

LAW REFORM COMMITTEE

Inquiry into warrant powers and procedures

Melbourne — 20 October 2004

Members

Ms D. A. Beard
Mr R. Dalla-Riva
Ms D. G. Hadden
Mr R. J. Hudson

Mr D. Koch
Mr A. G. Lupton
Mr N. J. Maughan

Chair: Mr R. J. Hudson
Deputy Chair: Mr N. J. Maughan

Staff

Executive Officer: Ms M. Mason
Research Officer: Mr J. Cina

Witnesses

Mr P. Lynch, coordinator;
Ms G. Hedges; and
Ms A. O'Connell, PILCH Homeless Persons Legal Clinic.

The CHAIR — Welcome to the parliamentary Law Reform Committee inquiry into warrant powers and procedures. Our work is governed by the Parliamentary Committees Act. This public hearing today is subject to parliamentary privilege. All the evidence is being recorded by Hansard, and you will be given an opportunity to review the transcript when it is completed. In general we have a presumption of our evidence taken at public hearings being on the public record, but if for any reason you wish to give evidence in camera, please let us know and we can arrange for that. Otherwise, once you have had an opportunity to correct the transcript, we will place it on our web site and use it in our considerations in terms of our final report. Thank you for coming along. Perhaps you could kick off by giving us an overview of your submission and then we will ask some questions.

Mr LYNCH — Thank you very much for the opportunity to supplement our written submission. As you will see from our written submission, I think we are particularly equipped to comment on the issue of the application of the penalty enforcement by registration of infringement notice (PERIN) fine system to financially and socially disadvantaged people. Since 2001 the clinic has represented more than 250 homeless people who have experience with the PERIN fine system. They have received infringement notices generally in respect of minor public space, public transport and public order offences.

To give you some idea of the demographic of these clients, more than 80 per cent of them were, at the time of engagement, in crisis accommodation or in transitional housing or sleeping rough or in squats. More than 90 per cent of them relied on a social security payment as their sole source of income, with more than 80 per cent of those people relying on a disability support pension. More than 50 per cent, at the time of engagement, reported past or present drug or alcohol dependency issues.

Given that this is the middle of Anti-Poverty Week across Australia, I think it is important to discuss the broader context beyond clinic clients in terms of the application of this system. I will recite some statistics with which no doubt some of you are very familiar. According to the Australian Bureau of Statistics on census night in 2001 more than 100 000 people were experiencing homelessness across Australia, and more than 20 000 people were experiencing homelessness across Victoria. That includes people sleeping rough, people in squats, crisis accommodation facilities, domestic violence refuges, people couch-surfing with friends and relatives and people living in inadequate housing in the form of rooming or boarding houses. According to the Australian Institute of Health and Welfare, 83 per cent of those people relied on a social security payment, which is pegged below the Henderson poverty line, as their sole source of income and a further 10 per cent received no form of income at all. It is conservatively estimated that there are approximately 250 000 people across Victoria who experience housing stress, meaning that their housing costs are so great relative to their income that they are unable to meet other basic needs.

As I have outlined in pages 16 to 18 of our submission, the experience of the PILCH Homeless Persons Legal Clinic is that people experiencing homelessness or living in poverty are disproportionately susceptible to receiving fines and are less likely than people who do not experience such hardship to be able to pay such fines. Again the reasons for that are discussed at pages 16 to 18.

One point which is not clear in our submission and I would like to clarify is that it is our experience that in some instances the receipt of fines can actually cause, contribute to or maintain homelessness. The clinic has acted for a number of clients who have been evicted from housing for rental arrears after they were required by the PERIN court to maintain an unreasonable or unsustainable payment plan or after they received a visit from the sheriff which then shocked them into prioritising fines over their housing costs. In other cases the existence of unpaid fines can actually prevent a person from exiting homelessness. The clinic has acted for a number of clients who have refused accommodation, refused to move into crisis accommodation, transitional housing, and even in one instance public housing, for fear that upon entering that stable

accommodation the sheriff will catch up with them and they will be imprisoned in respect of their unpaid fines.

