it is very difficult to obtain a variation of costs. A legal representative (Legal representative 14) suggested that people who fulfil their payment plan obligations should be acknowledged by having their late fees or costs automatically waived once payment of the original amount is finalised. This would provide an incentive to pay and would also help to convey that late fees are not a revenue-raising tool.

Amnesty fee waiver

The Fines Payment Incentive Program (a fee waiver program) ran from 1 February to 19 March 2010. It allowed people to have the majority of their fees waived by paying the balance of the initial fine in full or by agreeing to pay via an instalment plan managed by the Infringements Court. The DOJ sent approximately 523,000 letters to those with outstanding infringement warrants notifying them of the waiver. By 20 June 2010, over $25.5 million in cash payments were made and a further $87.8 million was allocated for payment under instalment plans (Victorian Attorney-General, 2009-10:7). However, several clients reported that they were unaware of the fee waiver amnesty. Indeed, one financial counsellor expressed her frustration at not being informed of the program. She argued that it was crucial that she be informed of this in order to alert her clients, especially since such a short window of opportunity to pay was provided under the scheme. She said:

> *That last one just came out of the blue with no warning to us – we were so annoyed and we told them so. They were very apologetic about not advising us of this up and coming fee waiver because that's a lot of work for us too. (Financial counsellor 3)*

However, a DOJ representative said the fee waiver program was unsuccessful because several people signed up for payment plans that they could not fulfil. He observed:

> *Now we're chasing people who have defaulted on the fine default so all the fees come back on. So now they owe more money than when they signed up. (DOJ representative 3)*

Another DOJ representative suggested that within approximately six months of the amnesty finishing 'a considerable proportion of it would have gone into default' (DOJ representative 6). And in the event of default all of the costs (or late fees) that were waived were reissued.

Disproportionate impacts of non-payment – criminal record and stigmatisation

The acquisition of a criminal record represents a further consequence of failure to pay an infringement penalty that disproportionately affects recipients according to income. However, in addition to acquiring a criminal record, fine defaulters in some Australian jurisdictions are subjected

to another detrimental method of stigmatisation. Tasmanian fine defaulters who do not settle their debt after receiving an enforcement order have their details published on the publicly accessible Monetary Penalties Enforcement Service website (s 65 (1*) Monetary Penalties Enforcement Act 2005*). These published details include the person's name, address, driver's licence number and details of the penalty (Tasmania Department of Justice, 2012). Similarly, WA Attorney-General Christian Porter reportedly recently announced that people in WA who owe in excess of $2000 in infringement penalties would also be 'named and shamed'. Their names and addresses will be published on a government website, where these details will remain until their outstanding bill falls below the $2000 threshold (Banks, 2012). While this stigmatising sanction has not been applied in Victoria, a recent *Herald Sun* article cited former Victorian premier Jeff Kennett reportedly suggesting that it should be (Harris, Dunn, & White, 2012:3). Importantly, shaming is unlikely to promote rehabilitation and deterrence among offenders and may limit their ability to secure credit, employment and accommodation.

The Victorian Attorney-General's guidelines to the *Infringements Act 2006* (Vic) state that infringement notices are issued 'to address the effect of minor law breaking with minimum recourse to the machinery of the formal criminal justice system and, as a result, often without the stigma associated with criminal justice processes, including that of having a criminal conviction' (2006:1). Section 33(1) (b) of the *Infringements Act 2006* (Vic) specifically states that 'no conviction is to be taken to have been recorded against the person for the offence' where an infringement notice is issued. However, the FCLC argued that the treatment of criminal records discriminates against marginalised groups who do not have the funds to pay their infringement penalty (2011). When a fine recipient in Victoria pays an infringement notice penalty, the offence is not disclosed on a criminal record check (Victoria Police, 2012:1). However, fine recipients who elect to challenge the matter in court risk the possibility of acquiring a criminal record if there is a finding of guilt (O'Malley, 2010). Police criminal record checks include a description of any charge found proven in court as well as unpaid infringement notices that proceed to court (North Melbourne Legal Service, 2009). This applies even if the court has ordered that the matter be recorded 'without conviction', as the finding of guilt remains. This is pertinent for those who wish to appear in the Special Circumstances List because pleading guilty to the alleged infringement is an eligibility requirement.

People who are already marginalised or disadvantaged are more susceptible to the stigmatisation that generally attaches to a criminal record. This stigmatisation may be explained by reference to the labelling perspective of offending, which helps to illuminate society's reaction to deviance. 'Primary deviance' refers to an initial stage of undetected offending, while 'secondary deviance' describes the increased tendency to offend that may result from the detection of the offending, the application of the label of deviant, and the recipient's subsequent internalisation of this label. Hence, the labelling perspective postulates that the stigmatisation and disadvantage resulting from the process of being criminalised may in fact exacerbate deviance (Lemert, 1951; Maruna, LeBel, Mitchell, & Naples, 2004). The acquisition of a criminal record may also lead to a variety of negative repercussions such as an inability to obtain credit, employment or stable housing.

Legal representatives who participated in our study also voiced their concerns about this, with one observing:

The advantage of not having a criminal record is great for people who are middle class and are able to pay these fines; it's a class issue.

In special circumstances there is a court record, so that attaches a criminal record even if it's a prove and dismiss because anything that goes to an open court attaches a record. (Legal representative 21)

A DOJ representative also commented:

Disorderly conduct and things like that, you know, that obviously doesn't look good because obviously the problem with those … higher level type offences is that in 10 years' time if an employer's looking back and does a background check like a lot of employers do these days, they're entitled to think that it's a lot more sinister and a lot more serious than what it may be. (DOJ representative 11)

4.6 The deterrent effect of fines and committing crime to pay the fine

Infringement notices purportedly 'seek to change behaviour and act as a deterrent' (Victorian Attorney-General, 2010-11:3). However, analyses of international and local jurisdictions have raised doubts over the persuasive power of infringement notices to exact behavioural change. In 2006, the New Zealand Ministry of Justice (2006) reported that the increase in the number of infringement notices issued over the previous decade led to concerns that the system does not alter behaviour or encourage compliance. Indeed, this form of punishment might not specifically impact upon the offender, as anyone may pay the fine (O'Malley, 2011). This lack of direct punishment means that the potential of a fine to change offending behaviour is often limited, particularly for those at both extremes of the socioeconomic spectrum. Importantly, the Victorian Government's recent announcement that infringement penalties will rise by 15 per cent in order to return the state budget to surplus could lead to assumptions that behaviour change is not the main priority driving the infringements system (Gardiner, 2012:1).

For those suffering from the combined effect of a mental impairment and social disadvantage, traditional criminal justice system processes are often not the most effective in providing a rehabilitative or deterrent effect, as they do not deal with the underlying causes of the offending behaviour (New South Wales Law Reform Commission, 2010b). As one client in our study noted:

They give me fine after fine after fine and once I got the first five it was like you're wasting your time … a fine isn't going to stop the behaviour. (Client 25)

Furthermore, there is evidence to suggest that imposing fines on impecunious people may discourage deterrence from crime, as they may be encouraged to commit more serious offences to pay the fines (Walsh, 2005) or to obtain basic necessities (Harris, Evans, & Beckett, 2010). There is also evidence indicating that disadvantaged people may incur fines while attempting to expiate them. Midgley (2005) found that merely getting to court was a challenge for those who did not have the money to purchase a ticket. One of her study participants described being fined for travelling on

a tram without a valid ticket while on his way to court to have his fines matters heard. This problem was also evident in our research. A DOJ representative (10) said it was common for people to accrue more fines in the process of trying to manage them. Some people drive their unregistered vehicle to court hearings and others catch the train without a ticket to meet their community work or fine payment obligations. Furthermore, a legal representative (2) and a welfare worker (1) both told of a sex worker client who was forced to literally 'work her ass off' over one weekend to pay the $3000 that was required to keep her out of prison for unpaid infringement notices.

At the other end of the socioeconomic spectrum, fines may have minimal or no deterrent effect on affluent offenders if penalty amounts are disproportionately low in comparison to their income (Mahoney & Thornton, 1988). As Fox noted, the fine 'becomes seen as an inconvenience, or a cost of doing business, rather than a meaningful deterrent' (Fox, 1995b:289). A local government representative in our study concurred, stating:

> *I was only looking at a case the other day with a woman who's had 50 [parking] fines in the last 12 months and only three are outstanding – she's paid all of the others. She obviously just sees it as a cost of business or something and just goes ahead anyway. (Local government representative 3)*

Another local government representative said:

> *The question is, I suppose, 'Is a financial penalty effective these days?' For people that have plenty of resources … a good example of how effective it is – A developer will look at a site and say there's 40 trees on that site, he'll look at the infringements, it's $2000 a fine, he's doing a $15 million development – does his maths – $80,000, here's your cheque. He's happy to pay a $2000 fine for each one because it's economically viable. But certainly there's a class difference between those that are able and those that can't. And some developers will just look at it and just laugh and say, 'It's a $2000 fine, who do I make it [the cheque] out to?' (Local government representative 1)*

Financial debt also poses a significant barrier to the reintegration of newly released prisoners into society. A NSW study (Martire, Sunjic, Topp, & Indig, 2011) examined the situations of 156 prisoners, all of whom had incurred significant fine debts prior to their incarceration. The participants were interviewed to ascertain the extent of their debts and to gauge the impact that this had on them. It was found that the stress resulting from financial debt was associated with negative physical and mental health outcomes, in addition to limiting their ability to find stable housing and accommodation. The average debt of 95 per cent of the participants was $8854 and more than two-thirds suggested that having this debt was 'very or quite stressful' (Martire et al., 2011:258). These debts were a result of unpaid fines that were most often incurred for using public transport without a valid ticket and various driving and licence-related offences (Martire et al., 2011:258). The NSW LRC (2012) claimed that this problem could be resolved by allowing prisoners who meet the criteria for a WDO to expiate their debt by classifying the work they perform in prison as an eligible WDO activity. This would also provide a more viable option for those serving short sentences, as the current option of serving extra time to pay the fine is usually not a preferred option for this group. A DOJ representative in our study espoused this view:

> *Let's say a person who's in jail for three months for whatever offence, some of them have up to six months' worth of fines outstanding that would have to get tacked onto their sentence. So the three-monther will say no – the lifer will say I don't care. (DOJ representative 7)*

Similarly, a financial counsellor said:

> *For short-term offenders I think they're frightened to talk about it because they don't want to serve any extra time. (Financial counsellor 1)*

Moreover, lengthening one's prison sentence to expiate fines is also counterproductive for the DOJ since it costs more to imprison a person for a day than what will be recovered in fines. In the period 2010–11, the real net operating expenditure per prisoner per day in Victoria was $257.35 (Productivity Commission, 2012:1 of table 8A.9). Further, Victoria's average daily prison population increased from 4044 people in 2006–07 to 4586 people in 2010–11 (Productivity Commission, 2012:1, Table 8A.33). Indeed, a recent article in *The Age* newspaper reported that 'Victorians face a multibillion-dollar bill for a "critical" prison expansion program' to ease the pressure on 'jails that have been operating at 105 per cent of the capacity for which they were designed' (Millar, 2011:1).

4.7 Denial, excessive paperwork and insufficient knowledge of the infringements system

People who are burdened with insurmountable debts often experience a significant amount of anxiety and depression, resulting in a state of denial, which in turn leads to the accrual of late fees and escalating debts. Several clients in our study told of how they experienced this vicious cycle once the fines reached a certain amount as they realised that the problem was beyond resolve. Their comments included:

> *I became overwhelmed so I never opened them … I can't remember ever opening one letter and I received many. (Client 15)*

> *When I got the first few I thought about [paying] it; once it exceeded $1000 or $2000 it was just like, um, pointless. (Client 25)*

This avoidance of facing the full consequences of non-payment has also been noted in interstate and international research on infringements. The NSW LRC found that, 'for some people, penalty notice debt accrues to such a level that they feel that they have no hope of ever being able to repay it. The deterrent effect of fines has no effect for these people' (2012:16). Similarly, the New Zealand Ministry of Justice found that the more infringements young people received, the less likely they were to pay. Once the total debt exceeded $2000 they believed that they did not have the ability to pay and thus adopted a 'head in the sand' attitude (Litmus Limited, 2005:8). A DOJ representative in our study attested to this, stating that people have a 'critical mass' or a point at which they can no longer afford to pay. She said, 'for some people that's $1000; for some people it might be $5000' (DOJ representative 6).

