

A Fine Mess

A report into the most significant entrance point into the Victorian justice system and recommendations on reform

September 2021



Executive summary and recommendations

83-year-old Jean lost her licence in early January 2020. After 53 years of holding her licence without a driving offence, she never drove again. The charge of driving without a licence was eventually dropped – and all of it came about because she had missed a letter from VicRoads. This has had a lasting impact on her life.

Justice is not remote – it is real and in the lives of Victorians every day. Some communities feel the engagement of justice more strongly than others, and the most likely interaction that any individual in our community is likely to have with the justice system is through receiving a fine.

Fines play a vital role in providing an incentive to discourage behaviour that negatively affects our community's safety and wellbeing. The fines system relieves the burden and costs, on both recipients and the courts, to resolve minor wrongdoing. But the benefits of this system also result in challenges.

Fines are concentrated by postcode, individuals are receiving multiple fines and amassing significant penalties related to them. This is leading to engagement with the criminal justice system which is unnecessary, detrimental to the individual and the broader community, and is having long lasting effects on vulnerable people.

First time and low-level offences can be resource intensive, taking up the time of the courts, police and community legal services. Many of these engagements with the justice system arise out of fines, but not all – sometimes it is the result of missing a letter, or moving house, or just not acting quickly enough.

Many clients of community legal services are receiving thousands of dollars in fines and penalties before they seek support, and often get to this point due to their vulnerable situations.

Penalties for not paying fines are often many times larger than the initial fine. An initial toll road fee can be as low as \$2 which can turn into \$382.82 in penalties as it works its way through the fines cycle.

Each new fine can carry these penalties, quickly adding up to thousands of dollars. A person in receipt of a fine that is not attended to can be arrested, be required to appear in court, be visited by a Sheriff who could seize property including the individual's car and auction it, or an individual's licence or registration could be suspended.

Accessible pathways and alternatives to avoiding the criminal justice system must be available to avoid unnecessary contact with it.

Within this context there are already some important, yet incomplete, circuit breakers including special circumstances, exceptional circumstances, and the family violence scheme. The Work and Development Permits (WDP) scheme is available to attempt to deal with fines on a non-financial basis, although this program has its own limitations highlighted by the limited numbers of accredited sponsors supporting this program.

Fines are an unnecessary entrance point for many into the criminal justice system and present a significant opportunity for early intervention through practical reforms.

Recommendations for reform

1. Ensure SMS and email contact to recipients of fines, and subsequent penalties, at all points of the fines cycle for both issuing organisations and Fines Victoria.
2. Implement SMS and email contact where a matter could lead to engagement with the criminal justice system as a result of lack of action.
3. Expand and fund programs to support community legal services to support WDP schemes.
4. Extend the period to nominate a person responsible for a fine until the end of the enforcement stage.
5. Empower toll operators to withdraw tolling infringements at any stage of the fine lifecycle.
6. Enshrine in legislation how, and how often, private toll operators may impose a fine.
7. Fine issuers and Fines Victoria undertake a process to develop a best practice model either led or including significant input from the Legal Services Board with an emphasis on dealing with hardship provisions.
8. Introduce a concessional rate in relation to fines and penalties tied to existing state or commonwealth government indicators such as accessing certain Centrelink benefits.
9. Introduce a First Infringements Program, where an infringements financial penalty is not enforced unless a second similar infringement is issued within two years, at which time the first and second infringements financial penalties will be imposed together.
10. Allow for a person to withdraw their application electing to go to court any time prior to the matter being heard at court.
11. More prominently encourage a person who is considering electing to have their fine matter heard in court to seek legal advice including through Victorian Legal Aid and community legal services.
12. More strongly promote access to the Work and Development Permit scheme including as an option on the Fines Victoria website.
13. Investigate and report on the cost effectiveness of the current fine enforcement regime.
14. Community legal services are actively promoted by Government departments and agencies, including Fines Victoria, actively promote community legal services as a primary source of advice and support and are funded appropriately to meet increased demand. At minimum fines that are issued will include the contact details for legal assistance.
15. Fund accredited sponsors to support their administrative processes related to their involvement in the WDP scheme, including to support their application process.
16. Support community legal services through funded and specific WDP positions to expand the number of sponsors, and increase linkages between community legal services, health providers and community organisations.
17. Expand the World and Development Permit program to include court fines.
18. Implement Recommendations 7 and 9 of the Fines Reform Advisory Board Report on the Delivery of Fines Reform.
19. Allow a review of a fine under Special Circumstances to occur in cases of extreme financial hardship requiring no causal link between the infringement offences and a person's condition or circumstances. In line with the Fines Reform Advisory Boards views this would include "those with a substantially diminished capacity to pay or otherwise manage a fine for the foreseeable future."

Note: We would like to thank and acknowledge the role of the Peninsula Community Legal Centre who provided important data points and examples for this report. In this report names have been replaced to ensure the anonymity of persons who have sought legal support.

OUR FINES SYSTEM AND FINE RECIPIENTS

The guiding principles for a successful fines system as defined by the Fines Reform Advisory Board in its 2020 report to the Victorian State Government set out nine key measures as listed below:

- Fines should only be imposed for a breach of the law and where fines would be a fair and just mechanism for addressing the fine recipient's wrongdoing.
- Infringement fines should be dealt with administratively to the greatest extent possible, so that it only falls to the courts to hear and determine those cases which are appropriate for entry into the judicial sphere.
- Those who make decisions relating to fines should exercise discretion appropriately. System processes must be designed to enable human intervention so that automation does not lead to inflexibility and administrative errors do not impose a crushing burden on vulnerable fine recipients.
- There should be consistency of behaviour across decision-makers in the fines system. Individual fine recipients with the same circumstances must be treated alike. More importantly, there must be consistency in treating different cases differently within a framework of overarching consistency. Essential to this outcome is the consistency of behaviour by entities both when issuing, reviewing and withdrawing fines and also when subsequent enforcement review and enforcement decisions are made by the Director, Fines Victoria.
- Fines should be strongly enforced to ensure fine avoiders are made to expiate their fines
- Vulnerable individuals who incur fines should be identified as early as possible so that they are not subject to sanctions unfairly. They should have the opportunity to expiate their fines through nonfinancial means where appropriate.
- The fines system should have a harmonised legislative, operational and IT framework, with legislation informing operational design and the operating model in turn enabling the IT system design. Key fines system stakeholders need to be involved in co-designing, to the extent appropriate, the operating model and IT functionality required to deliver the requirements of Fines Reform.
- There should be transparent monitoring and reporting of fines system processes and outcomes, including the establishment of key performance metrics that assure stakeholders, government and the community that decision-making in relation to fine enforcement is fair and equitable.
- Robust governance and oversight mechanisms should be in place to ensure the effective operation of the system.¹

These measures talk to a system that is fair and just, focused on administrative processes over judicial, with discretion and acknowledgement of disadvantage and IT systems, and governance and oversight that is fit for purpose.

¹ Fines Reform Advisory Board, Report on the Delivery of Fines Reform - Summary Report, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage-files/2816/0793/8523/Fines_Reform_Summary_Report.pdf

In 2018-19, around 4.3 million infringement fines and 53,000 court fines were imposed.² That is to say almost two fines for every three persons in Victoria. However, fines disproportionately fall on certain cohorts of people in certain places, and on people undertaking certain activities.

Almost 30% of infringement fines issued related to toll-roads and most significantly skewed towards suburbs on the outskirts of Melbourne, and with lower socio-economic statistics. Key suburbs to receive tollway fines were Cranbourne, Craigieburn, Hoppers Crossing, Point Cook, St. Albans, Frankston, Dandenong, Croydon and Pakenham.³

Toll-road infringements have been trending down led partly by the toll road providers' experience, and partly led by new contractual obligations which we will discuss in further detail later.