The purpose of providing this background and contextual information is not to be grim. It is just to make the point that procedures and mechanisms for dealing with and enforcing infringement notices, if they are to achieve what I am sure everyone would agree are common goals of fairness, equity, minimising enforcement costs, reducing recidivism, increasing civic compliance and, obviously, maximising revenue across government, must be sufficiently flexible and adaptable to be able to take account of the special needs and circumstances of people experiencing poverty or homelessness or other forms of hardship. To this end the clinic's submission makes 23 recommendations to make the PERIN system more fair for people experiencing financial or social disadvantage or poverty while maintaining the system's overall integrity and efficiency. I am happy to walk through what I have identified as 10 of the key themes, but I am conscious that the value of these proceedings is often in the questioning so I will be led by you on that.

The CHAIR — We do have your submission, which in terms of the issues you are seeking to address is quite comprehensive. If you want to elaborate on any particular points, that is fine, or we could move into questions.

Mr LYNCH — I will move through what I have identified as the 10 key themes from which these 23 recommendations emerge. The first theme is recognising that the repeated issuing of infringement notices to financially or socially disadvantaged people does nothing to address the underlying causes of their so-called offending behaviours. It often results in wasted and sunken expenditure on enforcement costs and policing time and resources. It is very important that issuing agencies, and law enforcement officers in particular, be appropriately educated, equipped and resourced to employ a range of early intervention, diversionary and cautionary strategies as an alternative to simply issuing an infringement notice.

We have provided a case study in our submission in relation to a client, John, who is homeless and experiencing mental illness and alcoholism. Only after appearing before a court was he given a referral to a social service provider. I think we have identified in his case that the enforcement costs exceeded \$40 000. Appropriately trained and resourced police officers could, of course, have made such a social service referral or intervention at the very initial engagement rather than five years after the very first engagement and 40 000 wasted dollars later.

To expand on that theme, I guess the importance of early intervention strategies is not only to effectively address underlying causes of people's poverty or homelessness but also to provide a measure which results in long-term savings and improved well-being and outcomes I thought I would point to one particular study which was undertaken in New York between 1996 and 2001. It is a five-year longitudinal study which followed 4679 homeless people with mental illnesses. It compared the costs of providing social services and interventions and maintaining a dignified life for those people when they were homeless as compared to when they were placed in service-enriched housing.

The results of that study found that when people are homeless they use 30-40% more social services and require 30-40% more interventions than when they are placed in service-enriched housing and that, having regard to that resources train, the relative cost of providing people with service-enriched housing rather letting them stay on the streets is almost zero. It provides a good strong economic case for up-front investment in early intervention and diversionary strategies.

The second key theme is the importance of ensuring that consumers are provided with very comprehensive information about their rights and options, and in my view that is so for two keys reasons. The first is it is required in the interests of fairness, transparency and accountability; the second is that, presented with options, people can avail themselves of those options. I have some examples of PERIN court correspondence and correspondence from issuing agencies which

people receive following an issue of an infringement notice and after they fail to pay an infringement notice.

The examples I will tender are of a courtesy letter, a final notice and a notice of enforcement order. They provide strong evidence of the fact that the correspondence is very much geared towards shocking people into paying, which might work well for 90 per cent of people who have the capacity to pay, but does not present financially or socially disadvantaged people with viable options. The reality, as you will see from the courtesy letter which I will hand up, provides that you can either pay or if you do not want to pay, you can go to court. Many of our clients have had previous experience with the court system often it is adverse experience, and confronted with that kind of option to pay in full on a disability support pension pegged below the Henderson poverty line or go to court, they do nothing, they cannot do anything.

If, however, that kind of correspondence or documentation presented other options such as detailing that if you have special circumstances such as mental illness or you are experiencing financial poverty, contact the officer in charge of enforcement or prosecutions at our issuing agency and we can talk about an instalment plan or we can talk about conversion to unpaid community work or extension of time to pay or withdrawal of the matter then it is far more likely that people would perceive the system to be fair and of course the people would act to resolve their matters rather than throw the fine away as is the case for many of our clients and cop another fine for littering because they have no other option in the circumstances.