Several legal representatives and financial counsellors mentioned that when their clients visit them they are often carrying bags of infringements correspondence that they have been too anxious to open. Indeed, one client said that she was overwhelmed to the point that she has become scared of mail and now has a 'phobia about receiving any' (client 15). Another client said that at one point in time she was receiving approximately 30 letters per day (client 8). DOJ representatives similarly acknowledged the excessive amount of correspondence that clients receive in relation to their unpaid infringements. One said:

> *There are some people with depression or whatever, they just can't deal with the mail because once one comes you'll find that there are four or five every day. (DOJ representative 10)*

Several financial counsellors and legal representatives said clients come to see them in a highly anxious state as they think that every piece of mail corresponds to a separate fine, when in reality they were receiving multiple pieces of mail for the one fine. One legal representative remarked:

> *I quite often get clients coming in with a pile of mail this high, going, 'Oh my God! Oh my God!' And you say, 'Look, calm down, this is all related to just a few fines'. It's just that they continue to send things out … I have clients who have not opened their mail in two years. I have clients who have missed court dates where they've got a summons from, say, corrections or whatever, because it's caught up in all this other stuff and they're refusing to open it, because they are so panicked about their mail … I mean the amount of times I've gone to somewhere like Windana and said to them, 'Look, we can deal with this', and they've gone, 'Oh thank God! I just kept on drinking so I didn't think about it until I'm in here'. (Legal representative 2)*

Fox et al. suggested that 'underestimating the risks involved, or ignorance of the consequences, may be a significant factor underlying the decision to ignore an infringement notice' (2003b:48). Furthermore, research on infringements and compliance has found that the public are often unaware of the options available to them. Fox and his colleagues randomly surveyed 2500 Victorians and found that two-thirds were unaware of the option to elect to have the matter heard in court (2003a). Similarly, Midgley (2005) found that many people who were experiencing homelessness did not understand the complex correspondence that they received in relation to their fines and many were unaware of their legal options with regard to disputing them. Research has also found that people with cognitive disabilities are often unaware of their legal rights and the options available to them. They report 'widespread confusion' about their rights and 'a lack of knowledge about available resources and supports' (Gray et al., 2009:6). In NSW, Spiers Williams and Gilbert found that many Indigenous people have insufficient knowledge regarding the procedure required to contest a fine or obtain legal advice. Furthermore, in a six-year period only seven Indigenous people in NSW exercised this right of contesting the fine in court (2011:2). Indeed, the FCLC (2007) claimed that infringement notices should contain more clear and specific information about obtaining legal advice.

Similarly, several participants in our study suggested that many clients simply do not know what steps to take after receiving an infringement notice, due to their limited English skills or lack of knowledge about the infringements system. Many clients reported that they were unaware of the

options for paying off their fine by instalments or challenging the matter in court; and the majority were also unaware of special circumstances provisions, prior to coming into contact with a financial counsellor, lawyer or sheriff. DOJ representatives also highlighted the public's lack of education as a primary weakness of the infringements system. Their comments included:

> *We've had situations where a person in the past has applied in the normal process, so the exceptional, not knowing they can go through specials [circumstances]. So even though we feel … we've done well in educating out there and informing the community on specials [circumstances], I still feel that there are isolated groups that are unclear on what they need to do. (DOJ representative 1)*

> *Where I see the difficulty with this whole process is [the] education of people ... The number of times where people come before the court when everything's snowballed, where I've said to them, 'Did you know you could write to the council and explain that?' and they say, 'No I didn't'. (DOJ representative 2)*

Clients also mentioned how correspondence comes from a variety of sources such as different councils, Victoria Police and the Infringements Court. Hence, they were unsure of who to contact to resolve their issues. On this point, one DOJ representative said:

> *I'm sure that if it was on billboards or in the paper every day about how to pay your fines, or do you have an outstanding warrant; it would be top of mind. (DOJ representative 8)*

A client similarly described this confusion and lack of understanding:

> *I suffer with anxiety and there's enough to look out for on the road now let alone having to worry how much you have to pay to go on a bit of road. I don't understand E-Tag; they haven't explained it enough. I didn't know that you had to pay unless you went a real long way – I thought that's what we paid in our taxes. (Client 8)*

The Sheriff's Office has been addressing this education deficit on a small scale through participation in ongoing community education campaigns. This has occurred on an informal basis, although a DOJ representative mentioned that the Sheriff's Office is in the process of putting together three separate standardised presentation packages: one for public awareness, one for professional groups and one for enforcement agencies (DOJ representative 6). When discussing the current presentation procedure another DOJ representative said:

> *They task us with some community engagement but it's just minute. You're targeting minority groups and immigrants and people that might not know the system but they need to be on the TV and spending a substantial amount regularly. (DOJ representative 3)*

4.8 Staff issues related to the inadequate use of discretion in reviewing and enforcing infringement notices

Throughout Victoria, over 120 enforcement agencies are authorised under the *Infringements Act 2006* (Vic) to issue infringement notices. As mentioned previously, the procedures involved with issuing, reviewing and enforcing infringements may have a significant impact on compliance. People are more likely to respect the system if it is perceived as fair and legitimate. Therefore, it is prudent to consider the practices of the main agencies who manage these processes.

One of the aims of the *Infringements Act 2006* (Vic) is to make the system fairer and an important aspect of this is including the right to request that the agency conduct an internal review of the fine. In 2009, the Victorian Auditor-General released an audit document detailing the withdrawal of infringement notices issued by four councils and Victoria Police in the period 2006–08. These five agencies issued 64 per cent of all infringement notices issued in 2007–08. The audit revealed several issues of concern, including:

- 'Inconsistent decision making within and across agencies' (2009:3).
- 'Agency guidelines are being over-ridden by internal review staff without justification and with incorrect and inconsistent results for appellants' (2009:33).
- 'None of the five agencies reviewed had guidelines for assessing appeals by offenders with special circumstances, as required by the Attorney-General's guidelines' (2009:38).

The Auditor-General recommended that staff involved in processing internal reviews should be subject to annual reviews of their 'competencies and capabilities', and also recommended the implementation of training strategies to 'address knowledge gaps' among staff (2009:49). A subsequent review by the Public Estimates and Accounts Committee found that three of the four councils confirmed that staff who process internal reviews are 'subject to annual assessments and reviews' and all four councils advised that they 'have training strategies in place'. Victoria Police did not have a 'specific targeted training strategy' but suggested that the Traffic Camera Office 'will be considering training options' (2012:32). In response, the Committee stated:

> *The Committee acknowledges the responses provided by the five agencies. However, this information was lacking in detail and consequently, the Committee is not in a position to determine the effectiveness of performance reviews or the adequacy of staff training in these agencies. Given the deficiencies in skills and competencies of internal review staff which were identified by the Auditor-General, the Committee confirms its support for the Auditor-General's recommendation and strongly advises all enforcement agencies to consider the audit recommendation to improve their internal review processes. (2012:32)*

Local governments

Local government internal review processes have attracted negative media attention in recent years. However, our interview participants had differing opinions about the fairness of these procedures. A *Herald Sun* article highlighted the inadequate and unfair internal review processes at Melbourne City Council with a report of an 80-year-old man who was issued with a PIN after a gust of wind blew his parking ticket off the dashboard and onto the floor of his car, out of sight of the parking inspector. The man subsequently sent the parking ticket to the council in the hope that they would withdraw the fine. However, the council chose to let the matter proceed to the Magistrates' Court where the magistrate threw the case out and ordered the council to pay the man $40 for photocopying fees. The man was shocked when the council prosecutor requested three months to pay this amount (Masanauskas, 2011:11).

A legal representative (5) in our study talked about one of his experiences with Melbourne City Council when applying for an internal review for a parking ticket issued to his client who had Crohn's disease.[13] The client sent a doctor's letter to the council explaining that he could not control his bowel movements and was forced to park his car so that he could run to the toilet. Despite the doctor's letter specifically stating this, the council allegedly told the client that he has had the disease for a period of time so he should be able to control his bowel movements and, based on this, the matter would be referred to court. The other legal representatives had mixed views with regard to local governments' internal review processes. Their comments ranged from: 'generally they don't get back to you' (legal representative 19), to 'the internal review works with local government' (legal representative 17), and that local councils were generally okay to deal with, and 'will withdraw the fine based on your special circumstances applications' (legal representative 15).

The interviews with local government representatives revealed that three councils would withdraw fines at the internal review stage if there was adequate evidence of special circumstances. One representative also mentioned that his council would withdraw infringements if the person provided evidence of financial hardship, such as a Centrelink card or bank statement. This did not happen on all occasions, but if the council thought it was warranted they would withdraw the notice and replace it with an official warning. He said:

> *We do get some that come through for special circumstances claims as in hardship, just can't put food on the table and that sort of thing. We take all those sort of things into consideration and I must say that if we can get some sort of proof that that is the case we generally withdraw the infringement. (Local government representative 2)*

However, the following case study highlights the hardship that can result when a council refuses to withdraw a fine.

Pete's Story (Client 32):

[13] A symptom of Crohn's disease is difficulty controlling one's bowel movements.

'Pete' resigned from his job after being raped and having a mental breakdown. He has suffered from severe depression over the last three to five years and also has a physical disability that impedes his ability to walk. He is on the disability support pension and is looking for a full-time job. This, however, has proved to be very difficult. He received his first fine for parking in a clearway zone. He said: *'With the parking fine, the sign that I actually looked at, it turned into a clearway zone after a certain time and because I'm disabled I got back a little bit later'*. Pete had to pay this fine in instalments as the council would not withdraw it. He received another fine for $130 for parking for five minutes in a no standing zone and had to gradually pay this also. He was trying to repay his mortgage and 90 per cent of his income was spent on this. He was worried that he would lose his house and have nowhere to go. He has had to minimise his food intake to pay the fines. He has also fallen behind in his rate payments and power bills as he does not like asking people for help. He said, *'In the end I was scared to leave my house; I was scared to go anywhere because everything that I was doing seemed to be wrong'*. Pete no longer ventures very far from home.

All local governments pay a significant lodgement fee to the Infringements Court for each infringement notice that is pursued. Five local government representatives (1, 2, 3, 5 and 6) explained how they often lose money when matters are heard in the Special Circumstances List, as in addition to losing the revenue from the fine, they also lose the lodgement fees that they have paid to the Infringements Court. As local government representative 2 noted, 'we've paid money and we'll never get that back'. As mentioned previously, another problematic aspect of local council processes is the fact that certain council prosecutors often fail to attend Special Circumstances List hearings, resulting in their matters being struck out (withdrawn). The researchers noticed this during the court observation phase of the study, and it was confirmed by the legal representatives interviewed. Presumably, this absence may be due to the costs that local governments would potentially incur for sending a prosecutor to court, combined with the knowledge that no money will be forthcoming from the special circumstances hearing. One legal representative commented:

> *Often councils just don't rock up to court. So again it's just sort of a lost opportunity and cost for the lawyers working on those matters because they could be using their time for other pro bono matters. (Legal representative 8)*

Importantly, this also causes a significant amount of stress for the client who has been forced to engage with the lengthy special circumstances process and has taken the time to attend court.

Department of Transport

The legal representatives in our research mentioned that DOT's internal review section was generally quite good. However, they believed that their issuing officers require more training in special circumstances and about when it is appropriate to issue a warning in lieu of a fine. These participants believed that these officers, at first contact with a client, did not make use of their ability to issue a warning often enough. Indeed, one legal representative said:

> *I have never had a client in the first instance issued with an official warning. What I've had is that once you write to them they'll withdraw the infringement and then issue an official warning but they never use that system to just issue an official warning. So*

unless you've got a client who is together enough to advocate for themselves or have someone to advocate for them, you don't get that official warning issued. (Legal representative 2)

Representatives from the DOT cited three instances where official warnings are issued instead of an infringement: where the person is under 15 years of age and has no prior offences, in extraordinary circumstances such as when the person is a victim of bushfire, and due to particular unforeseeable events such as when 'poor publicity around a new ticketing initiative may lead to confusion in the early days'. DOT representatives said fines for travelling without evidence of a concession were usually withdrawn and replaced with an official warning if people subsequently provided evidence of their concession entitlement. However, this was only the case if they were first-time offenders. Presumably this would be ascertained by cross-checking the DOT's database to see whether a report of non-compliance had been previously made against the person. DOT representatives told of how they received 34,917 requests for internal review in 2009, 17,548 of which resulted in the notice being withdrawn and replaced by an official warning. There were 25,538 internal review requests in 2010 and 11,571 of these resulted in the notices being replaced by official warnings. The most common reason for withdrawal was that people were subsequently able to provide evidence of their entitlement to travel on a concession fare.