Fine recipients have been characterised in the following way:

- “fine recipients who will or might pay their fines and require incentives or behavioural nudges to do so,
- those who won't pay their fines and require strong enforcement mechanisms,
- those who shouldn't pay their fines but rather should be diverted from the criminal justice system as early as possible, and
- those who can't pay their fines and should have a wider range of options to expiate their fines.”⁴

The final two groups will be the subject explored in this report - those who shouldn't pay and those who can't pay.

² Ibid, pg.5

³ TripleM Radio, Chances Are You Haven't Coughed Up For Your Citylink Fine, <https://www.triplem.com.au/story/chances-are-you-havent-coughed-up-for-your-citylink-fine-43520>

⁴ Fines Reform Advisory Board, Report on the Delivery of Fines Reform - Summary Report, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/2816/0793/8523/Fines_Reform_Summary_Report.pdf

CONTACT WITH THE JUSTICE SYSTEM CAN BE A SIGNIFICANT MOMENT IN A PERSON'S LIFE

For many people, their only contact with the justice system will be through the form of an infringement notice. For others in our community, an initial fine will turn into increased contact with the justice system that does not serve the interest of the individual or the wider community. Systemic failures and a

lack of taking on best practice may go some way to avoiding the negative effects of a system that may compound rather than improve community outcomes. Contact with the justice system can be a significant moment in a person's life

Jean's last drive

Three days into the new year, Jean, at 83 years of age, and with more than five decades of holding a driving licence without committing any driving offence or incurring any infringements, was pulled over by the police.

After the police identified that Jean's licence was suspended, Jean, as asked, surrendered her driver's licence. She was subsequently charged with the criminal offence of driving whilst suspended.

Jean was not aware her driver's licence had been suspended in May 2020 as she had not provided VicRoads with a medical review. She had not received the mail from VicRoads notifying her of the need for this review. VicRoads records indicated this notice was mailed to her in March 2020.

The police could have withdrawn the charge, issued an official warning instead of the charge or dealt with the charge by way of diversion.

Once Jean was aware of her licence suspension she undertook the necessary medical review and VicRoads lifted the suspension on being satisfied that she was fit to drive.

Jean's licence expired during the suspension period and Jean decided not to renew her licence, and sold her car as she had subsequently been diagnosed with Parkinson's disease.

The Police upon engagement by the Peninsula Community Legal Centre agreed to the charge being dealt with by way of diversion.

The Police Prosecutor agreed to withdraw the charge altogether on public interest grounds.

Although Jean no longer required her licence to drive, the withdrawal of the criminal charge was a source of great relief for her.

Examples like this raise opportunities for reform. Jean's lifetime of careful attention to following the road rules and administrative processes was disrupted solely through the lack of receiving VicRoads correspondence.

This case is an example of the common scenario that too many in our community face. Not having received, recognised or dealt with correspondence from an agency about impending action, and not being able to disprove that the agency had sent the mail caused significant impacts on a person who for all intents and purposes has attempted to comply with lawful directions.

The time and public resources expended on this matter demonstrate opportunities for systematic improvement rather than expending taxpayers time and money on moving people unnecessarily through the justice system.

Our justice system is not cheap. It relies on funding for the judiciary, legal representatives, including state funded legal aid and community legal programs, and police to ensure its smooth running. The resources routinely expended in pursuing an infringement often cost many times more than the value of a fine, especially upon entering the court system.

Finding off-ramps for people, especially without the means to pay a fine and subsequent penalties, should be a priority so that resources are not unnecessarily wasted - particularly when when, as often occurs, a magistrate wipes out fines and penalties as they are empowered to consider a person's means when handing down penalties. We can save the community's money and the judiciary's time by looking at some practical changes first.

Recommendation 9 from the 2014 report by the Sentencing Advisory Council set out that "The administrative body should trial the use of automated SMS messaging to remind people to pay prior to the expiry of compliance deadlines, such as prior

to the issuing of a warrant. The administrative body should collect and use email addresses as a means of correspondence with court fine and infringement penalty debtors."⁵ The report noted more than a six-fold increase in court fine payment rates when an SMS reminder was sent to those people who had failed to pay their court fine in the UK when SMS reminders were utilised. That was in 2012.⁶

Such actions, emails and SMS reminders should of course not be limited to the stage of infringement but expanded to ensure persons who are required to undertake a process that may well lead to the imposition of an infringement notice or higher penalty, be given every opportunity to undertake the action or behaviour required.

The Federal Government have been able to undertake such processes through their Services Australia portal that maximise the opportunity for persons to engage with Federal Government processes as they arise.

Put most simply, would an SMS and/or email to 83-year old Jean have ensured that her situation did not move from needing to undertake a medical examination, to ultimately being in the situation where she would never drive again? This is unknown, however, when further contact is undertaken with members of the community on a large scale, it is possible to save entirely avoidable harms, and the resources of the state, through some very simple and cost-effective actions.

RECOMMENDATIONS

- 1. Ensure SMS and email contact to recipients of fines, and subsequent penalties, at all points of the fines cycle for both issuing organisations and Fines Victoria.**
- 2. Implement SMS and email contact where a matter could lead to engagement with the criminal justice system as a result of lack of action.**

⁵ Sentencing Advisory Council, The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria: Report, pg.17, May 2014, <https://www.sentencingcouncil.vic.gov.au/publications/imposition-and-enforcement-court-fines-and-infringement-penalties-victoria>

⁶ Ibid, pg.101

SECTORS MOVING TO RESOLVE THE DRIVERS OF FINES

“When experiencing hardship people have less flexibility, fewer choices and less capacity to make informed choices about how they travel....It is easier and more effective to help people resolve tolling debt and avoid future debt, the earlier they access help. Financial counselling, the legal assistance and community welfare sectors share the concern of business who see customers too late in the debt cycle.”⁷

Transurban

The above statement from Transurban reflects a growing movement of the corporate and essential service providers, such as water and energy retailers, to move away from punitive approaches, either by choice, contract, regulation, legislation or a combination of these.

The Essential Services Commission makes it clear that there is an onus on a water business to work cooperatively with customers who are struggling to pay. Concession rates are available, payment plans can be agreed, and free financial counselling and advice on how to reduce water usage are all common practice. There are restrictions on action,

including legal action that can be taken depending on the amount or circumstance of the debt and a person's financial means. These restrictions apply to the water business. Water businesses must take into account the customer's circumstance including loss of employment, family violence, serious illness and unexpected expenses.

Similarly, energy retailers offer payment plans, free financial counselling, assistance in accessing government grants and advice on how to reduce energy usage in the home.⁸ Energy retailers are facing more significant fines themselves in instances of wrongful disconnection of vulnerable customers, with penalties of up to a million dollars.⁹ An onus is put on the provider of the service to engage customers, seek to assist them in getting them to a position where they can meet their payments and work through the drivers of their non-payment.

In considering the operations of fines in Victoria, there are reasons to see value in adopting more of these corporate approaches in dealing with vulnerable people. Limited practices are currently in place as a way for people to deal with fines. The Work and Development Permit scheme is an important element of this but is limited by the manner in which people can access the program, its promotion and the widespread availability of the program itself.

⁷ Transurban, When hardship is a factor in tolling debt, Oct 2018 <https://www.transurban.com/content/dam/transurban-pdfs/01/tolling-debt-hardship-report.pdf>

⁸ Origin Energy, Our hardship policy: Victoria, Jan 2019, https://www.originenergy.com.au/content/dam/origin/residential/docs/your-account/HardshipPolicy_VIC_Aug19.pdf

⁹ Victorian Government Media Release, New Rules For Energy Retailers To Protect Households, May 2021, <https://www.premier.vic.gov.au/new-rules-energy-retailers-protect-households>

DEALING WITH UNDERLYING ISSUES ASSOCIATED WITH FINES

Getting John back to work

John had local government parking infringements and speeding / traffic camera infringements totaling over \$3000. John had lent his car to his son-in-law for a period of time, who in turn incurred these fines and did not disclose this to John. The period of time allowed for John to have nominated another driver for these offences had elapsed.