I will also tender examples of notice of enforcement orders and examples of final reminder notices that are sent to people, which I will not speak to but which will give the committee a further sense of what I am talking about in relation to the lack of comprehensive information about consumer rights and options on all infringement notices and subsequent PERIN court documentation.

The third theme, and it is one that Godfrey from Western Suburbs Legal Service touched upon, is that recognising that a \$200 fine will have a vastly different impact on quality of life and its effect as a deterrent for a person experiencing homelessness as against a lawyer or a Parliamentarian, it is our very strong view that the government should develop some form of more equitable and proportional method of calculating infringement notice penalty amounts and take into account an offender's circumstances and means. Again, this kind of strategy is likely to result in a reduction in enforcement costs and the number of people dealing with their matters earlier.

Presented with a fine of \$200 for travelling without a valid ticket, a person on a disability support pension will generally or often, in our experience, have no option but to ignore it. If they were presented with a \$50 fine, on the other hand, and there was some opportunity to pay that fine by instalment before it went to the PERIN court, they may well enter into and maintain an instalment plan.

You will see from both the Fox report and also from the experience of overseas jurisdictions which I have referred to in our written submission that the concept of proportional fines or day fines or concession fines has been adopted in a number of jurisdictions overseas, where they have been supported broadly by the community and have resulted in earlier payment of fines and reductions in enforcement costs and recidivism. I think they are important lessons.

The fourth key theme relates to the importance of issuing agencies developing and implementing strategies to deal with infringement notices before they are registered with PERIN that have been issued against homeless or otherwise financially or socially disadvantaged people, including by developing protocols for the withdrawal of fines, the cancellation of fines, the extension of time to pay or the payment of fines by instalment. It is extremely problematic, as you will have heard from other witnesses, that there is no opportunity for a person to pay fines by instalment, regardless of their income, circumstances or means, until such time as that fine has been registered with the PERIN court and accrued significantly greater enforcement costs.

The government specifically legislated to enable issuing agencies to accept payment by instalment, yet issuing agencies stubbornly refuse to do so, citing the administrative costs. They all seem to accept payment of bills by instalment and rates by instalment, and there is no reason that they cannot similarly accept payment of fines by instalment.

The fifth theme relates to the level of coordination as between the three arms of enforcement management following registration of an infringement notice with the PERIN court. Those arms are civic compliance, which effectively is the front desk of the PERIN court, the PERIN court itself and the sheriff's office. Our experience is that there is a real lack of coordination and communication between these arms of enforcement management, which causes extreme difficulties to consumers.

I hand up two documents — one is a memorandum between lawyers, the other is correspondence from one of our senior lawyers to the registrar of the PERIN court — as examples of instances where a client has engaged a lawyer to try and deal with their unpaid fines. They very proactively sought to address these issues, and as a result of extreme levels of bureaucracy and an absolute lack of coordination and communication between arms of enforcement management even the lawyers have been unable to take the very first step, which was to obtain information about the clients' outstanding fines, so they could then seek to resolve them.

The sixth point I make relates to the PERIN court's acceptance of instalment plans and its application of clause 7 of schedule 7 of the Magistrate's Court Act, which enables them to grant extensions of time to pay or accept payment by instalment. The provision for that says nothing about the amount of an instalment plan or the period within which fines should be repaid. Notwithstanding that, the PERIN court has adopted an internal policy, which in our experience is extremely strictly and rigidly applied, which provides that depending upon the nature and the amount of the fines, fines must be paid off between two and four years regardless of an offender's means or circumstances.

What that has meant for clients of ours is that where they have accepted responsibility for offences, have sought to enter into an instalment arrangement and have ascertained that on a disability support pension, for example, they could pay \$20 a fortnight — that would cause hardship but may be sustainable — they then make that kind of offer to the PERIN court, which may make a calculation that repayment of \$20 a fortnight will not result in full payment of the fines within two or four years, whichever is the case; and will write back saying, 'Sorry, we object to the instalment plan. Either pay \$120-\$200 a fortnight', or whatever it is that will result in repayment within the two or four year-period or alternatively pay off the \$10 000, \$15 000 or \$20 000 within 28 days.