Victoria Police

The police are the official gatekeepers of the criminal justice system and their intervention often determines whether or not an individual, event or action will be criminalised. Indeed, as White and Perrone note, 'the criminalisation process is contingent upon how discretion is used throughout the criminal justice system' (2010:7). However, several studies have revealed that police officers are not adequately educated and trained to recognise or deal with those suffering from a mental illness or intellectual disability. McGillvray and Waterman interviewed several lawyers regarding offenders with an intellectual disability and 96.9 per cent of respondents believed that police require further education in order to understand these offenders (2003:249). Similarly, a report by the Mental Health Legal Centre (MHLC) (2010) found that police often experienced difficulty recognising when a person's behaviour is caused by a mental illness, unless their behaviour is overtly psychotic. Some officers also stated that they were reluctant to withdraw charges at the time of the offence on the grounds of mental impairment and preferred to lay charges and let the matter proceed to court where a magistrate could consider the cause of the offending behaviour. However, this reluctance to exercise discretion at the time of the offence is inconsistent with the aim of diverting people with a mental illness away from the criminal justice system.

The inadequate use of police discretion has also been found in other Australian jurisdictions. A 2010 study of the use of infringement notices for public nuisance offences in Queensland reported police survey results which demonstrated a need for more extensive officer training and guidance with respect to diversion and discretion when issuing infringements. The study also found that police often experienced difficulty in identifying those who were eligible for diversion (for example, Indigenous people, people who are mentally ill or people experiencing homelessness) (Mazerolle et al., 2010:135). Similarly, NSW research found that many Authorised Officers were not trained to identify 'mental illness, cognitive impairment and other vulnerabilities, or may not have clear and

comprehensive guidelines to assist in the exercise of their discretion' (New South Wales Law Reform Commission, 2010a:131).

A legal representative (17) in our study suggested that police discretion with regard to cautioning appears to have 'completely come to an end' in the area of infringements due to the ease of issuing an infringement notice. However, a DOJ representative (8) mentioned that Victoria Police will withdraw a minor speeding fine if the recipient has not previously received one within a two-year period. However, in order to take advantage of this one must go to the police website, as this information is not advertised. The lack of public knowledge regarding this concession was illustrated in *The Age* newspaper article headlined 'Drivers in the know avoid speeding fines – most motorists unaware of review' (Sexton, 2010:3). The article reported that in 2008 and 2009, 53.9 per cent of drivers who applied for a caution instead of a fine were successful. However, the small number of applications 'suggests that most motorists have no idea they can beat the fine'. Indeed, Shadow Minister for Crime Prevention Andrew McIntosh was quoted as saying, 'the public's ignorance meant they effectively had fewer rights than police' (Sexton, 2010:3). The Victoria Police website also states that guidelines have recently been implemented regarding 'the enforcement of multiple speed camera infringements issued to drivers detected at low speeds within certain freeway/highway zones'.[14] This allows the police the discretion to withdraw subsequent infringements if more than one has been issued within a 24-hour period, or when multiple infringements have been issued 'over a period of several days, prior to the driver becoming aware of the first issued infringement'. These concessions do not apply to mobile speed camera infringements or fixed speed/red light cameras at intersections. Furthermore, they are only available if the driver is travelling at less than 10 km over the speed limit (Victoria Police, 2011:1).

As mentioned previously, the use of a warning in lieu of issuing an infringement notice may encourage people to be more compliant with the law in the future (New Zealand Ministry of Justice, 2006). This perspective was reinforced by some clients' comments in our study. One client told of how it was extremely rare to receive a warning from the police. However, he has received a couple of warnings for drinking in public and felt that this was actually more effective at changing his behaviour than an infringement notice. He said:

> *If you get a warning you think well, oh yeah that's fair enough and you don't, you don't drink there again. I think that's the best approach.*

He went on to describe how he often had to steal food from shops to survive when he was living on the street, yet:

> *Whenever a store warned me, I was sweet, I wouldn't go back there and if I do I'd always pay in cash and always do the right thing. If I got caught [and fined] by the police I didn't care – I'd wait a month, wear different clothes, maybe put a hat on, go back to the same store and do what I did before. (Client 21)*

[14] Victoria Police website: http://www.police.vic.gov.au/content.asp?Document_ID=10369.

Therefore, as this comment suggests, it is likely that exercising discretion at the point of issuing may have a greater deterrent effect than issuing an infringement notice, as compliance may be more likely to transpire if law enforcement procedures are perceived to be fair and reasonable (see, Fox et al., 2003a).

All 23 legal representatives and the majority of the financial counsellors who participated in our study expressed concern about Victoria Police's internal review system**.** Their concern was such that legal representatives often advised their special circumstances eligible clients to wait until the matter had progressed to the enforcement stage (risking added costs and enforcement action) so that they could be assured of appearing in the Special Circumstances List. This was because Victoria Police rarely withdraws notices on internal review and always refers the matter to the Magistrates' Court, where the client does not receive the benefits of the Special Circumstances List. Legal representatives reported having spoken to Victoria Police and being told that it was their 'policy' to refer special circumstances matters to court, despite the stipulation in the Attorney-General's guidelines that agencies do have the discretion to withdraw a fine if there is evidence of special circumstances. On this issue, one legal representative said:

> *I've been wanting to look into this for a while but I'm not sure that what they're actually doing is legal from an administrative law point of view simply because if the Act gives them discretion to consider these particular grounds, what they're doing is they're basically putting in a policy which is taking away the discretion that the legislation gives them … One of the standard form letters says something like we accept that special circumstances apply and therefore we are sending it to court, which is a bit of a strange way of phrasing it because if you accept that special circumstances apply then why don't you withdraw it? (Legal representative 8)*

Indeed, in 2009, the Victorian Auditor-General reported that 'the high level of special circumstances appeals denied by Victoria Police indicates that it is not interpreting the legislation and the Attorney-General's 2006 Guidelines correctly' (2009:44). It was recommended that Victoria Police should, in consultation with the ISOU, 'clarify the legislative requirements for appeals claiming special circumstances and whether its practices comply, or further policy guidance is needed' (2009:45). A subsequent review by the Public Accounts and Estimates Committee identified that the majority of Victoria Police internal reviews relate to driving offences, and hence the organisation needs to consider safety issues when exercising discretion. The DOJ's response to this review was that 'all parties now have a better understanding of the need to balance consideration of special circumstances with public safety concerns' (2012:30). However, our findings suggest that Victoria Police's internal review procedures are not yet adequate.

The Victorian Infringements Court

Despite the increasing number of behaviour types that can be dealt with by way of an infringement notice, there are only two registrars and one team leader at the Infringements Court who deal with special circumstances matters. Several legal representatives and financial counsellors spoke about the difficulty of being able to make contact with Infringements Court staff and the inconsistencies in the advice they had received. They described how they often receive differing advice from different people at the court, and that staff are 'sometimes more of a hindrance than a help' (legal

representative 10). Often this advice will be wrong and potentially detrimental to the welfare of their clients. In addition to this common concern, there were several other complaints raised by our research participants, as follows:

- An infringement registrar told one legal representative that his client would not need to attend the special circumstances hearing. Yet on the day of the hearing, the presiding judicial registrar was quite annoyed at the client's absence. Hence, this incorrect advice had the potential to lead to a negative outcome for the client. (Legal representative 10)

- Some infringements registrars have said that it was not possible to forward fines correspondence for clients who were experiencing homelessness to their legal representatives, yet others were happy to do so. (Legal representative 10)

- Infringements registrars would accept one special circumstances application and reject another even though the evidence submitted and the situation was identical in both cases. (Legal representative 8)

- Infringements registrars sometimes demanded medical reports when the special circumstances claim was on the grounds of homelessness. (Financial counsellor 9, legal representatives 2, 19 and 20)

- Infringements registrars would sometimes accept brief medical reports but at other times they would not. (Legal representatives 12 and 20)

- Infringements registrars appeared to be biased against certain medical conditions, such as anxiety, depression and Attention Deficit Hyperactivity Disorder, and did not like granting special circumstances applications for these conditions. (Legal representatives 13 and 19)

A DOJ representative also spoke of infringements registrars 'putting in their personal views' and of the possibility that 'the team leader is suddenly making up their own rules' (DOJ representative 1). She added that she believed the special circumstances registrars required further training. Another DOJ representative told of his frustration at trying to contact the registrars and said it could sometimes take a week before someone would get back to him (DOJ representative 9). A client also voiced his frustration at the difficulty of making contact with Infringements Court staff:

> *I kept sending letters to the Infringements Court but they either don't get back or they just send another fine out. (Client 23)*

Interviews with local government representatives revealed differing views about Infringements Court staff. One representative described how there was always someone on the other end of the phone (local government representative 4), while another representative said that his requests 'go into the never-never, emails are unanswered, telephone calls are not returned'. He added:

> *And it does make it difficult from our side of things because we've got the offender at this side asking questions and we can't answer them because once you go to the Infringements Court there's not much we can do with it. We can't accept payment for it, we can't cancel it – we can't do any of that sort of stuff and then trying to contact them*

and discuss the matter in relation to a customer who's contacted us, makes it very difficult. And sometimes we've just had to let it go because you can only make so many phone calls and send so many emails. (Local government representative 2)

Considering this discussion, it is important to recognise, however, that the very large caseload of each staff member of the Infringements Court would be a significant contributing factor to the problems described above.

The Sheriff's Office

A sheriff is often the first point of face-to-face contact for people who fall into the special circumstances category. Therefore, it is imperative that sheriffs provide correct and constructive advice and that fine recipients perceive these interactions to be fair. Three legal representatives told of their concern that some sheriffs lacked understanding about the special circumstances regime (Legal representative 11, 5 and 2). This was evident in cases where the sheriff would realise that their clients were experiencing homelessness or were mentally unwell, yet would sign them up for a payment plan without informing them of the special circumstances options. Two other legal representatives commented that it was often 'hit and miss' (Legal representative 6), as some sheriffs could be great while others were 'terrible' (Legal representatives 5 and 6). However, many legal representatives thought sheriffs were generally 'very helpful' and that their dealings with sheriffs had been 'very positive'. Indeed, the majority of the clients we spoke with felt that sheriffs were very fair and compassionate towards them and had offered useful advice.

Several financial counsellors told of their appreciation that sheriff's officers take the time to meet with their clients and arrange payment plans before enforcement proceedings escalate. One financial counsellor commented that this interaction helps to dismiss any preconceived notions about the sheriff being a 'scary authority figure'. She said:

They come in uniform and they wear all the gear and they sit in there and they have a cup of coffee and wander around and one of them has a cigarette with some of the guys and it's all very friendly. (Financial counsellor 9)

Another financial counsellor told of the mutual relationship she has with the sheriff. The sheriff refers people to her for financial advice and she refers her clients to the sheriff (Financial counsellor 5).