John lost his employment in the construction industry during the Victorian lock-down restrictions in 2020, he has no income and is recovering from surgery for an injury as a result of years of wear and tear working in manual labour. John has two dependent children, and this is the first period of unemployment in John's life.

John is anxious on many fronts: aside from the fines issue and having no means to pay these, he has justifiable cause for concern that he will struggle to obtain employment in the construction industry given his age and recent medical issues.

John sought to undertake a vocational training course to attain new skills and enhance his employability in different types of employment, and give him the knowledge to develop his CV and letters of applications.

Peninsula Community Legal Centre's (PCLC) WDP worker contacted a prospective college and arranged an appointment for John to attend the next day. After this appointment, John contacted the WDP worker to confirm that he had enrolled into the course and that the college had made an application for him to access the WDP scheme. Undertaking this course would enable John to "work off" nearly half of his fine debt. The college also offered John other employment and vocational training courses to build his skills and confidence whilst simultaneously finalising his fine debt.

The purpose of our fines system is to regulate behaviour. This case illustrates the benefits of a WDP model that utilises the expertise of a community legal service and the health-justice relationships that are established by them locally to ensure that vulnerable people are not disproportionately adversely impacted by the infringements system. In this case, despite the unfairness of receiving fines, John is using the WDP scheme to improve his life circumstances where he would have been unable to financially respond to the fines.

Further, this case also illustrates that properly resourcing a place-based WDP role such as that being piloted by PCLC can ensure the objectives of the WDP can be realised and that people can have a much-improved prospect of accessing the scheme in a timely way.

While John is taking responsibility for fines that another person should have received, an extension of the period that a person may nominate an alternative person may have provided the opportunity to avoid this unfairness. Within the fines lifecycle there is a 28-day period for 'Notice of Final Demand' that is in place prior to an enforcement warrant being issued. This presents an additional period, and additional opportunity for a person receiving a fine to appropriately nominate who was responsible.

RECOMMENDATIONS

- 3. Expand and fund programs to support community legal services to support WDP schemes.**
- 4. Extend the period to nominate a person responsible for a fine until the end of the enforcement stage.**

PENINSULA COMMUNITY LEGAL CENTRE: CASE STUDY ON SOUTH AND EASTERN SUBURB TOLL FINES

>> City of Casey:

70,624 toll infringements issued, valued at \$11,530,893. 79% progressed to enforcement orders with a value of \$18,048,691.

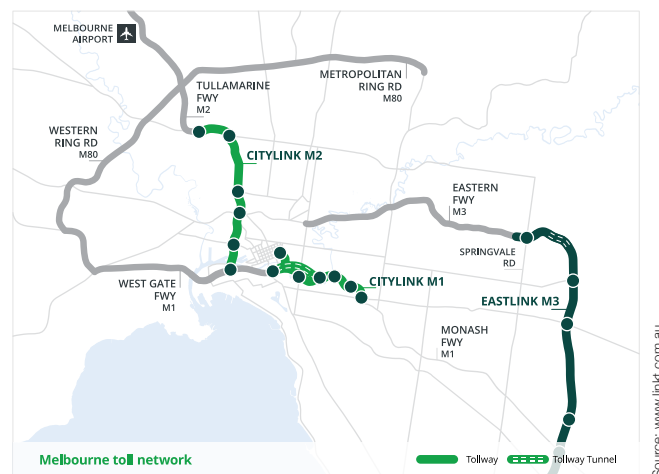
>> City of Frankston:

34,493 toll infringements issued, valued at \$6,748,549. 95% progressed to enforcement orders with a value of \$10,647,553.

>> The City of Dandenong:

34,609 toll infringements issued, valued at \$5,653,333. 77% progressed to enforcement orders with a value of \$8,677,728.¹⁰

Road toll fines are a significant burden on outer south eastern communities. With the increase in the reliance on toll roads across Melbourne, as opposed to open access highways and freeways, the community is sustaining concentrated fines, especially in areas of disadvantage.



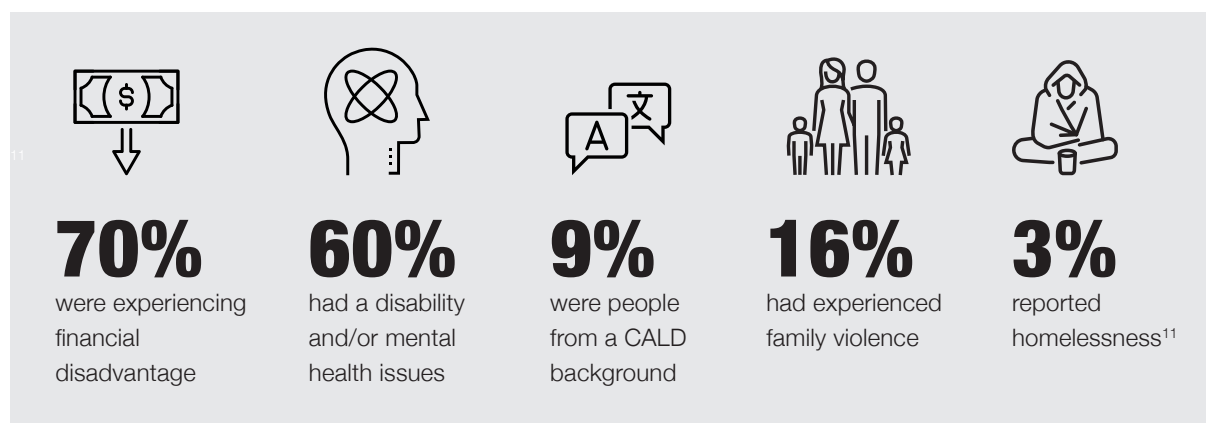
The disadvantage is compounded with the reliance on cars to access work, and the lack of alternatives to accessing toll roads. These penalties are compounded when added penalties and enforcement actions, such as drivers licence suspensions, refusal of vehicle registration renewals and the seizure of motor vehicles become part of the response to non-payment of toll fines.

Toll fine data obtained by the Peninsula Community Legal Centre shows that over a quarter of all enforcement infringements issued in Victoria for toll roads are in the outer south eastern suburbs.

The PCLC fines clinic advised or assisted 545 clients with fines matters and the average unpaid fines debt for PCLC clients with open casework matters is approximately \$12,000. The Fines Clinic has successfully revoked \$1,868,356.31 of fines on behalf of 107 clients over 2020-21 based on their special circumstances including family violence. The average for each of these clients was \$17,461.27.

¹⁰ These values were obtained through a Freedom of Information request and cannot be accurately compared with other outer suburban communities.

UNPAID FINES WITH THE PENINSULA COMMUNITY LEGAL CENTRE



The figures above reflect members of the community able to access the fines clinic run by the Peninsula Community Legal Centre. Many in the community are unable, and do not have the social capital to seek support address their fines or debt matters. Experiencing disadvantage, including people with significant mental health and other psychosocial risk factors, can lead to ignoring mail, which is how most people become aware of a fine. People experiencing disadvantage are most likely to seek assistance through a healthcare provider, who are not equipped often to deal with financial or legal matters.