That is a manifestly unreasonable system. People who are making a real effort to pay their fines should be provided with that opportunity, and the PERIN court should be required to have regard to peoples' circumstances and accept reasonable offers of instalment.

The seventh issue is it is clear that courts are, broadly speaking, much better equipped to deal with issues of financial and social disadvantage, homelessness and poverty than an automated system which does not individualise sanctions. Of course schedule 7 of the Magistrate's Court Act provides the PERIN registrar, under clause 10A, with a broad discretion to refer matters to court when he or she considers that the matter would be more appropriately dealt with by the court.

In our view that provides a strong legislative basis for and framework within which matters could be referred to the courts where it is appropriate that a person's context and circumstances be taken into account. The difficulty, however, is that that provision has been very narrowly interpreted and applied such that only people with a disability or a mental illness are referred to the court under that clause or on that basis and that factors such as homelessness, poverty or chronic drug or alcohol dependency are not taken into account and those people continue to be dealt with under an automated system.

It is our view that the interpretation and application of that clause and the policy which the PERIN court has developed pertaining to the application of that clause should be significantly broadened to take account of factors which would point towards a matter being more appropriately dealt with by the court, and some of those factors are outlined in our submission.

The eighth theme is that, in our view, the enforcement review program is working very well alongside the special circumstances list in dealing with people who come before it. We recently conducted a survey of 50 homeless people about their experience of the court process. Survey respondents who had experience of the special circumstances list and had been processed through the enforcement review program reported that they were significantly happier and considered that the substantive outcomes were far fairer when they appeared before the special circumstances list. They also felt that they had received a more just and fair hearing when they appeared before the special circumstances list than when they appeared before other lists.

My strong view is that that program should be supported, and that additional funding and resourcing should be provided to that program to enable it not only to continue to operate but to expand such as to be able to accommodate people who are experiencing poverty, homelessness, drug or alcohol dependency or other factors or conditions which would tend towards their matters being more appropriately dealt with by the court.

On that, there is very significant evidence from both Australia and overseas that problem-solving court approaches, therapeutic approaches for the administration of justice while requiring some up-front investment come out very positively on a cost-benefit analysis, and certainly our clients who have gone before that list have a reduced propensity to reoffend, and there are reduced rates of recidivism.

Often, coming before that list results in a sentencing disposition in the form of either a dismissal or an adjournment on an undertaking of good behaviour, and the magistrates who preside on that list are particularly sensitive and equipped to make appropriate social service recommendations or referrals or interventions that should be supported.

Of course, that is the very back end of the system. What we would advocate very strongly is that similar resources and efforts need to be devoted towards the front end of the system to ensure that people receive these forms of social service interventions before they have to get to the special circumstances list. However, once they get to the special circumstances list — for those people who can get on the list — it works very well and the government and the Magistrates Court should be very strongly congratulated for that excellent initiative.

The ninth issue is that under present arrangements there is no capacity to convert PERIN fines into unpaid community work. There is of course capacity to convert monetary penalties imposed under the Sentencing Act in open court to unpaid community work, but the only way to convert infringement notices, notwithstanding that they may be issued for the same kind of offence, to unpaid community work is to get the matter before a magistrate.

There is no reason — certainly there are mechanisms in other states — that an application for a conversion should not be able to be made to the PERIN registrar in exactly the same time way as an application for revocation or an application for extension of time to pay or payment by instalment. That would again provide another flexible option which would enable people who take responsibility for their actions to work off their fines and contribute to the community.

The final issue relates to the position of people whose matters continue to remain unresolved and who are the subject of a penalty enforcement warrant which is executed. Where those people are impecunious they will be taken into custody and assessed for eligibility for a community custodial permit and taken before the court. As we have highlighted in our submission, a real difficulty with this system is that it is only people who are impecunious or poor who wind up before the court

following the execution of a penalty enforcement warrant, as anyone else will have seizable assets against which payment can be levied; so it is only the poor who get the before the courts.