Civic Compliance

Civic Compliance is an outsourced administrative body that processes fines issued by a variety of agencies in Victoria. The Infringements Court issues enforcement orders and infringement warrants and these are all processed by Civic Compliance (Fines Victoria, 2011). Civic Compliance is often the first point of contact for people who are trying to access information about their fines and payment options. Several interview participants, particularly legal representatives and their clients, expressed concern that Civic Compliance staff were unhelpful, inadequately trained and often provided incorrect advice. This concern was echoed by some of the DOJ representatives. One stated that

clients would try to call Civic Compliance to enquire about the steps they needed to take to expiate their fines and that:

> *Quite often they get off the phone without a clear answer on what they can do and what steps they can take to solve it. (DOJ representative 9)*

This type of scenario is especially frustrating for people who are financially disadvantaged as in addition to wasting their time, they may spend the last of their mobile phone credit on a call that is completely uninformative and often counterproductive. Another DOJ representative encapsulated the frustration that many clients felt in observing:

> *I challenge someone to ring up Civic Compliance, nothing against our outsourced partner they're doing their job, and navigate your way through to press one, press three … then I want to talk about my fine and get told, 'Sorry, I'm not an authorised person, goodbye', and you've just spent 35 minutes on the phone waiting. (DOJ representative 7)*

CityLink

CityLink is a 22-kilometre tollway in Melbourne connecting the Monash, West Gate and Tullamarine freeways. Several legal representatives stated that CityLink does not withdraw fines based on special circumstances applications. One (legal representative 15) suggested that this was because it receives a $40 administration fee for every fine irrespective of whether or not it is proven and dismissed.[15] This applies even if the matter is heard in the Special Circumstances List, meaning that disadvantaged people may be left owing tens of thousands of dollars in outstanding costs to this private corporation, despite the fact that the magistrate has dismissed their fines. The presiding judicial registrar regularly recommends that these costs should not be enforced, yet CityLink has the final say. We were unable to ascertain whether or not these fees are regularly enforced as CityLink chose not to participate in our research. However, anecdotal evidence provided by other participants suggests that CityLink rarely enforces these penalties. Yet it was also revealed that CityLink often does not notify clients as to whether these costs will be enforced until the end of the undertaking, meaning that clients may wait up to 12 months before they know whether or not they will be required to pay this fee. Legal representatives, DOJ representatives and clients also related their concerns with regard to how CityLink handles complaints and queries. One DOJ representative said:

> *If a person's got a complaint with CityLink, saying, 'Look, I've paid this' or 'What's going on?' and they've already put the infringement out to the Infringements Court, they will not deal with that person. (DOJ representative 4)*

Similarly, a client told of her distress when trying to contact CityLink to ask why she had received her fines so late. She told the CityLink employee on the phone that because of this late receipt of the fines she was required to go to court and faced the prospect of jail, to which the employee allegedly replied, 'Just pay it' (Client 7).

[15] Section 76 of the *Melbourne CityLink Act 1995* allows CityLink to charge a $40 fee on each infringement that is proven.

4.9 Technology and payment issues

This section discusses the problems concerning technology and payment matters within the infringements system, with particular regard to the impact on disadvantaged groups. Each of the following issues is discussed, with reference to qualitative data obtained from the interviews:

- an inability to pay fines by instalments in the first instance
- the prevalence of multiple payment plans and the absence of a central payment plan
- inappropriate payment plans
- the multiple identification numbers attached to clients' records.

Inability to pay by instalments in the first instance

It has been suggested that the difficulty of applying for instalment plans is one of the main reasons why people do not pay their infringement notices (Fraser, 2009). Furthermore, the complexity of the system is exacerbated by the number of agencies with differing payment procedures (Grant et al., 2005). Some agencies offer instalment plans, while many others, such as the DOT and several local councils, only offer an extension of time to pay (usually three months). One local government representative in our study told of how he discouraged clients from seeking instalment plans and preferred to offer an extension of time to pay so that they 'don't have to go down this path of weekly or monthly payments and all the difficulties with the court system involved in that' (Local government representative 5). He added that people should 'put their money aside in their own piggybank and then come in and do it in one go'. However, this extension of time does not help those who are experiencing financial hardship, as it is based on the fanciful premise that they would be capable of saving money while living below Henderson's poverty line.[16] Clients voiced concern about this problem, and, one said:

> *If you extend it I'll use all the money for food or shopping or petrol or whatever and then the pension's gone. But if my pension came and I'd given them already $10 a fortnight it's already gone and I don't see it – don't see it, don't know about it – even if they tapped into my account and took out $10. Why not that way? (Client 33)*

Consequently, people who are unable to pay in one lump sum often must wait until the enforcement stage, and risk being subject to late fees and enforcement action, in order to obtain a reasonable instalment plan arrangement. Such accounts were echoed by the majority of clients, financial counsellors and legal representatives who participated in our study.

Multiple payment plans and the absence of a central payment plan

The multitude of agencies involved in the infringement process and their varying payment procedures often resulted in added confusion and stress for disadvantaged clients. Financial

[16] A single person receiving Newstart allowance of $303.10 per week ($240.40 per week plus $59.70 rent assistance) is classified as living below the Henderson poverty line, which is calculated at $459.83 per week (Melbourne Institute of Applied Economic and Social Research, 2012, p. 3).

counsellors told of their concern about clients simultaneously being placed on payment plans (at the infringement stage) and payment orders (at the enforcement stage), and how this effectively negates the benefits of only having to pay a minimum fortnightly amount for those in financial hardship. While one fortnightly $10 payment might be manageable, multiple $10 fortnightly payments are unfeasible for those living below the poverty line. The financial counsellors explained that there was originally meant to be a central payment plan facility set up, but that this was presented to the enforcement agencies as an option and very few agreed to it. As one financial counsellor noted:

> *The point of that central payment plan was that you could pay instalments so if every agency was a member of that central payment plan, people could pay one instalment for all their fines – it made sense. But then they said it's an opt-in system, so only three agencies out of 150 agencies said, 'Yes we'll do it'. (Financial counsellor 8)*

Some of the financial counsellors said they were told that this central payment plan would give clients the option of paying by instalments, irrespective of where the fine originated. However, a 'loophole' resulted in an extension of time to pay being classified as an instalment plan. Others mentioned that obtaining an affordable payment arrangement was becoming 'increasingly difficult' for those experiencing financial hardship, as the minimum payment was $20 a fortnight, except for rare cases where a $10 fortnightly payment was accepted. One financial counsellor said:

> *So that's a major deficiency in the system – a central payment plan enabling people to deal with their fines at the earliest possible stage and just keep adding them in if they get them [fines]. (Financial counsellor 3)*

Inappropriate payment plans

When a client has defaulted on an instalment plan a number of times, or their debt exceeds $10,000, sheriff's officers are not permitted to authorise further plans. However, there are no such limitations at the Infringements Court. Four DOJ representatives expressed concern that the Infringements Court authorised instalment plans that 'set clients up to fail' as they would often end up accruing more debt for not meeting the payments (DOJ representatives 10, 6, 5 and 3). One recounted the case of a client who had $15,000 worth of fines and the Infringements Court required an up-front payment of $7000 in order to authorise an instalment plan. However, the client had to borrow the $7000, leading the representative to presume that the client would more than likely default. This DOJ representative said:

> *If they default and they come back out as warrants every one of those has another $53.60 or something on top of it. So it just gets dearer and dearer and we're chasing money that they haven't got for things that they shouldn't have incurred as additional costs really. (DOJ representative 10)*

She commented that it would have been better for the client to go before a magistrate and try to have the debt reduced to a total of $7000. She went on to suggest that re-adding the warrant fee in the instance of default should be reviewed because it is an administrative fee and 'it just seems silly – it can't possibly be another $53 or whatever to print another warrant'. Another DOJ representative

told of an inappropriate payment arrangement in which a taxi driver who had accrued $150,000 worth of CityLink fines was signed up to a payment plan requiring him to pay $3000 per month (DOJ representative 7). This amount was in excess of his monthly earnings, which set him up to default.

Legal representatives and financial counsellors also expressed concern that clients who are put on payment plans through the Magistrates' Court are not provided with the option to have their payments deducted electronically via the Centrepay facility available at the Infringements Court. This means that they have to travel to the court as many do not have a cheque account or the funds to purchase a money order. This necessity to pay in person also places them at risk of acquiring further fines for travelling on public transport without a ticket or driving while unregistered. As the means to electronically deduct payments is not available, those who were put on plans through the Magistrates' Court are more likely to default. Two clients believed that more people would pay if the Centrepay system was more widely available, as the difficulty of travelling to the Magistrates' Court every fortnight or month presented a significant barrier to paying (Clients 31 and 20).

Multiple identification numbers

Financial counsellors highlighted that clients have multiple reference numbers attached to their records, resulting in confusion for clients and others. Indeed, one financial counsellor described the situation as 'a nightmare' (Financial counsellor 5). Fine recipients often have an infringement number, an infringement court case number, an obligation number, and a debtor ID number. Another financial counsellor said:

> *There's the numbers that a fine starts out at and then it changes its numbers about four times as it moves through the system so it's very confusing to get a true picture of a person's outstanding fines because they incur different numbers. (Financial counsellor 3)*

A DOJ representative concurred that these multiple numbers, which are all '10 digits long', create confusion for both clients and their representatives. He said: 'Once upon a time the DOJ went down the path – and it never eventuated – of having a unique identifier' and 'what we have ended up with is a proliferation of databases' (DOJ representative 7). Many financial counsellors agreed that the absence of a unique identifier has caused confusion. They spoke of how they would often submit special circumstances applications on behalf of their clients, to then find out that there was a second file under the person's name containing further infringements. This was because a typographical error, such as a slightly different spelling of someone's name or a misplaced space, often created another debtor ID number. One DOJ representative raised this issue, suggesting that people could end up with as many as four separate debtor ID numbers. However, he advised that the department was in the process of implementing a new system which 'should fix that up completely with a bit of luck' (DOJ representative 4). A financial counsellor described how the misallocation of these multiple debtor numbers meant that they then had to link the client's separate files. Often this required clients to recall their street addresses from several years ago, and while they may have been able to remember the street name, they often had difficulty remembering the street numbers. Consequently, clients had to:

Go and do a walk-by or a drive-by to get a number and then they have to physically come back in and we have to ring Civic Compliance again … it's just so cumbersome to have to do that. (Financial counsellor 2)

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5.0 Problematic aspects of special circumstances processes

This section discusses some additional problems within the infringements system, with particular reference to the processes and procedures surrounding special circumstances. Each will be discussed with reference to qualitative data obtained from the interviews, the relevant literature and the procedures in place in other Australian jurisdictions. The issues discussed include the:

- lack of an option for early exit from the system for clients with serious, permanent conditions
- nature and amount of information required to prove special circumstances
- delays involved in the process
- various problems related to having to appear in court
- lack of ongoing support for clients after appearing in the Melbourne Magistrates' Court Special Circumstances List
- lack of regional access to the Special Circumstances List
- legislative definition of 'special circumstances' which does not include extreme, long-term financial hardship or domestic violence.

5.1 The absence of an early exit option for people with serious, permanent conditions

It is questionable whether many of those with cognitive and mental health issues are able to understand the implications of receiving an infringement notice. Consequently, the potential for an infringement notice to induce behavioural change among such recipients will be limited at best. Indeed, many of these people 'will continue to incur fines no matter what official action is taken against them' (New South Wales Law Reform Commission, 2012:352). The NSW LRC suggested that it would be extremely difficult and inappropriate to implement a blanket ban on fining these people as many experience these conditions sporadically and with varying levels of severity. However, the Commission noted that special arrangements were necessary for those who 'do not have the capacity to understand offending behaviour and who are unlikely ever to have such capacity' (2012:358). Hence, the NSW LRC recommended that the State Debt Recovery Office establish a flagging system whereby people with mental or intellectual impairments that are unlikely to improve may apply to be registered. In such cases notices would be automatically withdrawn without the need to conduct an internal review or for the client to provide additional evidence if their condition was a contributing factor to the offending behaviour. While the SDRO did appear to already have a similar system, it was recommended that this be further developed and publicised (New South Wales Law Reform Commission, 2012). Implementing such a system would have the dual advantage of minimising public expenditure on enforcing fines that are highly unlikely to be paid, and

eliminating the stress and anxiety felt by those who are continually drawn into the infringements system due to behaviour they cannot control.