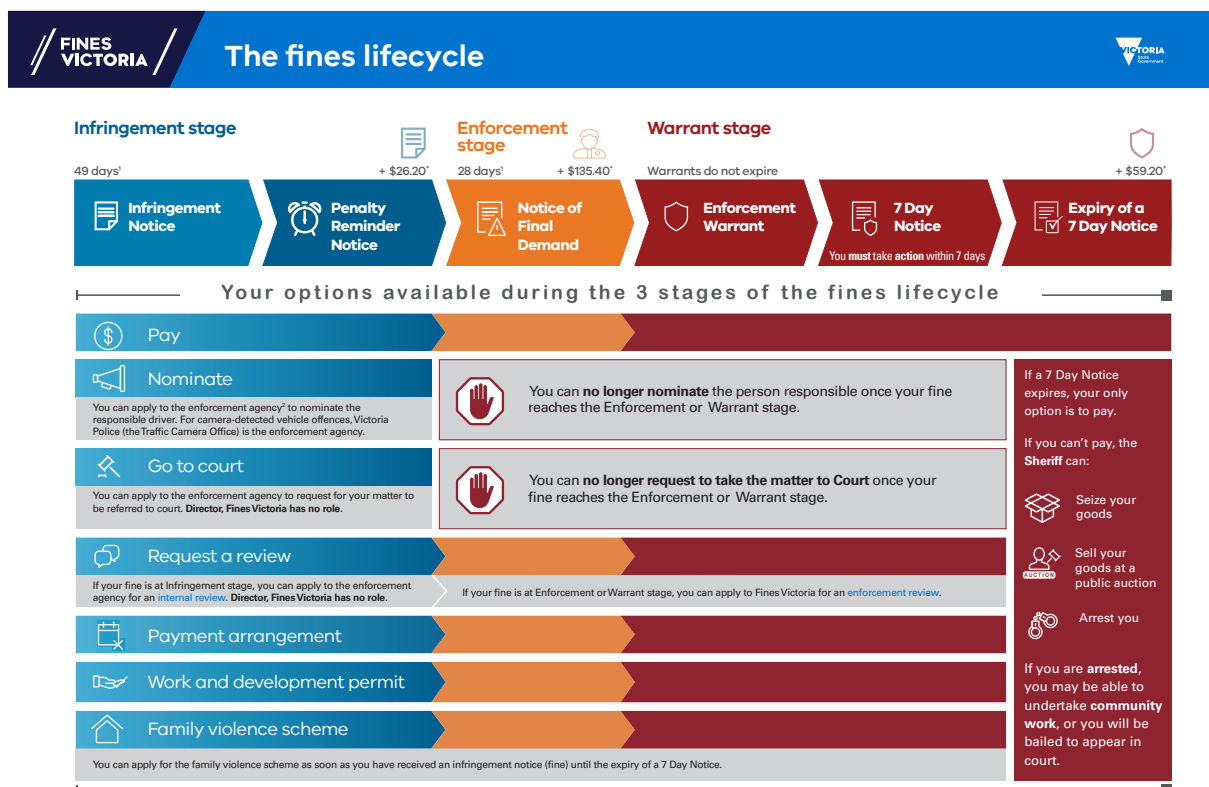
This provides a challenge to authorities that issue fines or processes that will ultimately end up resulting in a fine, an infringement notice or a more severe penalty. This challenge occurs with the initial issuer of a fine like a toll road and continues through to Fines Victoria and their well-publicised IT issues.¹²

Efforts to contact people receiving a fine vary by organisation, however, the accepted standards are to issue a fine payable within 21 days via mail, followed by a reminder (potentially with an additional fee) and another 14 days. It can then be registered with Fines Victoria which issues a final Notice of Demand with the addition of a fee. If a fine and additional fees are still outstanding, the Magistrate's Court may issue an enforcement warrant, with a Sheriff's Officer able to take action. A '7-day Notice' can be issued as a final warning, before the person faces being arrested if the matter is unresolved.

A more detailed format from Fines Victoria is presented on the following page.

¹¹ Peninsula Community Legal Centre, Fines clinic attendees 2020/21

¹² Fines Reform Advisory Board, Report on the Delivery of Fines Reform - Summary Report, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage-files/2816/0793/8523/Fines_Reform_Summary_Report.pdf



Tolling-related fines are the most significant category and increasingly so, as an infringement moves from one process to the next. Starting out at 29% of all fines, by the stage that a fine debt moves to a warrant being issued for an arrest toll fines account for 41% of matters unresolved.¹³ By 2015-16 driving on CityLink without a valid pass had topped the list of charges before Magistrates' Courts, with more than 73,000 toll matters in the Magistrates Court.¹⁴

This is increasingly not at the insistence of toll road operators or the State Government, who both have made efforts at minimising the number of fines that can be accrued. Rather than daily fines for tolls on Transurban, fines are now only issued weekly. There is a greater emphasis by Transurban on dealing with drivers in hardship directly, and taking more time, now

up to six months, to try to resolve unpaid toll charges before referring matters onto Fines Victoria.

The operator says "Transurban does not profit from fines, and the infringement process is the last and least preferred option available to us."¹⁵ Once a penalty has moved from the control of the toll operator, hardship is no longer as significant a factor in the government infringement processes led by Fines Victoria.

These reforms however are contractual in nature, rather than backed by legislation, meaning that the other toll road operator in Victoria, Eastlink, is not subject to the same requirements. Moving to a legislative approach will ensure consistency across our road network.

¹³ ibid

¹⁴ Benjamin Preiss, Transurban extends support to debt-ridden drivers, The Age, Oct 2018, <https://www.theage.com.au/national/victoria/transurban-extends-support-to-debt-ridden-drivers-20181011-p5095l.html>

¹⁵ Transurban, When hardship is a factor in tolling debt, October, 2018, pg.6, <https://www.transurban.com/content/dam/transurban-pdfs/01/tolling-debt-hardship-report.pdf>

A greater emphasis on dealing with the drivers of the individual's behaviour is seen by Transurban as being a more productive approach, in a circumstance where members of the community cannot be excluded from their service, and where unpaid tolls are less likely to be recovered when combined with significant infringement penalties.

Hardship affects a person's ability to seek support before matters moved on to debt collectors, fines and courts. "We heard how small tolling debts are often ignored when lives are in chaos"¹⁶ the operator says. As we have noted earlier, small tolling debts too often turn into significant fines and negative episodes in people's lives.

Even prior to this work on hardship policies, Transurban was able to reduce fines by 61% in two years by working with governments, stakeholders and road authorities. They did this by providing more time to contact people who had infringed, getting more contact information from state authorities to contact people and proactively working with their customers in social or financial difficulties.

Once a toll has moved from Transurban to Fines Victoria, the withdrawal of a tolling-related infringement is at the discretion of Victoria Police. The State Government initiated a Fines Reform Advisory Board which delivered its report in April 2020 on the Delivery of Fines Reform in Victoria. This report had 24 recommendations. One of these recommendations outlined that toll operators should be given powers to withdraw tolling-related infringement fines by their own motion and that when this occurred tolling fines could not be reinstated.¹⁷

The fact that Transurban felt compelled to advocate for the ability to request the recall infringement notifications by Fines Victoria when hardship was identified is telling. This reflects the ineffectiveness of a fines system that does not properly take hardship into account, and underscores how it is counterproductive to move this through to a judicial process. Most of Transurban's customers with financial hardship due to special circumstances had their fines waived.¹⁸ A driving force of the Fines Reform Act of 2014 was to see vulnerable people, especially those with multiple infringement notices, diverted away from the infringement framework as quickly as possible, especially where financial settlement of a fine was beyond the means of the recipient.¹⁹

RECOMMENDATIONS

- 5. Empower toll operators to withdraw tolling infringements at any stage of the fine lifecycle.**
- 6. Enshrine in legislation how, and how often, private toll operators may impose a fine.**

¹⁶ Ibid, pg 8.