The problems are exacerbated when it is taken into account that following execution of a penalty enforcement warrant where a person is taken before the court, a mandatory sentencing regime applies. It is a mandatory minimum sentencing regime, which means that unless the person has an intellectual disability, a brain injury or dementia or exceptional circumstances, the person will be imprisoned for a minimum period of a third of the period, calculated at one day per \$100 outstanding.

So we have a system of mandatory minimum sentencing in respect of infringement notices issued for begging, swearing, littering, or parking offences when there is no such system for people who commit assaults, even people who commit murders or rapes as we have seen in recent sentencing outcomes; and of course this mandatory minimum sentencing regime applies only to people who are definitionally experiencing severe financial disadvantage or hardship.

We would advocate very strongly that the mandatory minimum sentencing regime under Part IV of Schedule 7 be repealed and replaced with a provision so that persons brought before the court following execution of a penalty enforcement warrant be sentenced under the Sentencing Act on the finding of guilt, as is any other offender brought before the court.

That would of course retain the ultimate sanction of imprisonment for extreme cases where a person is a chronic recidivist, for example; but where a person is experiencing financial or social disadvantage that does not constitute exceptional circumstances, brain injury or dementia, the court will have options other than imprisoning the person, such as for example referring them to a drug or alcohol counsellor or referring them to another appropriate social provider. Thank you.

Mr MAUGHAN — Very comprehensive!

Mr LYNCH — Thank you.

The CHAIR — Yes, a very good submission indeed.

Mr LUPTON — I am not sure if you have left us any questions!

The CHAIR — Just on two things: you mentioned evidence from overseas in relation to investing in enriched services for homeless people and the cost benefits of that, and you also referred to research indicating that where courts take a therapeutic approach to interventions with homeless people and people in like circumstances, that has been shown to have significant benefits overall for the justice system and the costs of the system. Could you make that research available to the committee? That would be very helpful.

Mr LYNCH — Certainly. In relation to the evidence regarding the cost of provision of service enriched housing, there is a citation to the evidence contained in footnote 7 of page 21 of our submission. It is the *New York/New York Agreement Cost Study*.

The CHAIR — Thank you. If you have a full copy of the study, that will be good, or we will see if we can get hold of it. Secondly, in talking about the use of concession fines overseas related to income, could you indicate whether those concession fines extend beyond the social security population — in other words, those who identifiably would have a social security card of some description, does it extend to low income working people? Is it something that is applied to the total population or is it just to people who are identifiably within the social security population?

Mr LYNCH — It varies from jurisdiction to jurisdiction. A number of jurisdictions — for example, I have identified Oregon in the United States as one in particular — have adopted day fine systems which take account of an offender's income regardless of whether that income is

earned through employment or is in the form of a social security payment. There are other jurisdictions which have adopted simple concession rate fines. Those jurisdictions include Quebec in Canada, whereby people who are recipients of social security payments are eligible to pay a lesser amount.

I heard in evidence earlier that the committee was concerned that there is no real mechanism for assessing a person's income in Victoria or at a state level as against the federal level, where income is assessed for the purpose of social security, taxation and so on.

In our submission recommendation 10 pointed to documentation which could constitute evidence in this context for an assertion that a person is financially or socially disadvantaged or has special circumstances. My view is that similar protocols could be developed in relation to the payment of fines. It may be that there is a *prima facie* presumption that a person who, for example, receives a fine for the set amount of \$100 — but upon evidence in the form of a statutory declaration for example, which is acceptable to the PERIN court in the instance of an revocation application — has attached a copy of a health care card or social security income statement or a statement of their fortnightly income, that that be accepted as evidence of financial disadvantage or hardship such as to invoke a lower cost to enable that person to pay a lower penalty in respect of that infringement notice.

Mr DALLA-RIVA — We have heard evidence from other witnesses about the lack of support to the police from the crisis assessment and treatment team. I note your recommendation 3 talks about referring out. In the context of the niceness of this environment it sounds good, but I wonder about the practicalities of its application in the real world.