Several legal representatives, financial counsellors and DOJ representatives in our study acknowledged that certain people, particularly those with permanent conditions such as an intellectual disability or acquired brain injury (ABI), should be granted an early exit from the system. The infringements system does not deter these clients, as they often do not have the capacity to realise that their actions constitute an offence. In addition to fines causing these clients a significant amount of stress and anxiety, the need for them to reapply for special circumstances and reappear in court each time wastes an exorbitant amount of resources for all concerned. This wastage includes time spent by Civic Compliance who process the fines, the Infringements Court that sends out massive amounts of paperwork, sheriffs who must enforce warrants, legal representatives and financial counsellors who represent and advise these clients, enforcement agency prosecutors who must appear in court, judicial registrars who preside over the Special Circumstances List, and other court staff. As one legal representative noted:

> *It seems that the end result is no fine, but the amount of the state's resources, to say nothing of our own resources, that go into these matters seems utterly futile. (Legal representative 20)*

Similarly, a DOJ representative said:

> *All we're doing really is we're spending more time and resources. There are more officers going out there, enforcement agencies are spending more time and money on prosecuting briefs that end up nowhere and then they're back again infringing the same people. So long term, are we adding value to the system? And also are we sending out that message of community safety and compliance? (DOJ representative 1)*

Ideally, marginalised individuals who should never have been caught up in the system would be immediately removed from it. However, this is not the way the current system works. A legal representative remarked:

> *People who have ongoing, non-curable, if you like, circumstances which lead them to incur infringements never get out of the system. They're trapped. So [there is] no exit from the system. (Legal representative 13)*

Legal representatives expressed concern that people with intellectual disabilities or ABIs are required to go back to court every six to 12 months to re-establish that they have a disability. Many believed that the whole system is flawed as it does not deal with the underlying issues facing these clients, and consequently:

> *You are going to get people repeating, people who are going to come back who have to rack up increased penalties before they can get to the courts so that they can have the special circumstances taken into account. (Legal representative 18)*

The discussion of these issues led several legal representatives to suggest that people with these types of disabilities should be 'registered in some way' so that when they receive an infringement

notice it would be automatically withdrawn. While some participants also commented that these people should not be fined in the first place, it was also acknowledged that implementing this practice would be difficult for several reasons. For example, many fines are issued electronically, so it is often impossible to take an individual's circumstances into account at the point of issue. Additionally, when infringements are issued on a face-to-face basis, it might be difficult to ascertain whether an individual is eligible for such concessions. Many issuing officers are not adequately educated to recognise disabilities and people may also attempt to hide their disabilities. It was also suggested that this group could be issued with some type of registration card that they could present to issuing officers. However, there is a risk that these cards could be left at home due to the cardholder's poor memory skills, thereby negating the benefits of having them. DOJ representatives acknowledged the flaws in the current system and concurred that certain people should be removed from it as early as possible. One said:

> *As far as people with disabilities I think if they have a genuine disability where they really don't understand what they're doing, well then it should be just an open and shut case: bang, throw it out. (DOJ representative 9)*

DOJ representatives also expressed concern about people who are experiencing homelessness or mental illness being fined repeatedly on public transport, leading to suggestions that there should be 'exemptions' for some people. As one DOJ representative commented:

> *They may need to have their name lodged somewhere or other so that every time a fine is issued against them it just gets absolved. (DOJ representative 6)*

They questioned the viability of processing infringements, lodging them through the courts and then 'going through that whole vicious cycle' (DOJ representative 1) in cases where the individual inevitably ends up back on a train without a ticket. Some participants suggested that those who fall into the special circumstances category, but whose situation shows some potential for improvement, should be diverted into counselling or education programs in lieu of payment and shortly after a fine is issued. This would reinforce that the behaviour is not acceptable, while also addressing its underlying causes, thereby providing a much more humane and constructive solution than simply issuing a fine that will never be paid. Many homeless people are simply unable to avoid offending due to their circumstances. Providing this group with access to housing services would be proactive and arguably less resource intensive than repeatedly forcing them to engage with the infringements process. The following comment by a legal representative encapsulated this issue:

> *The first step towards reform was making the Special Circumstances List work more in favour of people with genuine issues and I think that's been very positive. But reform doesn't stop there with the first step; the first step was that it made things easier at the end of the process. Now we have to take the next step and actually make it better before the legal issues reach the point that they currently reach. (Legal representative 20)*

5.2 The nature and amount of information required to prove special circumstances

Those who meet the special circumstances criteria often experience difficulty obtaining reports to substantiate their claims. The 2006 inclusion of homelessness as a special circumstances criterion was a positive step. However, those who list this as the primary criterion often face great difficulty in providing the required documentation. Some legal representatives even mentioned that homelessness must be associated with a mental illness to gain entry to the Special Circumstances List. One legal representative remarked:

> *They kept on asking for psych. [psychological] and GP reports for people where the main special circumstances claim was on the basis of their homelessness. And I kept on writing letters to them saying homelessness is a social condition; not a medical condition. (Legal representative 2)*

The Infringements Court has stipulated that it requires a report 'from an agency funded under the *Supported Accommodation Assistance Act 1994* (Cth) (for example, the Salvation Army, Hanover and St Vincent's) and/or a report from a general practitioner or health care provider/psychiatrist'[17]. The report must be less than 12 months old and must contain information about their period of homelessness, any additional information about drug use or mental illness, and how this has contributed to the offending behaviour. However, several legal representatives reported that those who are not engaged with support services, such as those who are sleeping rough, may be ineligible for special circumstances due to the lack of supporting evidence. One legal representative commented:

> *I don't know who came up with these ideas like that people who are homeless are going to have accessed particular funded services and have ongoing relationships with them and have people who have worked there for long enough who can provide letters that talk about their six years of homelessness or whatever … that's not how it works. So I think that there needs to be far greater flexibility in terms of the documentation that's accepted in order to prove special circumstances. (Legal representative 13)*

Those who list mental illness, intellectual disability or substance addiction as their primary ground also often experience difficulty obtaining the required evidence. Legal representatives spoke of the difficulties their clients experienced when attempting to obtain medical reports, as GPs, psychologists and psychiatrists usually require a significant fee. Furthermore, many clients have not had regular contact with a doctor. Hence, asking them to write a report about their past is very difficult. While Legal Aid can provide a funding grant, this is restricted to people whose fines are in excess of $5000 (Victoria Legal Aid, 2012c) and who fit a certain income criteria. The comments on this issue included:

[17] The *Infringements (General) Regulations 2006* sets out what the court requires as evidence of homelessness (r. 8).

I mean a psychologist is the luxury of the middle class, if we're talking about going to see a psychologist and being paid. Our clients don't have access to those sorts of resources on an ongoing basis. (Legal representative 18)

Special circumstances I think they're becoming too onerous. As I said before, you need a psychiatrist, you need a case worker, and you know some people fall through the cracks and don't have that but they do have special circumstances. (Legal representative 9)

One legal representative told of a client whose psychiatrist refused to provide a report unless she paid $400 (Legal representative 19). Another described the case of a client who was asked to pay $550 for a medical report (Legal representative 17). Other legal representatives said they often submitted detailed reports from a psychologist, a social worker and a caseworker which were deemed unsatisfactory by the court because they were not from medical doctors (Legal representatives 9, 18, 19 and 20). However, a DOJ representative suggested that these reports did not have to be from a doctor if the person had been an inpatient in a drug rehabilitation facility, and that reports from a treating nurse or drug and alcohol counsellor would be accepted (DOJ representative 1).

In order to establish special circumstances, these reports must explain how the person's condition contributed to the offence. However, several legal representatives mentioned that reports were often scant and did not include this information. Many said they provided clients with precedent letters to give their doctors outlining the required information. However, doctors often just provided a summary of the client's illness and medication without elaborating as to how their condition contributed to the offending behaviour. Further, a financial counsellor mentioned that many clients who were eligible to appear in the Special Circumstances List chose not to because of the intrusive and stressful nature of the process. She said the amount of evidence the court requires 'scares some people away from it', and:

They'd rather pay on an arrangement that they're going to struggle to afford than go through special circumstances when you explain the detail of how it works to them. (Financial counsellor 5)

As one client recalled:

It took ages to get all the letters together. Having to get letters that covered the last 10 years of my life was a bit of a job. At times it was also difficult to have the financial means. I had one place try to charge me to get a medical report. (Client 20)

5.3 Delays involved in the special circumstances process

Sullivan maintained that 'if punishments are not timely, they lose their worth' (2010-11:28). This sentiment is especially significant for those with mental illnesses or intellectual disabilities. An extended time period between an offence and its resolution reduces the likelihood that the offender will link the behaviour to the subsequent court-imposed sanction and be deterred from future offending. As VLA noted, those with intellectual disabilities are 'more likely to learn from an immediate, supportive, behavioural intervention than a court hearing months or years down the

track' (2011b:15). The importance of early intervention has also been highlighted in New Zealand, where the Ministry of Justice (2006) flagged this as a technique to increase the effectiveness of the infringements system. However, the special circumstances process is lengthy, meaning that many disadvantaged people must wait several months before their matters are resolved.

The Special Circumstances List sits every Thursday and every fourth Wednesday at the Melbourne Magistrates' Court and one day per fortnight at the Neighbourhood Justice Centre (NJC) in Collingwood. While the number of people who appear before the court has not significantly increased in the past 12 months, the average number of infringements received by each applicant has: in 2011 this figure was 17.2 and in 2012 this escalated to an average of 23 infringements per applicant. Based on this and future projections, the Melbourne Magistrates' Court planned six extra sitting days during 2012 in an attempt to ease the backlog of cases waiting to be heard (Special Circumstances User's Forum Melbourne Magistrates Court, 2012). This backlog was noted in the Magistrates' Court of Victoria Annual Report 2010–11, which reported that 3100 matters were listed in the Special Circumstances List in the period 2010–11, and of these only 1762 were finalised, representing a clearance rate of 57 per cent (2011:83).

As mentioned previously, enforcement agencies do not have adequate or consistent internal review processes with regard to special circumstances. Their reluctance to withdraw matters on these grounds at the internal review stage means that many people are forced to remain in the system for protracted periods in order to ensure that their matters are heard in the Special Circumstances List. Indeed, one legal representative said:

> *Our average file here would be something like between 12 and 18 months from when a client comes to see us with outstanding fines to when it's finally resolved at court. (Legal representative 16)*

Moreover, legal representatives told of the transient nature of many of their clients and how they regularly lost contact with them during this time. Their comments included:

> *The infringements process takes so long; at any point during the year or two that we're interacting with the client they may become homeless again, they may disappear, they may go interstate, they're a very transient group. We had a look at some of our figures from 2009 and we closed 24 per cent of our files because we just lose contact with clients, they just kind of disappear. (Legal representative 16)*
>
> *One of the huge things for our young people is that they disappear. Yes I had contact with them one year ago when they came in and asked me to help them with their fines. But one year later, surprise, surprise, I don't know where they are and you know why? Because they're homeless … (Legal representative 13)*
>
> *The way our criminal justice system is meant to work is that if somebody does something wrong, you're meant to bring them before a court rapidly. They have some consequences and then that's meant to alter their behaviour so they become law-abiding. The way the fines system works is that there are delays of around five years*

generally before there are specific consequences. So effectively the system is something which is abhorrent to how we would see justice working. (Legal representative 3)

5.4 The court appearance

Those who experience the types of disadvantage discussed in this report might feel alienated from the criminal justice system for a variety of reasons. People suffering from mental illness might feel alienated due to their inability to understand the language used in the court setting, the inadequate explanations of court processes provided to them or their being assigned a lawyer who does not have an understanding of mental illness. These barriers can result in significant distress and confusion for the accused. Additionally, the possibility that they might be required to reveal details about their mental illness in a public forum can exacerbate this distress. Indeed, the Mental Health Legal Centre (MHLC) found that several of their study participants would be reluctant to participate in the Assessment and Referral Court list which was set up by the Melbourne Magistrates' Court in 2010 to appropriately manage offenders with a mental illness. This reluctance was due to the fact that clients must plead guilty and disclose their mental illness or impairment to the court, causing many to fear that this could lead to stigmatisation (2010:34). Similarly, defendants with a cognitive impairment often reported that the court process was extremely stressful, intimidating and alienating, impacting their ability to effectively participate in the process. This stress can be intensified by the often lengthy duration of court proceedings and the extensive waiting periods that must be endured (Gray et al., 2009).