¹⁷ Fines Reform Advisory Board, Report on the Delivery of Fines Reform - Summary Report, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage-files/2816/0793/8523/Fines_Reform_Summary_Report.pdf

¹⁸ Transurban, When hardship is a factor in tolling debt, October, 2018, pg.12, <https://www.transurban.com/content/dam/transurban-pdfs/01/tolling-debt-hardship-report.pdf>

¹⁹ Department of Justice and Community Safety, Annual report on the infringements system 2017-18, pg.8, https://files.justice.vic.gov.au/2021-06/Annual%20report%20on%20the%20infringements%20system%202017%2018.pdf?_x_IYSINGhSsZOuMaelaUC7KtzwqndSx=

HAVING THE MEANS TO PAY FINES AND PENALTIES

“At one end of the scale a fine might be crushing; at the other, the same fine may be no punishment at all. The minimisation of this effect will be an essential element in any well-designed fines system.”

- The Fines Reform Advisory Board²⁰

The Fines Reform Advisory Board does not use the phrase “crushing” without considering the weighty effect it has on the reader. The experience of those who receive fines that simply are beyond a person’s means to pay, can become too great of a burden for some in the community to deal with.

Rather than prompting a change in behaviour, fines can cause great hardship to individuals and their families. People of limited means may be faced with choices like paying the electricity bill, or paying a fine. Some people just stop reading their mail in response to the worry over receiving another fine. Fines can be a reason that crime of a higher order is committed. The fine is no longer changing an undesirable behaviour but prompting undesirable behaviour – which often comes with another fine or higher-level sanction.²¹

Concessions are non-existent, and it is not until a person is in a judicial process that a person’s means can be taken into consideration. A fine that causes genuine hardship to one person may well be of negligible consequence to another. Calibrating a fine to a person’s means is surely an element that may need to be resolved to ensure a better operating fines system.

The current approach is regressive and without nuance. Other jurisdictions have taken different approaches, such as Finland which scales fines to income. Such scaling has been recommended by organisations like The Australia Institute.²² However, a more simplified method is to simply refer to known and understood current processes such as Health Care Card holders or those with Pensioner Concession cards. Differential rates take account of the effective punishment imposed by a fine, not a flat dollar amount.

While in the context of infringement penalties, the 2014 report by the Sentencing Advisory Council recommended that “infringement penalty recipients who are experiencing financial hardship should receive a reduced infringement penalty amount of 50%.”²³

This approach was supported by the Fines Reform Advisory Board last year stating that “the value of fines should better reflect the capacity of fine recipients to pay their fines.”²⁴ It recommended further consideration around the introduction of a concessional penalty rate of infringement for those in financial hardship in recommendation 15.²⁵

A further approach is to expand on processes that currently exist like those used by Victoria Police. The police say that their guidelines are “being adopted to ensure that drivers are being afforded the opportunity to positively alter their driver behaviour, without being penalised by multiple infringements”.²⁶ Similarly, police are giving official warnings in relation to low level speed infringements where a person has an otherwise good driving record.²⁷

20 Fines Reform Advisory Board, Report on the Delivery of Fines Reform - Summary Report, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/2816/0793/8523/Fines_Reform_Summary_Report.pdf

21 Quilter J and Hogg R (2018), p. 16, The hidden punitiveness of fines, International Journal for Crime, Justice and Social Democracy 7(3): 9-40.

22 Jesper Lindqvist Cameron Amos, Finland’s fine example, <https://australiainstitute.org.au/wp-content/uploads/2020/12/TAI-Discussion-Paper-Finlands-fine-example.pdf>

23 Sentencing Advisory Council, The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria: Report, pg.30, May 2014, <https://www.sentencingcouncil.vic.gov.au/publications/imposition-and-enforcement-court-fines-and-infringement-penalties-victoria>

24 Fines Reform Advisory Board, Report on the Delivery of Fines Reform - Summary Report, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/2816/0793/8523/Fines_Reform_Summary_Report.pdf

25 Ibid, pg. 16

26 Victorian Police, Official Warnings, June 2021, <https://www.police.vic.gov.au/official-warnings>

27 Ibid

In other circumstances where an infringement could be issued, there is no good reason why it should not be where there is demonstrated good behaviour (no previous fines in the past two years related to the matter has been issued). Alternatively, fines could only be payable upon a second similar infringement within a certain time period (for example two years).

A First Infringements Program, where an infringement's financial penalty is only imposed on receiving a second similar infringement, could be introduced. Such a program would encourage the change in behaviour that the community is seeking by the imposition of potential fines if the behaviour was repeated, but without the various negative consequences that are outlined in this paper elsewhere – particularly on those in our community without the means to pay fines at all.

In its review of penalty notices almost a decade ago, the New South Wales Law Reform Commission emphasised “the need to respond to the impact of fixed penalty amounts on low-income earners and the compounding effects of penalty notice debt on social disadvantage and personal and family distress. Enforcing debt in relation to those who cannot pay is wrong in principle, and in practice wastes the resources of enforcement authorities.”²⁸

RECOMMENDATIONS

- 7. Fine issuers and Fines Victoria undertake a process to develop a best practice model either led or including significant input from the Legal Services Board with an emphasis on dealing with hardship provisions.**
- 8. Introduce a concessional rate in relation to fines and penalties tied to existing state or commonwealth government indicators such as accessing certain Centrelink benefits.**
- 9. Introduce a First Infringements Program, where an infringements financial penalty is not enforced unless a second similar infringement is issued within two years, at which time the first and second infringements financial penalties will be imposed together.**

²⁸ New South Wales Law Reform Commission, Penalty Notices, Report 132 (2012), <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-132.pdf>

ELECTING TO GO TO COURT

A significant amount of the courts' time is spent on fines. It is costly to all involved, especially the tax payer. Electing to go to court to deal with infringements is risky – however most in the community will not have a strong knowledge of how our justice system works, and the risks of seeking to contest a fine through a judicial process.

People who receive a fine can contest their matter through a court. This of course should not change, however, there must be a balance to provide the appropriate opportunities to understand exactly what opting to have a matter heard in a court means, and for the system to demonstrate appropriate stepping off points to allow a person to extract themselves from a court process before it has been heard.

Electing to go court without advice

Susie was pulled over by police for speeding and issued an infringement for \$537.00. Susie was rushing to get home at the time after receiving news that her father had been diagnosed with terminal cancer.

Susie, without seeking legal advice, was advised by a family friend to elect to have the infringement heard in court so she could explain why she was speeding. She has since received a police brief requiring her to appear at a Magistrates' Court.

Susie was not aware until then that this would result in a criminal charge being issued in place of the original infringement. She was also unaware that the Magistrate could record a conviction against her and give her a higher penalty compared to the original infringement amount.

Susie had simply thought that electing to have the matter proceed before a Magistrate would give her an opportunity to explain why she was speeding, request leniency and a waiver of the fine.

Susie was very concerned about the impact of a criminal record on her employment as a bus driver and her qualifications as a personal carer and disability worker.

But it was too late to stop this process.

Susie contacted the police to request the charge be dealt with by way of a diversion so that she could attempt to avoid a criminal record. However, given she had incurred some speeding fines previously, she was advised that diversion may not be recommended in her particular case.

Susie was faced with the option of pleading guilty or pleading not guilty, in the event diversion was not recommended.

She was advised that she was at liberty to plead not guilty, however, would likely be unsuccessful in contesting the charge as police had evidence of her speeding.

As this case study reflects, the lack of information on infringement notices about the impact of electing to have infringements heard in a court setting can put people onto a path that with full information they would not have chosen.

Going to court isn't a gamble on reducing the infringement as it is, but a risk on more significant penalties. The court's time is not without cost, the police and police prosecutor and services that the individual may be eligible for are additional costs most often borne by the community. These costs are often many times the value of any particular fine.