Let us say there is a person who is on the train without a ticket who would not appear to be a person who — we heard evidence from the other witness — would fit the criteria, they would slip through the cracks. The next day they get another fine and so on. It is difficult for law enforcement agencies to have that relationship until all of a sudden these fines fall into the lump, given that you have got different bodies who are each working independently. I understand what you are saying. That is my first point.

My second point is: if there is somebody who is clearly identified — John was the case study as the previous witness said — as having some issues, from the evidence that we have heard the problem appears to be that until it is at a crisis stage, most support agencies will not necessarily get involved. You may argue otherwise, but that is the reality of what is happening out there. This in a sense means that recommendation 3 is a bit difficult to apply in the context of what we have heard from other people in the application. I like the back-end discussion. It is sound and relevant. I am just wondering how it applies out there in the cold face of it when people are breaking the law.

Mr LYNCH — I will take the second issue first. There may be mechanisms which would enable, for example, a police officer or another law enforcement officer to issue something in the nature of a caution. I will take a step back. You have identified the issue that social services are generally inadequately resourced such as to often only intervene when a crisis occurs. One way to ensure there is appropriate intervention in cases other than crisis cases would be for a law enforcement officer to issue a caution which will then crystallise into an infringement notice unless a person can somehow demonstrate engagement with a support agency.

So it may be that rather than issuing an infringement notice to someone drinking on the bridge on Swanston Street, issue them a cautionary letter which provides them with 28 days — if they have been identified by police as a repeat offender but a relatively low level offender — to demonstrate some form of proactive engagement with a social service. If in that instance the social service is Odyssey House — and the issue is in relation to drug and alcohol issues — and it writes a letter saying that this person is engaged with the service, the matter is then withdrawn. At the moment there is no mechanism to do that kind of thing. That is the kind of mechanism which could be used in other than crisis situations.

Mr DALLA-RIVA — If there is no engagement in the 28 day period or the time allowed, what are you saying?

Mr LYNCH — Then an infringement notice would be issued and enforced in the ordinary way. Presumably one would hope that the person would be picked up at the back end through the special circumstances list.

Mr DALLA-RIVA — You could have the situation — and I am just trying to flesh this out — where you have one person who is in an episodic state who is seen at Swanston St and at Cranbourne. They are then getting pinned and picked up by various people, be it police, transport officers or somebody else. Are you saying that on that basis the police would issue a cautionary notice? I like the concept, but I am trying to see the practicalities of the application of what you are saying.

Mr LYNCH — This is what recommendation 10 particularly deals with. They could issue a cautionary notice or an infringement notice which is one of the options details — that if you have special circumstances and you can demonstrate some form of engagement with a service in respect of those special circumstances, then you can apply to have the notice withdrawn or cancelled which means that the matter is dealt with. The person receives the appropriate social services without a need for extensive enforcement costs.

Mr LUPTON — While it would not keep everybody out of the system, the idea would be to pick up as many people as possible by way of referral or treatment acting with some kind of support service?

Mr LYNCH — Absolutely and exactly. For people where there was a crisis, that invention could occur at the very outset during the engagement with the law enforcement officer through engagement of a crisis assessment and treatment team or another service provider. Where there is not such a crisis, the intervention could occur through a mechanism providing for the withdrawal or cancellation of an infringement notice upon evidence of hardship but positive engagement with the service to overcome that hardship. It would seem to me that it would achieve the system's goals of fairness, minimising enforcement costs, maximising revenue and importantly, increasing civic compliance.

The CHAIR — How would you set up a system in such a way assuming that you extended the income related penalties to a broader section of the population beyond the social security population? How do you ensure that you do not subject the system to abuse? You could imagine that at any point in time almost anyone could claim to have particular circumstances which are creating hardship for that individual: the other commitments they have to make which would require them to be able to be put into a special circumstances category. How do you ensure that that is something that does not lead to further delay in relationship to the payment of fines that have been incurred as a result of breaking the law?