People who are experiencing homelessness also face significant challenges when appearing in court. Previous research has shown that people who were experiencing homelessness often felt embarrassed about their appearance in the court setting and were concerned that they would be judged and stigmatised. The presence of police may also deter many from attending court as police contact can elicit feelings of intimidation (Midgley, 2005). Previous negative experiences of the criminal justice system can mean that they are frightened to participate in legal processes and many are unsure about how to behave in the court environment (Forell et al., 2005). Many also suffer from mental illness or substance abuse, further impeding their ability to attend court. Those who are suffering from a substance addiction may also be reluctant to appear in court because of the possibility that their diagnosis will be publicly disclosed. Indeed, a client in our study who appeared in the Special Circumstances List said:

When it got to my turn, the judge had obviously read through … quite an extensive report from my psychiatrist [and those from] a couple of doctors I've been to over the years. There was quite a lot of information about me and it also delved into the fact that I was a mother who had a heroin problem. It made me feel like shit … the whole court thing, there's pretty sensitive information that goes in these reports. (Client 20)

The Special Circumstances List is designed to cater for vulnerable groups. Clients are given the opportunity to explain how their situation or condition has impacted on their behaviour and this may be empowering (Popovic, 2006b). However, the fact that this List is heard in open court has raised concerns due to the sensitivity of the information that is publicly revealed. For example, Walsh's evaluation of the Brisbane Special Circumstances Court found that many professional

participants thought the 'open nature of the court was both inappropriate and a source of extreme anxiety for some defendants' (2011a:52). Several clients who appeared in the court said they felt comfortable. However, others thought that their privacy was invaded and 'felt pressured to reveal personal details about themselves that they would rather have withheld' (2011b:14). In fact, Walsh recommended that magistrates should 'consider exercising their discretion to close the Special Circumstances Court more frequently, in the interests of protecting defendants' privacy and safety' (2011a:73).

Our research found a lack of consensus among legal representatives over whether or not special circumstances matters should be heard in an open court environment. Some legal representatives believed a court hearing was unnecessary and suggested that people who have had their applications accepted by the infringements registrar should have their matters dealt with 'on the papers' (Legal representatives 6, 13 and 20). Another legal representative felt that special circumstances hearings should be conducted in a more closed setting such as a mediation room (Legal representative 1), while others emphasised the importance of the court appearance. The comments from legal representatives included the following:

> *Of course it has to be in the open. You can't have the judicial arm of government doing its business in secret. (Legal representative 17)*
>
> *If there's somehow we could avoid going to court it would be much easier for the clients and everyone concerned. (Legal representative 23)*
>
> *What I would like to see though is for it not to be in court at all. I think you make an application that you have special circumstances. It's found. You get a result on the papers without having to go into any sort of hearing. Why drag people through the process? And only if you need to review that decision, or if there's a problem with that decision, would you go to a court to hear that matter. I think the court should be an option of last resort, not part of the process. (Legal representative 13)*

Some clients mentioned that the court process was not problematic for them. Indeed, one client described his positive experience of the Special Circumstances List:

> *I just stood up myself and spoke to the magistrate and the magistrate was actually nice for the first time in my life. I said, well, this is my situation and I'm struggling to be able to afford any kind of accommodation. The way things are going, I said, I'm always going to be on the street no matter what happens and the more fines I get the worse it's going to be for me. And I think she just took an understanding approach to it and she said, 'Well, I'm quite willing to wipe them and start you off clean again'. (Client 3)*

However, several clients voiced their concerns, as follows: going to court would 'cause a lot of anxiety and depression' (client 33), 'going to court just terrifies me' (client 29), and 'to go through that process it was just an absolute nightmare' (client 32). Indeed, three financial counsellors reported that the prospect of revealing a mental illness, addiction or stressful situation in a public forum has dissuaded some eligible clients from appearing. They believed that many more people would apply if 'they didn't actually have to stand up in open court' (Financial counsellors 5, 6 and 9). Another financial counsellor said:

> *One of the things … that I continually get driven home is when I go to court how vulnerable people are in the court system. No matter how friendly the court tries to make it, they get in there and they shit themselves … they have an incredibly high no-show rate and they blame it on things like, you know, clients not having the correct information and clients moving address, but I think a lot of clients are just too scared to go to court. (Financial counsellor 8)*

During the last observation phase at the Melbourne Magistrates' Court Special Circumstances List, the researchers noticed that several clients had matters heard in their absence. Subsequent correspondence with a DOJ representative revealed that the court will often hear matters in the absence of the accused 'when there are only a small number of charges and the written material provided clearly established special circumstances'. The representative said that the accused may contact the court requesting this and that 'physical and/or mental health issues would certainly play a part in any consideration' (DOJ representative 12). Of the 1762 matters that were heard in the Special Circumstances List in 2010–11, 64 per cent of accused people appeared in court, while 36 per cent were heard ex parte (Magistrates' Court of Victoria, 2011:83). The reasons for the defendants' non-appearance were not disclosed in the Magistrates' Court Annual Report. However, it was stipulated that 'all applicants must attend court unless they suffer exceptional circumstances, such as being institutionalised' (Magistrates' Court of Victoria, 2011:83).

5.5 Inadequate ongoing support after appearing in the Melbourne Magistrates' Court Special Circumstances List

There are a small number of possible outcomes for those who appear in the Special Circumstances List. Clients may have their fines proven and dismissed, they may be placed on an undertaking to be of good behaviour for a specific period of time, or they may be placed on an undertaking to continue treatment and comply with the lawful demands of their practitioners. They may or may not be required to reappear at the end of the undertaking to provide evidence of this to the court. However, a non-therapeutic undertaking, such as a requirement to remain offence free, often sets clients up to fail as compliance is unfeasible for people whose circumstances mean that they are unable to control their offending (Midgley, 2005). This is particularly pertinent for people who are experiencing homelessness as their lack of access to food and shelter makes it practically impossible to comply with these undertakings unless they are provided with ongoing support and access to services. Some defendants may have support networks in place, as letters from support services and medical professionals are required to substantiate the initial special circumstances claim. However, relying on this fact could be a 'leap of faith' as many of these people are unwell, frequently change address, and might not maintain steady relationships. Indeed, as one legal representative observed:

> *They still have circumstances – the fact that you put them on an undertaking and they promised to be good doesn't resolve their homelessness and doesn't give them money to pay for tickets. (Legal representative 19)*

Within the court, other services such as the Salvation Army are able to provide support, material aid and referral to a number of health, accommodation and welfare services. However, disadvantaged clients who are overwhelmed by the court process and struggling with personal issues may need

encouragement and support to seek assistance. While transitory assistance might be available at the court, many of these people's needs are entrenched and they require support of a therapeutic and ongoing nature. A DOJ representative remarked:

> *The other thing that for us is disappointing in that system is [that]there was to be a rehabilitation service delivery aspect to the special circumstances, and the magistrates were able to order treatment and things for people and just generally help them with their things, but what's actually happening is the magistrates – I think in a lot of cases – due to the pressures and the time constraints and the fact that it's late anyway, they just look at the person and say, "Right, well, you have no capacity to pay, I'll quash the fines". But then what happens is they go out and they just continue to offend. (DOJ representative 6)*

Another DOJ representative concurred:

> *There is no backup plan … so what's happening is the financial counsellors, all these State Trustees, other public interest groups that are representing their clients, they represent them up to the court stage but then there's no follow up. (DOJ representative 1)*

She added that there is no one to monitor the clients after the court hearing to ensure that they are receiving the treatment, support and accommodation assistance they need to avoid further offending. She highlighted the need to ensure assistance is provided for these people, such as access to ongoing counselling, as 'that is what we're missing at the back end'. She commented:

> *Not everyone has family and support networks, or they don't even know how to tap into support networks.*

This DOJ representative suggested that the DOJ should 'get the referral centres together' or 'even have a pamphlet' that they can circulate so that people know where to go for assistance:

> *Because from the court hearing onwards they're kind of left alone again … once they walk out that door they're back to 'square one' because … what caused these fines in the first place is not being looked at.*

She noted that Melbourne Magistrates' Court has a great referral centre where people can be helped with all sorts of services, 'but it's not broadened to infringements … it's more for the summary [sic] offences'. However, the situation has changed slightly since the interviews took place. In July 2012, the Melbourne Magistrates' Court announced a pilot program to provide all Magistrates' Court defendants, including Special Circumstances List participants, with access to the Court Advice and Support Officer (CASO). This is an 'on-call' service 'to assist with unusual or complex psychological issues that arise in court'.[18] The CASO provides advice to legal representatives on appropriate welfare options and, if requested by a magistrate, initiates and facilitates 'linkages and access to a range of court, government and community services for court users'. Yet these are mainly brief, 'once-off' interventions, and subsequent correspondence we had with a financial

[18] An information sheet on the CASO is available at **www.magistratescourt.vic.gov.au**.

counsellor revealed that these interventions are apparently 'quite limited' (Financial counsellor 8). The CASO information sheet states that eligible clients who require more extensive intervention may also be referred to other court programs for ongoing case management, such as the Court Integrated Services Program (CISP). However, it appears from email communication with staff at the Melbourne Magistrates' Court that people who appear in the Special Circumstances List do 'not meet the eligibility requirements for case management' despite being party to a court proceeding. It appears that this may result from a perception that special circumstances applicants are 'not in the criminal jurisdiction so to speak'.

There is one initiative in Victoria that takes a different approach: the Neighbourhood Justice Centre (NJC) in Collingwood. The NJC is a community court that provides defendants with access to various ongoing support services such as counselling, housing support, employment training, and alcohol and other drugs support services. Clients who appear at the court may request access to these services, or may be referred by a worker who has identified that they have a particular need. However, in order to be eligible to appear at the NJC and benefit from these services, defendants must fulfil one of the following criteria: they must reside in the City of Yarra, they must be homeless and temporarily residing in the City of Yarra, or they must be an Aboriginal or Torres Strait Islander with a 'strong connection to the area'.[19]

5.6 Regional access to the Special Circumstances List: 'postcode justice'

There are over 50 Magistrates' Courts in Victoria, yet only two of these – the Melbourne Magistrates' Court and the NJC – have established Special Circumstances Lists. The lack of regional access to these programs has meant that those living in remote areas have significantly reduced access to justice. This is reflected in outcomes, which are often determined by the extent of court programs available in different areas. Indeed, Coverdale (2011:13) found that regional communities are disadvantaged compared with metropolitan communities. Over three-quarters of his regional study participants felt disadvantaged due to the significant distances they were required to travel to attend court. Importantly, excessive travel may also be difficult for those with certain mental illnesses such as panic disorders or severe anxiety, and merely getting to court is challenging for those who do not have a vehicle or enough money to purchase a public transport ticket (Forell et al., 2005; Midgley, 2005). Excessive travel time also apparently provides a disincentive for regional enforcement agencies to attend court. The Victorian Auditor-General noted that Ballarat City Council 'often abandoned the prosecution of cases as they did not have the resources to travel to Melbourne, especially when there is little prospect of recovery of the penalty costs. When the council does not attend the matter is struck out by the court … This situation may be indicative of other councils outside the metropolitan area' (2009:44).

Victoria's Chief Magistrate Ian Gray highlighted the 'disparity of access to services available at metropolitan courts, in comparison to regional courts', and suggested that funding should be increased to allow specialist court lists and programs to be extended throughout Victoria (Gray, 2011:4). The *Victorian Government Response to the Rural and Regional Committee* acknowledged

[19] These requirements are set out in the *Courts Legislation (Neighbourhood Justice Centre) Act 2006* (Vic), part 2, 40 (2) Jurisdiction of Neighbourhood Justice Division.

the difficulties that people in remote areas face when attempting to access the justice system. The government reported that it would give 'consideration' to extending video-conferencing facilities to many of the smaller regional courts (2011:49), and to supporting 'in principle' the extension of specialist courts and programs in remote areas (2011:50). However, these potential developments are yet to be approved or implemented and the report made no mention of expanding the Special Circumstances List to these locations. A legal representative who participated in our study related his concern in this regard:

> *The other issue that sort of raises a letter too is this issue of what is sometimes described as postcode justice. The fact that there are only currently two places where someone can go to court with a Special Circumstances List ... that's problematic because a lot of these people because of their circumstances can't travel to get to these courts. (Legal representative 5)*

While special circumstances arguments may be made in local Magistrates' Courts, there is no guarantee that the sitting magistrate or judicial registrar will be sympathetic to these, potentially leading to inconsistent outcomes. One legal representative claimed that the difference is often because the judicial registrar who presides over the Special Circumstances List is more educated about mental illness, for example, and as a result, is 'more sympathetic because of that knowledge'. This contrasts with regional magistrates who hear special circumstances arguments infrequently and 'don't necessarily have a background in anything else but law' (Legal representative 3). Consequently, people residing in remote areas must travel to Melbourne to gain the benefits of the Special Circumstances List, yet this may cause a significant amount of distress for many special circumstances eligible clients. Indeed, one legal representative (7) suggested that clients in regional areas are 'discriminated against in that sense'. Coverdale's recommendation that specialist courts should be expanded to all regional Magistrates' Courts, 'with consideration given to greater use of information technology services including "virtual courts" and video conferencing', could rectify this situation (2011:11).