Of course, the option is rightly available, but the interest of the community is as often as possible in not having matters go to court, if only for the purposes of seeking the least financial cost to community.

On the individual, attending court imposes costs of preparation, time and cost of attendance including missing work and stress related to being involved in a judicial process. This is before any judgement is made, which may well impose more severe penalties than originally incurred.

The Peninsula Community Legal Centre reports that the majority of their clients regret intending to have their matter considered by the court, upon understanding that the court could impose a more severe penalty.

Where their clients are not eligible or not recommended for diversion, they have the difficult task of deciding how to plead to an offence which, had they made an informed decision before electing to have their matter heard by a court, would have otherwise remained as an infringement, and a financial penalty only.

Having elected to go to court, there is obviously a role to play in allowing someone to change their mind and allow them to finalise their infringement rather than burden the court's time, and resources of the state in pursuing the matter.

There is also a role to play in ensuring a person who elects to have their matter heard before a court is able to seek the advice of a lawyer or community legal service to assist in making a decision before the matter comes to court. This is especially important where there is no reasonable chance that a person may be able to avoid a fine.

A typical example of this is when public safety priorities ensure that a matter will be pursued by a police prosecutor, and where there is overwhelming evidence, such as driving through a red light with evidence of a red-light camera photo available to the prosecutors.

RECOMMENDATIONS

10. Allow for a person to withdraw their application electing to go to court any time prior to the matter being heard at court.

11. More prominently encourage a person who is considering electing to have their fine matter heard in court to seek legal advice including through Victorian Legal Aid and community legal services.

FAILING TO KEEP FINES OUT OF JUDICIAL PROCESSES

When unpaid fines and penalties move to a judicial process it is a systemic failure of the fines system. Often the person receiving an infringement is either unaware or unable to effectively deal with their fines, even if there are some examples of those that are unwilling to pay.

Moving infringements from administrative processes to the judiciary incurs increased costs to the community and individual with no evidence of any better outcome or changed behaviour as a result of these increased costs.

Additional fees, and an appearance in court, do not resolve non-compliance around paying fines, or the drivers that led to the original behaviour that incurred a fine. The result of actions imposed by the judiciary –like orders to undertake certain programs, such as drug and alcohol programs - may have this result, but the action of going to court itself does not seem to be influential. There is therefore a strong argument to bring forward opportunities to intervene earlier than at the point of attending a court to attempt to deal with drivers of behaviour, rather than wait.

RECOMMENDATIONS

- 12. More strongly promote access to the Work and Development Permit scheme including as an option on the Fines Victoria website.**
- 13. Investigate and report on the cost effectiveness of the current fines enforcement regime.**

Options for reform

THE POSITIVE ROLE OF COMMUNITY LEGAL SERVICES AS FIRST POINT OF CALL FOR INTERVENTION

Community legal services play a vital role in connecting people in our community to the right services to deal with their legal issues.

Getting in contact with a community legal service

Emma had received an infringement notice for carrying a weapon (pocket knife) at a train station and had been issued with an approximately \$1000 fine. She got in touch with Peninsula Community Legal Centre and then met with a community lawyer from their Fines Clinic. Emma was assessed as suitable for the WDP scheme and was referred by the lawyer to the WDP project worker for support to identify a sponsor service provider.

Emma was studying first year teaching at university but was struggling to cope in this new environment. Having a history of mental health issues, she was receiving counselling support from a student services psychologist. Emma's anxiety led to a growing reliance on drugs and alcohol; this, along with her fines matter, was eroding her ability to cope and had started to interrupt her engagement with her studies.

Through discussions with the PCLC WDP worker, Emma agreed that she could benefit from being linked into the local Youth AOD and mental health service to address her escalating anxiety and substance use issues. An appointment for assessment was scheduled to occur the following day. The PCLC WDP worker was able to provide guidance for the caseworker which allowed Emma to maximise her treatment and to work off her fine debt. This experience also means that the AOD worker will be better placed to identify other vulnerable young people on their case load who may be suitable for the WDP scheme.

This case demonstrates the value of a local WDP linkages worker who knows who the local sponsors are and what the service demand and access issues exist across the region. In the absence of this, it is highly likely that Emma would not have been provided with referral information to the local service because there is no public list of sponsors available.

Ensuring that Emma was able to engage in the WDP scheme has given her an opportunity to break a potentially destructive cycle and furthered the local health service's capacity to engage young people in alternative options to respond to the justice system.

Community legal services are on the frontline to make interventions with people in crisis that can positively change people's engagement with the justice system.

This is a role that can and should be expanded as a way of minimising contact with the justice system when related to fines. The support provided by community legal services can put people in touch with services that improve their legal outcomes and lives, as well as provide expert advice to ensure a person who is in contact with the legal system fully understands their options.

The current system of fines presents earlier opportunities of contact to be engaged with community legal services that can play a vital role in improving outcomes, especially where a person can consider opting to go to court.

An additional outcome is to put people into contact with their community legal services prior to opting to go to court, if eligible. This also builds on recommendation 21 from the Fines Reform Advisory Board that “Fine recipients should also have more time to get advice or take other action following the service of a notice by the Sheriff which presently warns a fine recipient to take action within seven days or be served with an enforcement warrant for their arrest.”²⁹

RECOMMENDATION

14. Community legal services are actively promoted by government departments and agencies, including Fines Victoria, as a primary source of advice and support, especially for fines recipients, and funded appropriately to meet increased demand. At minimum fines that are issued will include the contact details for legal assistance.

²⁹ Fines Reform Advisory Board, Report on the Delivery of Fines Reform - Summary Report, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage-files/2816/0793/8523/Fines_Reform_Summary_Report.pdf

EXPANDING THE WORK AND DEVELOPMENT PERMIT SCHEME

The Work and Development Permit (WDP) scheme is a Victorian Government initiative to provide vulnerable and disadvantaged people with a non-financial option to address their fine debt. It is modelled on interstate examples including NSW's Work Development Orders.

Eligibility for the scheme is limited to those who have, or have experienced, one of the following:

- a mental or intellectual disability, disorder or illness
- an addiction to drugs, alcohol or a volatile substance
- homelessness
- family violence
- acute financial hardship.

Eligibility is dependent on providing detailed supporting evidence. The WDP scheme allows an eligible person to work off their fine debt by participating in certain activities and treatment.

The WDP scheme commenced on 1 July 2017. The limitations imposed allow significant room to expand what has been demonstrated to be a successful program in seeking to change the behaviour of people who have received fines.

The Fines Reform Advisory Board made three recommendations to improve the accessibility of the Work and Development Permit scheme to enable “those who shouldn't or can't pay their fines to access a therapeutic, non-financial alternative to payment.”³⁰

ACCREDITED SPONSORS

A key element to the scheme is being able to be in touch with an accredited sponsor. Accredited sponsors are organisations or health practitioners accredited by the Director of Fines Victoria to support the WDP scheme.

Accredited sponsors assist their clients to deal with their fine debt and encourage engagement with services so that they can ‘work off’ their fine debt. The rate at which a person can ‘work off’ their debt is variable according to activities undertaken.

In 2018 the Victorian Legal Services Board (LSB) funded the Peninsula Community Legal Centre to implement a collaborative health-justice project to address multiple issues associated with vulnerable cohorts within the infringements system across the PCLC catchment area.

The primary objectives of this project included the following:

1. Build a sustainable system within the health and community service sector in which the WDP initiative can be effectively implemented through broad sponsor uptake
2. Increase access to legal advice for clients of health and community services who present with outstanding infringement matters via education and streamlined pathways to existing legal supports
3. Create a credible evidence base for the benefit of policy and legislation makers in developing a fairer and simpler toll infringement system

The LSB funded project has proven to be highly effective in garnering interest and promoting uptake of the WDP scheme by a diverse range of community health and social services agencies. Prior to this, community agencies had very little awareness of the WDP nor the capacity to implement it effectively within their service settings. After less than 12 months the WDP officer had linked more than 50 clients with sponsors and assisted more than 50 service providers to become accredited sponsors.

³⁰ Fines Reform Advisory Board, Report on the Delivery of Fines Reform - Summary Report, pg.10, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/2816/0793/8523/Fines_Reform_Summary_Report.pdf

A key challenge for the WDP program is securing a sufficient number of suitable community service organisations and registered health practitioners across the state to become WDP sponsors. Without this, vulnerable Victorians who will benefit most from may miss out on this service, and a service that ultimately benefits all Victorians will not fulfill its role.

The state government can play a critical role in facilitating community service organisations and health providers into becoming WDP sponsors. Supporting locally based resources, like Community Legal Centres, to enlarge the number of WDP sponsors will be critical to increasing the scheme's success.

The success of a localised approach to engaging service providers is demonstrated in NSW where there are more than 2,500 service providers as compared to around 300 in Victoria, where half are estimated to be registered, but inactive and not currently offering places.

Research in NSW in 2015 demonstrated very positive experiences by participating organisations in their WDP including that:

- “94% indicated the scheme had enabled their organisation or practice to meet client needs better or in new ways; and
- 72% reporting that the Scheme had provide more opportunities for their organisation or practice to establish or strengthen networks with local NGOs or government bodies.”³¹

The research also concluded that:

- “95% of sponsors said the scheme had helped reduce the level of stress and anxiety their clients felt about their fines debt; and
- 87% of sponsors said the scheme had enabled clients to address the factors that made it hard for them to pay or manage their debts in the first place.”³²

Organisations and participants were both seeing very positive results through their participation, however, in Victoria, health and community service providers must be pro-active to become a sponsor. In the absence of any funding to incorporate the scheme into their services, the centralised approach to sponsor engagement taken by Fines Victoria will remain insufficient.

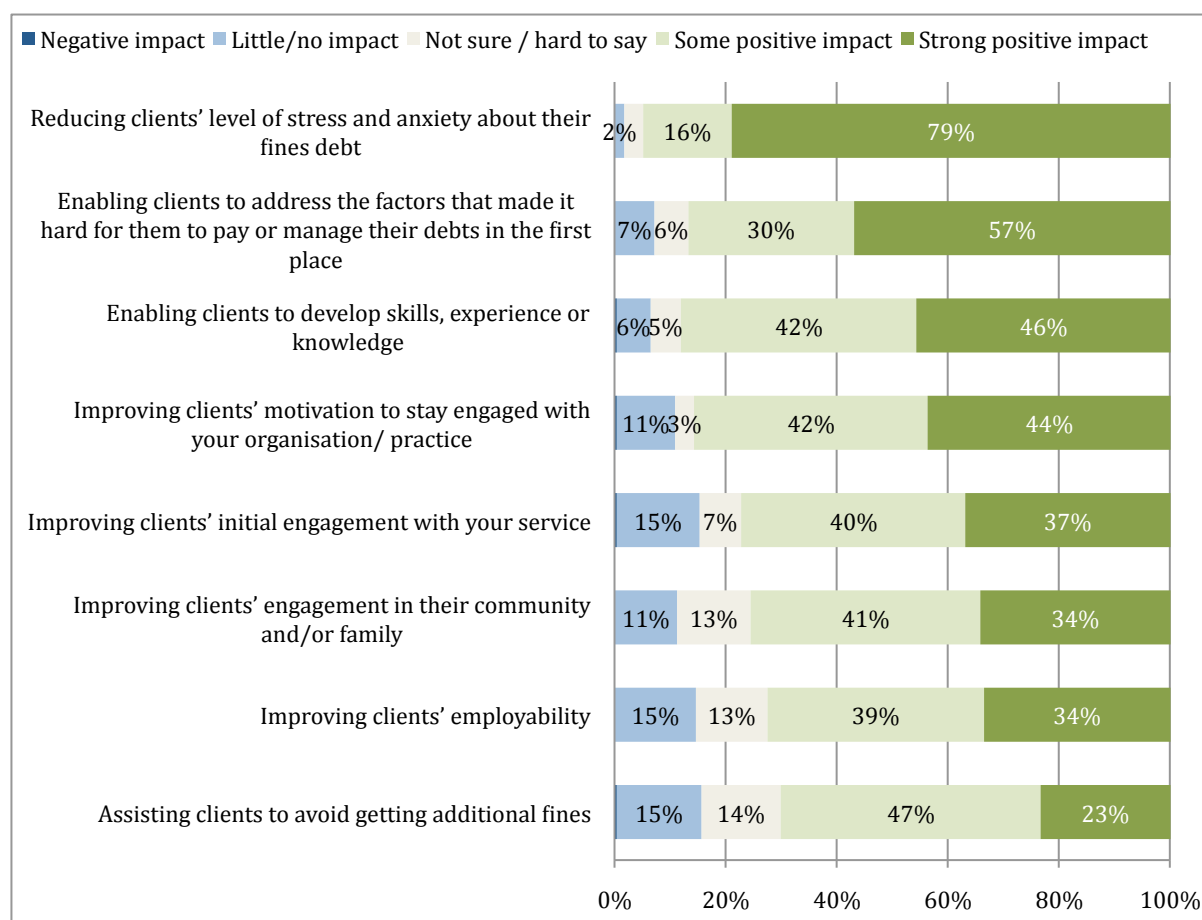
When sponsors in NSW were being approached to understand how they had become involved in their equivalent scheme the highest responses indicated Legal Aid NSW, word of mouth from other sponsor organisations, State Debt Recovery (NSW equivalent to Fines Victoria) and approached by a client seeking a WDO.³³ Diversifying how organisations can find out about Victoria's WDP, and providing them support to get involved, is important to find more opportunities for individuals to avoid engagement into the criminal justice system.

³¹ Legal Aid NSW, Evaluation of the Work and Development Order Scheme: Qualitative Component https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0018/25218/WDO-Final-Evaluation-Report-May-2015.pdf

³² Ibid

³³ Ibid, pg. 26.

Figure 2.2: Perceived impact of the WDO scheme for clients ³⁴



N=295 sponsors who have supervised one or more WDOs.

In Victoria, the PCLC has observed many instances where vulnerable clients have accessed the scheme and as a result are engaging with health and community programs, often for the first time, while diverting them away from the justice system.

The present onus on individuals to identify and negotiate with a potential sponsor requires a degree of social capital that is not accessible to all members of the community who are in already vulnerable situations. A potential sponsor then must engage with Fines Victoria to become a registered accredited sponsor which imposes an administrative burden for an organisation. This process is often drawn-out and can take several weeks to conclude. This limits sponsors' willingness to engage with the program. These hurdles are able to be overcome.

While the WDP has strong merit and is a logical initiative within the suite of Fines Victoria activities, its chances of achieving its objectives are diminished while there is no local or regional approach to promoting uptake by potential sponsors or facilitating access to it for individuals locally.

The WDP has presented opportunities for the PCLC to work much more closely with health providers in health-justice partnerships, resulting in greater capacity for non-legal service providers to identify and respond to the legal needs of their clients and to generate streamlined access to a full range of free legal services.

³⁴ Legal Aid NSW, Evaluation of the Work and Development Order Scheme: Qualitative Component, pg. 17 https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0018/25218/WDO-Final-Evaluation-Report-May-2015.pdf

Trying to find a WDP

Justine was referred to the Peninsula Community Legal Centre by her school welfare officer after concerns were raised for Justine and her family. Justine had accumulated \$3,000 of fines including toll roads and driving offence infringements.