The Victorian Auditor-General also noted the disadvantage that rural and regional clients face when attempting to access the special circumstances provisions. He recommended that the DOJ 'review the provision of services to people with special circumstances in regional areas' (2009:6). A subsequent report by the Public Accounts and Estimates Committee similarly reinforced the importance of extending the program to rural and regional areas. The DOJ acknowledged the benefits of expanding the program. However, it suggested that 'this required further consideration in order to devise an appropriate service delivery model within budget constraints' (2012:31).

5.7 The legislative definition of disadvantaged groups

As noted earlier, the *Infringements Act 2006* (Vic)stipulates that vulnerable people, specifically those who are experiencing homelessness, mental illness, intellectual disability or substance addiction, should not be disproportionately and unfairly drawn into the infringements system (Victorian Auditor General, 2009). However, 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.

Domestic violence

Domestic violence involves physical, sexual, emotional and/or psychological abuse within an intimate relationship. Females are more likely to be victimised than males and the ABS data captured in the 2006 Personal Safety Survey suggested that approximately 20 per cent of females have been subjected to domestic abuse – physical, emotional, or sexual – by a current or former partner (Morgan & Chadwick, 2009:2). Victimisation surveys provide the main source of data regarding the prevalence of domestic violence. Hence, the true number of victims is likely to be significantly higher than the self-reported estimates suggest. This is because victims of domestic violence often remain silent about their victimisation for a range of reasons including shame, embarrassment, fear and 'concern about having to re-live the event by re-telling the story to multiple parties' (Morgan & Chadwick, 2009:2). The interviews with the participants in this research revealed that many females subjected to domestic violence are also often facing other special circumstances, such as substance abuse or a mental illness. As a result, their claim will fall under these grounds.

Legal representatives in our study (3, 5, 7, 13, 15 and 16) suggested that victims of domestic violence may be forced to face the consequences of vehicle-related fines incurred by their abusive partners because of their inability or reluctance to nominate their partner as the offending driver. Sometimes the deadline for driver nomination has passed, or they may be too intimidated and fearful of repercussions to nominate. Domestic violence victims can proceed to mount a case under so-called 'exceptional circumstances'. This is a provision in the *Infringements Act 2006* (Vic) that is not further defined. It is however implied that it is different to 'special circumstances' and thus left open to interpretation. People with exceptional circumstances are required to produce documentation to substantiate this claim and they must appear in court before a magistrate who may not be sympathetic to their problems. Indeed, one legal representative observed that 'often that creates even more trauma for them [the victim]' (Legal representative 11). Those victims who can provide documented evidence of their mental illness are eligible to apply for special circumstances. However, this effectively shifts the problem from the offender onto the victim. Furthermore, those appearing in the Special Circumstances List must plead guilty to the alleged infringement, further shifting the blame from the offender to the innocent party in cases where the domestic violence victim did not commit the offence. Those who apply under the homelessness criteria often experience difficulty providing the required documentation to substantiate their claim as the addresses of domestic violence refuges are often not publicly available for safety reasons. A legal representative encapsulated this issue:

> *I know of quite a few where they have tried to establish special circumstances and on a lot of occasions they just basically give up because it's too difficult to provide all the necessary documentation and for the court to grant special circumstances. (Legal representative 11)*

This point was recently illustrated in the case of *Brookes v Magistrates' Court of Victoria & Anor* [2011] VSC 642, where Brookes (who was suffering from post-traumatic stress disorder as a result of domestic violence), in an IIL of payment of fines hearing under s160 of the *Infringements Act 2006* (Vic), was unable to provide written evidence of her mental illness at the hearing and thus was not able to substantiate her claim for special circumstances. As a result, at the first instance she was

ordered to serve a period of IIL of unpaid fines. Following a judicial review application the orders made against Brookes were set aside because the magistrate had not considered Brookes' personal circumstances as required under s160 (2) (3).[20] As a result of the difficulties of proving other special circumstances criteria, many domestic violence victims agree to payment plans that they cannot afford. A DOJ representative (5) suggested: 'I think maybe something needs to be altered to deal with that particular group of people'. Indeed, 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.

There have also been calls in the ACT to introduce provisions in their infringements regime for victims of domestic violence and those experiencing extreme financial hardship (Street Law, 2011). Street Law, a free legal service for those who are experiencing homelessness or are at risk of homelessness in the ACT, assists many clients to deal with unpaid fines. In 2011, lawyers at this service recommended that the ACT Government should consider implementing special circumstances provisions for disadvantaged groups, such as those who are covered under the Victorian legislation. They also acknowledged the disproportionate impact of fines on those with low incomes, and suggested that exceptional financial hardship and domestic violence should be included in special circumstances provisions. In supporting these recommendations, they remarked, 'at least one of our clients who was formerly a working member of the community has become homeless as a result of unpaid fines in the past 24 months' (Street Law, 2011:5).

Financial hardship

People who are caught in a cycle of extreme financial hardship may feel compelled to commit 'offences of poverty' in order to survive (New South Wales Law Reform Commission, 2012:118). 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.

People who are experiencing financial hardship have limited options for expiating their infringement debts. As mentioned previously, while they have an option to convert their fines into community work, this option is not available in the first instance and is only available to those whose fine amounts do not exceed 100 penalty units (s147 *Infringements Act 2006* (Vic)). Moreover, those who

[20] Emerton J also held that s160 did not impose an obligation on the offender to provide proof 'in the conventional sense'. Indeed, the court could satisfy itself through its own enquiries (para 97) or a hearing could be adjourned to allow evidence to be obtained and put before the court. At the time of writing the DOT had appealed against the decision of Emerton J with the appeal being heard on 13th November 2012 at which the decision was reserved.

are experiencing long-term financial hardship are disproportionately and unfairly affected by infringement notices that are not relative to a person's income. Further, mental and physical health issues may subsequently ensue. The strain of financial worries and chronic debt may result in feelings of anger, anxiety, depression, nervousness and stress, which can cause or exacerbate mental health problems (Martire, 2010:164). Clients in our study reinforced this perspective. One remarked:

> *I'm just trying not to think about it now and get a job, save some money and then sort it out. That's what I need to do in order to keep myself calm. Just not think about it for now. (Client 26)*

Clients also described how they chase wins through poker machines and get into credit card debt in an attempt to pay infringement notices. One client said she required urgent dental work but had been forced to prioritise her fine payments as she risked being imprisoned in the event of default (Client 17). In addition to exacerbating existing mental illness, financial debt also arguably fuels substance addiction. Several financial counsellors and legal representatives told of clients who used drugs to 'zone out' to avoid thinking about their debts, and one client said she 'used to get a bottle of wine and just forget about it' (Client 33). Indeed, our research reinforced Martire's findings which suggested that 'financial strain precipitates or escalates the use of licit and illicit substances, which in turn exacerbates existing financial strain' (2010:164).

As one legal representative noted, s50 (1) of the *Sentencing Act 1991* (Vic) requires the judiciary to take a person's finances into account before imposing a fine. He said:

> *There's some fluidity within the judiciary that doesn't exist within the administrative structure. (Legal representative 17)*

Robert Hudson (former Member for Bentleigh) also acknowledged this during the first session of the Legislative Assembly to discuss the Infringements Bill prior to it becoming the *Infringements Act 2006* (Vic). Mr Hudson, in addressing the parliament, remarked:

> *All the evidence indicates that individuals will pay a fine if they are able to and if it is tailored to their resources and capacity. I believe there is an argument for us to consider going further in the future, because the uniform fine system discriminates against the poor, who have no capacity to pay in many circumstances. We need to contrast these court fines with the Sentencing Act, which basically allows the individual circumstances of the person and any mitigating factors to be taken into account by the court in determining the level of the fine. I believe that is something we ought to look at in the future. (Parliament of Victoria, 2006:498)*

The Bulk Debt Negotiation Project established in 2010 revealed how some financial institutions have accepted that debtors facing significant levels of disadvantage are often unable to pay their debts, either now or in the future. In 2010, the Victorian Law Foundation provided funding to West Heidelberg CLC to undertake the project which was initiated to aid debtors who have no assets and a low income. The details of eligible clients were collected from a variety of legal services and financial counsellors throughout Australia, culminating in the project helping 410 low-income debtors, 78.5 per cent of whom were receiving Centrelink benefits (Nelthorpe & Digney, 2011:5). This involved a

'bulk negotiation', as opposed to individual negotiation for each debtor, with six major financial institutions. Each of these institutions or creditors was provided with 'collated information' about the participating debtors such as their personal circumstances and amounts owing. The project identified the following seven 'indicators of disadvantage' which were widespread among these debtors: homelessness, ill health, mental health, family violence, gambling, drug and/or alcohol addiction, and being a carer. The negotiations resulted in five creditors waiving $3.2 million of debt, amounting to 85 per cent of matters being resolved by waiving the debt (Nelthorpe & Digney, 2011:1). The participating creditors accepted that waiving these debts was also in their best interests as debt collection costs would be reduced and they could focus their efforts on customers who were able to pay.

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6.0 Recommendations

1) **Internal review processes are inconsistent and often not conducted in accordance with the provisions of the Infringements System Oversight Unit. Hence, internal review applications should be assessed by a central, independent agency**.

While the Infringements System Oversight Unit's Internal Review Provisions state that 'if the agency finds that there are special circumstances, the agency should withdraw the infringement notice' (2008:11), it is evident that this policy is not consistently adhered to. Hence, internal review applications should be assessed by one central, independent agency. If this agency concludes that special circumstances apply, the matter should be automatically withdrawn without the need to proceed to a court hearing. Clients should be provided with the option, where this is reasonable and likely to be effective, of participating in education and/or counselling courses to address the underlying issues that led to their offending behaviour. If the central agency decides that there is not sufficient evidence to substantiate a special circumstances claim, the matter should proceed to the Special Circumstances List for consideration by a judicial registrar.

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2) **The Infringements Court should remove the confusing terminology used in its correspondence.**

When the Infringements Court notifies clients that their enforcement order has been 'revoked', many misconstrue this as meaning that their fine has been withdrawn, and hence take no further action. In the context of the infringements system, the word 'revocation' actually means that the enforcement order has been cancelled and that the matter has been referred back to the enforcement agency. Misunderstandings of this nature have the potential to result in detrimental outcomes for clients. Therefore, the Infringements Court should reconsider the terminology used in its correspondence. It may be better to say that 'the matter has been "referred back" to the enforcement agency for consideration'.

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3) **Infringement notices should contain clearer and more specific information about obtaining legal advice. Further, there should be a community education campaign about infringements.**

Previous research on infringements compliance has indicated that the public are often unaware of the options available to them when they receive an infringement notice. This point was also confirmed by our research, in which several clients stated that they were unaware of the option to dispute the matter in court, the availability of instalment plans or the special circumstances provisions. Many clients were also unsure of who to contact to resolve their issue and were confused by the excessive amount of correspondence they received from a range of agencies.

Infringement notices should contain clearer and more specific information about how clients can obtain legal advice. In addition to this, there should be a community education campaign focussing on infringements. This could involve a print media campaign, a televised advertisement and/or advertising at train stations and along tollways informing people of their options and the consequences of not taking immediate action.

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4) **Section 160 of the *Infringements Act 2006* (Vic) should be amended to include a right of appeal to the County Court for those who receive an imprisonment in lieu (IIL) order as a result of unpaid infringement fines.**

Currently people who default on payment orders with imprisonment in lieu (IIL) orders attached have no right to appeal the decision in the County Court, while people charged with more serious offences do have this right. Yet a sentence of imprisonment is meant to be a penalty of last resort (*Sentencing Act 1991* (Vic), s 5[4]). Hence, it is recommended that s160 of the *Infringements Act 2006* (Vic) be amended to include a right of appeal. In addition, the legislation is silent with respect to the level of proof required to claim special circumstances in a s160 hearing. This needs to be clarified to avoid individuals being imprisoned because they are unable, at that last pivotal point in the process, to provide written evidence to support their claims.

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5) **The Attorney-General's Guidelines to the *Infringements Act 2006* (Vic) should specify that issuing officers (including police) must consider whether issuing multiple infringement notices simultaneously is justifiable and proportionate, particularly in relation to people with special circumstances**.

The *Infringements Act 2006* (Vic) should include a provision for the automatic withdrawal at the internal review stage of additional notices that are incurred as a reaction to the original notice (such as being fined for swearing after receiving a fine for having one's feet on a train seat).

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6) **Those who appear in the Special Circumstances List should not be burdened with a criminal record, and infringement offences should not be included in a criminal record check, irrespective of how they are resolved.**

It is recommended that infringement offences should not be included in a criminal record check, regardless of how they are resolved. People who are able to pay their fines are not forced to carry this burden, while those who are not able to pay are criminalised. It is also recommended that those who appear in the Special Circumstances List should not be required to plead guilty as the eligibility criteria stipulates that they must be unable to control their offending behaviour or be unaware that their behaviour constitutes an offence. Indeed, the Infringements System Oversight Unit's Internal Review Provisions state that 'special circumstances are those situations in which a person should not be *criminally liable* for his or her conduct' (2008:11).

7) **We recommend that funding for community legal centres and Victoria Legal Aid should be increased by the allocation of a small percentage of infringements revenue. We also recommend that a percentage of infringements revenue should be allocated towards funding the Special Circumstances List at the Melbourne Magistrates' Court to ensure that the clients who appear in the list are provided with the option of accessing ongoing support services.**

The increasing use of infringement notices has placed a significant burden on community legal centres and Victoria Legal Aid as more disadvantaged people seek assistance to deal with infringement matters.

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8) **Victoria Police officers should exercise the discretion available to them by not issuing infringement notices to people who have clearly identifiable special circumstances.**

This may require more extensive education and training in certain areas, including mental illness, and intellectual impairment. We have recommended that internal reviews should be conducted by a central, independent agency. However, if that recommendation is not adopted, Victoria Police should be more willing to withdraw infringements at the internal review stage so that those with special circumstances are diverted away from the criminal justice system. If after an internal review application it is decided that the matter should proceed to court, Victoria Police should refrain from referring the matter to the Magistrates' Court and instead refer the matter to the Special Circumstances List.

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9) **Department of Transport Authorised Officers should receive additional education and training.**

Authorised officers from the Department of Transport require additional education and training in the use of discretion with regard to issuing infringement notices, particularly for those people who fall under the special circumstances category.

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10) **Behaviour that is open to subjective interpretation or standards of reasonableness, such as offensive or indecent language or conduct, should only be included with great caution under the infringements system, as they can result in selective enforcement and discrimination**

Removing these offences from the infringements system, or issuing a caution at the first instance instead of a fine, would minimise the possibility of disadvantaged people being drawn into the criminal justice system for conduct that would not withstand judicial scrutiny.

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11) **Infringement amounts should be much less than the amount one would receive for the same offence if the matter proceeded to court, as stipulated in the Attorney-General's Guidelines. Fine amounts should also be proportionate to the seriousness of the offence.**

Fines for offences that are unlikely to cause harm to third parties should be set at lesser rates than those for potentially harmful offences. Furthermore, fines for 'offences of poverty' (New South Wales Law Reform Commission, 2012:118), such as fare evasion and drinking alcohol in public, should not be set at high amounts.

In accordance with the Attorney-General's Guidelines, infringement amounts should be much less than the fine amount one would receive if the matter were to proceed to court.

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12) **Fixed-rate infringement penalties disproportionately impact on those who are financially disadvantaged. Therefore, provisions should be implemented that allow those in financial hardship to apply for a standard concession rate.**

This would provide an incentive for all people – regardless of income – to take early action and would subsequently increase revenue and reduce enforcement costs. Additionally, people who have a concession card and receive their fine in person should be immediately issued with a concession fine amount (for example, people who receive a fine on public transport could show their concession card to the authorised officer who would note this entitlement on the report of non-compliance).

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13) **Community work or other alternative expiation methods should be available in the first instance for those suffering from financial hardship.**

Currently, people who wish to expiate their debt by performing community work must wait until enforcement action has taken place, meaning that late fees will be incurred. 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.

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14) **The option to pay by instalments should be available in the first instance and should be managed by one central agency. A central payment plan would allow all of a person's fines to be rolled into one plan, irrespective of which agency they came from and what stage in the process they are at. This would ensure that clients are not placed on multiple payment plans. The central agency should also have the capacity to deduct payments through Centrepay to minimise the chance of default. Additionally, each client should have one unique identifying number under which all of his or her infringement matters are listed.**

While many enforcement agencies do offer instalment plans, many only offer an extension of time to pay. This extension of time does not help those who are facing financial hardship, as it is based on the premise that they will be capable of saving money while living below the Henderson poverty line.

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15) **Clients who fulfil their payment plan obligations should have their late fees automatically waived once payment of the original amount is finalised.**

The disproportionality of fixed-rate infringement penalties is exacerbated by the excessive amount of fees that are added to the debt for late payment. Waiving these fees once the original debt amount has been settled would provide an incentive to take action.

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16) **The special circumstances criteria should be broadened to include victims of domestic violence and people who are experiencing long-term, extreme financial hardship.**

These people are often equally as disadvantaged as those who meet the legislated criteria, hence they should be included.

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17) **The documentation requirements to prove special circumstances should be less stringent and easier to meet. Reports should be accepted from a broader range of service providers, including AASW eligible social workers and a statutory declaration should be acceptable evidence (in the absence of other documentation) for those who apply on the grounds of homelessness. Additionally, the Infringements Court should design a template letter for use by practitioners.**

Many clients do not maintain regular contact with a general practitioner or psychiatrist, so it is often extremely difficult to obtain detailed reports from these professionals to support a client's claim. Furthermore, clients who are claiming homelessness as their primary criterion may not be linked in with accommodation services and therefore are unable to obtain reports. Hence, it is suggested that in the former situation, if it is indeed the case that reports from a broader range of service providers (such as social workers and counsellors) are acceptable, it is imperative that this information be conveyed to legal representatives in a consistent manner. In the latter situation, a statutory declaration provided by the client should be acceptable as evidence to prove their special circumstances.

Clients who have had contact with medical practitioners often take precedent letters to their doctors outlining the information that is required. However, in the documents they provide, doctors often do not elaborate as to how their condition contributed to the offending. Therefore, the Infringements Court should design a template for this purpose. Doctors or other service providers would only need to tick the appropriate boxes and write a couple of paragraphs as opposed to writing a report spanning several pages. Furthermore, financial counsellors reported that doctors are unable to bill Medicare for writing such reports. They therefore recommended that a Medicare item number be created to minimise costs for clients who are ineligible for a Victoria Legal Aid grant.

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18) **The number of infringements registrars should be increased and they should receive further education and training in relation to special circumstances and the evidence deemed acceptable to establish these circumstances. The Department of Justice should also consider establishing satellite areas where infringements registrars can work periodically, such as the Justice Centre at Moorabbin, instead of only being located in Melbourne's central business district.**

Despite the rising number of behaviours that can be dealt with by way of an infringement notice, there are currently only two registrars and one team leader at the Infringements Court who deal with special circumstances matters. Furthermore, registrars sometimes provide incorrect and inconsistent advice. Hence, they must be provided with further training and strict guidelines regarding the criteria for acceptable special circumstances evidence. As mentioned previously, if it is indeed the case that reports from a broader range of services are acceptable, it is imperative that this information be conveyed to legal representatives in a consistent manner.

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19) **People with serious, permanent conditions, such as acquired brain injury (ABI) or intellectual disability, should be provided with an early exit from the system. If they have previously appeared in the Special Circumstances List, and their condition is a contributing factor to the continued offending, they should have their infringement notices automatically withdrawn immediately after issuing.**

These people or their carers would need to provide their consent to be registered on a database to allow this to take place. This register could be managed by the Infringements Court, or by an independent, central agency which could be established (see below). Professionals working with these clients should alert them to the availability of the Special Circumstances List and the need to register.

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20) **Enforcement agencies should be required to 'opt in' if they wish to pursue matters through special circumstances hearings.**

Enforcement agencies are currently required to 'opt out' if they wish to withdraw the fine (at the revocation stage), and if they do nothing the matter is automatically referred to the Special Circumstances List. As mentioned previously, enforcement agency prosecutors, particularly those who represent local councils, often fail to attend court. Therefore, it would seem logical to require agencies to 'opt in' if they wish to pursue the matter, as this would avoid the wastage of resources that the current procedure allows. Moreover, this would reduce the unnecessary stress and anxiety experienced by clients who have taken the time to make their application and attend court.

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21) **There should be an option of a closed hearing or non-appearance for those who are intimidated by the process, particularly those who are suffering from anxiety-related mental illness. A request for non-appearance should be considered irrespective of the number of fines incurred.**

For those cases that do proceed to a hearing, there should be an option of a closed hearing, particularly for those who are suffering from anxiety-related mental illnesses. Alternatively, these clients should be permitted to provide the court with evidence of their special circumstances and to request that their matters be heard in their absence, irrespective of the number of fines accrued. Legal representatives and financial counsellors should also be made aware of this option.

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22) **People who appear in the Melbourne Magistrates' Court Special Circumstances List should be provided with the option of accessing ongoing support services at court, as they do at the Neighbourhood Justice Centre in Collingwood. This would ensure that they have the best chance of adhering to both therapeutic and non-therapeutic undertakings.**

A non-therapeutic undertaking, such as a requirement to remain offence free, often sets clients up to fail, as many will be unable to control their offending. While the court may provide access to services by way of 'once-off', brief interventions, it does not provide the ongoing services required to support clients in undertaking their obligations. Hence, it is recommended that those appearing in the Melbourne Magistrates' Court Special Circumstances List should have ongoing access to referral services at the Magistrates' Court.

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23) **People living in regional or remote areas should have easier access to the Special Circumstances List.**

The Melbourne Magistrates' Court should establish video-conferencing links to regional courts and consider establishing satellite lists in these areas to hear special circumstances matters on a monthly basis.

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24) **CityLink should not enforce its fee costs ($40 cost on each fine) against those with special circumstances**

Additionally, clients should be notified of this immediately rather than at the end of their undertaking.

7.0 Conclusion

The recommendations presented in this report are based on the findings gleaned from interviews conducted with 95 stakeholders involved in the Victorian infringements system – including those who enforce the *Infringements Act 2006* (Vic), legal and financial representatives who assist fine recipients and those who are subject to infringements – and also by reference to international and national best practice. One of the key advantages of the infringements system is that criminal justice system expenditure is minimised by eliminating the need for minor offenders to appear in court. Accordingly, this also reduces the possibility that these minor offenders will be burdened with a criminal record. However, our research found that, paradoxically, disadvantaged people are more likely to be drawn into the criminal justice system as a result of their contact with the infringements system. Indeed, many of the problems identified in this report ensure that these people will remain in the system for protracted periods. This research is timely as the continuing expansion of the infringements system means that an increasing number of individuals will inevitably come within its reach.

The recognition that some individuals, specifically those with special circumstances, should be provided with certain concessions has been a positive step forward. However, we have identified weaknesses in the system that discourage or prevent many disadvantaged groups from accessing the benefits of these concessions. Furthermore, we have identified other disadvantaged groups who do not meet the legislated criteria and are therefore not provided with these options. We have drawn attention to a variety of practices and policies that require amendment if the system is to be perceived as procedurally just. This perception of fairness is critical as it facilitates respect for the system and encourages compliance. The recommendations emanating from our research suggest an urgent need for law reform that reduces the resources spent on dealing with unpaid infringements while also providing better options for disadvantaged groups who are often unfairly and disproportionately drawn into the criminal justice system.

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Appendix 1- The Infringements Process