Justine had arrived in Australia several years earlier with her mother and siblings as refugees, speaking no English and suffering the impact of trauma relating to their experiences of violence, death of family members and displacement in their country of origin.

Justine had obtained her driver's license, often providing transport support for her family, Justine had obtained her driver's license, often providing transport support for her family, but was completely unaware there was a cost to drive on the toll roads. Justine and her family were very anxious about their financial situation, they were worried that the Sherriff or debt collectors would come to their home or that they would be evicted. These circumstances were compounded by the family becoming transient, moving on multiple occasions through crisis accommodation services and also having to spend a short period living in the family car.

After agreeing to undertake a Work Development Permit Scheme to deal with the outstanding fines, Justine needed to identify a suitable sponsor.

Her first attempt was with her then secondary school. The school wellbeing team identified that providing Justine with ongoing counselling would be beneficial to Justine. The school agreed to initiate the application process to become an accredited WDP sponsor. However, although the school provided in-principle agreement in August 2019, the application process remained incomplete by the end of the school year in December. By this time, Justine had graduated and left the school and was unable to access the WDP there.

Justine commenced studies at university in 2020 and classes were quickly transferred to online learning due to COVID-19. Justine secured support from the University student services to become a WDP sponsor. The university did not complete their registration until December 2020, by which time Justine had completed her first year of study and had left the university in order to study interstate.

Justine contacted the WDP worker in 2021 from interstate, where she is now studying. She reports that she is enjoying her studies but is experiencing a lot of stress about her unresolved fines. She is disappointed that her efforts to encourage WDP sponsor participation from service providers has not yet yielded a positive outcome. Although interstate providers are able to become sponsors in the Victorian scheme, Justine was wary of approaching her new university to seek support.

Justine agreed that accessing counselling to address the trauma issues she has experienced previously from her childhood in her country of origin, and through her complex settlement experience had the potential to be helpful. The PCLC WDP worker has identified a counsellor with specialist refugee trauma practice experience who has agreed to become a WDP sponsor. After assessment from an interstate GP Justine is now undertaking counselling via telehealth with the Melbourne-based psychologist.

Despite multiple attempts across the course of two years it was difficult for a high performing individual to secure a WDP sponsor. Justine was clearly committed to the scheme, as a way to deal with the underlying issues of her behaviour, and to use it as an opportunity to improve her circumstances.

Such diligence should be commended and supported, however, the supportive structures required to facilitate a well working WDP scheme are clearly not in place. Place-based WDP support to assist access to the scheme, and support for sponsors is essential to overcoming multiple barriers. The NSW findings demonstrated that a person may come out of the WDP better able to contribute to the community than prior to their engagement with the justice system. This should be strongly embraced, but clearly needs proper and appropriate investment with organisations close to community.

Recommendation 11 of the Fines Advisory Board was that “accredited sponsors should be funded to undertake the administrative activities required as a condition of accreditation for the WDP scheme.”³⁵

Our recommendation builds on this in supporting the finding of sponsors as well as their support directly to avoid the circumstances outlined above.

RECOMMENDATIONS

15. Accredited sponsors be funded to support their administrative processes related to their involvement in the WDP scheme, including to support their application process.

16. Support community legal services through funded and specific WDP positions to expand the number of sponsors, and increase linkages between community legal services, health providers and community organisations.

WDP PROGRAMS EXTENDED TO COURT FINES

The Work and Development Permit scheme can be expanded to court fines. Currently, an artificial barrier exists that treats these financial penalties in a different manner to any other. There is no good reasoning behind this, and its consideration was supported by recommendation nine of the Fines Advisory Board report stating “The Advisory Board recommends that guidelines should be developed to support the exercise of the power under section 10F of the Fines Reform Act to waive infringement fines subject to a WDP.”³⁶

RECOMMENDATION

17. The Work and Development Permit Program can be expanded to court fines.

³⁵ Fines Reform Advisory Board, Report on the Delivery of Fines Reform - Summary Report, pg. 15, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/2816/0793/8523/Fines_Reform_Summary_Report.pdf

³⁶ Ibid

SPECIAL CIRCUMSTANCES - REFORMING THE 'NEXUS REQUIREMENT'

A review of a fine under Special Circumstances can occur if a person can show that one or more of the following applies to them:

- intellectual disability
- mental illness or disorder
- a serious addiction to drugs or alcohol
- homelessness
- family violence.

Additionally, it needs to be demonstrated that the person did not understand their behaviour was against the law, or they were unable to control their behaviour, even where they knew it was against the law.³⁷

Accessing Special Circumstances is complex and difficult to achieve. A direct causal link between the conduct constituting the offence and a person's circumstances or conditions must be established and is known as the 'nexus test'. The nexus test requires a professional, often a health practitioner or case manager, to be able to provide advice on behaviour that has already occurred, and a retrospective assessment that a person's conditions were the reason that the behaviour occurred that ultimately resulted in their fine.

This is a hard requirement to meet. Wary professionals are being asked to definitively comment on behaviour long after it occurred, including a number of years later, and where the professional providing the advice may have had no contact at the time with the person who received the fine. The level and detail of advice required as part of the nexus test further sets an avoidably high bar.

It asks for certainty to be provided when dealing with a period in a person's life that is often chaotic, and in circumstances where they are sometimes yet to reach out for help.

Providing documentary evidence to Fines Victoria, despite there being no requirement within the Act to do so, presents a further barrier with health care providers commonly charging \$400 for a medical report, and up to \$1,000.³⁸

The Fines Reform Advisory Board recommended that "the threshold to meet the existing test should be reduced and a second, narrow limb, requiring no causal link between the infringement offences and a person's condition or circumstances, should be available to those with a substantially diminished capacity to pay or otherwise manage a fine for the foreseeable future."³⁹

These are practical recommendations recognising the current limitations and should be supported and implemented.

RECOMMENDATION

18. Implement Recommendations 7 and 9 of the Fines Reform Advisory Board Report on the Delivery of Fines Reform

19. A review of a fine under Special Circumstances can occur in cases of extreme financial hardship requiring no causal link between the infringement offences and a person's condition or circumstances. In line with the Fines Reform Advisory Boards views this would include "those with a substantially diminished capacity to pay or otherwise manage a fine for the foreseeable future."

³⁷ Special Circumstances, Fines Victoria, Aug 2021, <https://online.fines.vic.gov.au/Support/Special-circumstances>

³⁸ Peninsula Community Legal Centre, Submission to the Fines Reform Advisory Board, Feb 2020, <https://pclc.org.au/wp-content/uploads/2020/02/PCLC-FRAB-Submissions-Feb-2020.pdf>

³⁹ Fines Reform Advisory Board, Report on the Delivery of Fines Reform - Summary Report, pg.9, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/2816/0793/8523/Fines_Reform_Summary_Report.pdf

Conclusion

Our justice system is in constant renewal, and continual reform can ensure that it achieves its goals.

The fines system's ability to provide an incentive to discourage behaviour that negatively affects our community's safety and wellbeing remains vital. The fines system limits the burden and costs on both recipients and the broader community to resolve minor wrongdoing. But the system also has challenges.

As we have seen there are people in our community who shouldn't pay fines, there are those that should be diverted away from the criminal justice system as early as possible, and there are also those in our community who can't pay their fines.

Diverting these members of our community into support services and having a wider range of options to expiate their fines will have beneficial outcomes for them and the wider community.

Moving them through the fines system will not improve but will often diminish their circumstances.

The thousands of dollars in fines and penalties that some members of our community receive before they seek support is indicative of a failure of the fines system. That failure is not irreparable, and we can support members of the community out of their vulnerable situations and see the behavioural change that the fines system is in place to achieve.

Fines can fail. However, they should fail less often, and by adopting the recommendations outlined in this report we believe it will result in a more robust and fair fines system.