Mr LYNCH — I think the answer to that floodgates question, which is effectively what it is, lies in current experience and practice. There is currently a mechanism to apply for revocation of enforcement orders. The basis of the revocation can be that you had a reasonable excuse for committing the offence or that you have special circumstances. To my understanding, we have not seen an abuse of that system. I do not know that there is any evidence of this at all.

The CHAIR — Most people would not be aware of the second category.

Mr LYNCH — But all people who receive enforcement orders are aware of the capacity to make an application for revocation because along with the enforcement order, they also receive a blue form, which is a pro forma statutory declaration application for revocation.

Mr DALLA-RIVA — Is that attached to one of these?

Mr LUPTON — Are you saying a PERIN notice?

Mr LYNCH — Yes. When a person receives a notice of enforcement order, it will be accompanied by two forms: one is a blue form, which is a pro forma statutory declaration applying for revocation, under clause 10 of schedule 7 of the Magistrates' Court Act; and the other is a pro forma statutory declaration application for extension of time to pay or payment by instalment. We do not see any evidence of widespread abuse or misuse of that system at all.

For the vast majority of consumers — and certainly this is my experience if I have ever received an infringement notice — the issue is that because I have a stable income and acknowledge that I have done something wrong, it is more efficient to pay the infringement notice. I do not want to engage in a whole lot of evidence gathering, disputes with the issuing agency or the enforcement agency merely to get out of a \$100 fine. For the vast majority of people this system will continue to work efficiently and expeditiously. However, what we need are a few changes around the edges to ensure that there is sufficient flexibility and adaptability to enable the system to better account for people's special circumstances where they exist.

Mr DALLA-RIVA — That is not within the PERIN court system? There is no group within the system that actually deals with that in your experience?

Mr LYNCH — With what?

Mr DALLA-RIVA — With special needs and the issues you are raising.

Mr LYNCH — Under the act, there is provision to make application for revocation of enforcement orders where you have special circumstances.

Mr DALLA-RIVA — I understand the application of the law, but in terms of within the PERIN court system there is no separate creation that works with your organisation?

Mr LYNCH — No.

Mr LUPTON — I ask this in relation to the transferring of cases from the PERIN system to the Magistrates Court where there is the ability for the PERIN system to divert people where they suffer from mental illness for instance. Does that system seem to work quite well for that group of people who are capable of being picked up in that way as far as your experience is concerned?

Mr LYNCH — The system works very well for the group of people who currently fall within the relatively rigid guidelines developed by the PERIN court in respect of clause 10A — that is, special circumstances. The problem is that the provision is interpreted very narrowly. There is significant documentary evidence required to support an application for revocation on the basis for special circumstances: either a medical report or a doctor's report.

As we would have seen from the recent federal election, accessing a doctor can be very difficult for anyone, far less for people who are experiencing poverty. It is very difficult for us to obtain free or low cost medical reports in support of a revocation application. It is therefore very problematic that the PERIN registrar will not, for example, accept as evidence of special circumstances a letter from a social worker with the Salvation Army, or a letter from a case worker at Odyssey House who has been working for an extended period assisting a person with drug and alcohol issues.

Mr LUPTON — Could you perhaps give us an idea of whether you would favour the broadening of that sort of category and making that process more flexible to get cases into the Magistrates Court to be dealt with, or whether you think that the PERIN court itself can be made more flexible and adaptable to deal with those things? I am conscious of the fact that what we want to try and do is to deal with as many cases in the PERIN court system as ought to be because

there is an important need to keep a lot of the cases that do not need to be dealt with in the Magistrates Court out of that court because it can have a negative affect on the Magistrates Court system itself. Can you give us a bit of insight into those issues?

Mr LYNCH — It is important that there be flexibility and adaptability at all stages of the process. The three key stages are: the infringement notice stage and courtesy notice stage; the stage where a matter is referred to and registered with the PERIN court and an enforcement order and subsequently an enforcement warrant are issued; and then the stage at court.

What we have now is a good mechanism for dealing with people with special circumstances within the narrow definition of ‘special circumstances’ at court. That ought to remain and that should be expanded. What is needed is: some adaptations to the system to better account for people’s special circumstances, both at the infringement notice stage and at the PERIN court stage and some of our recommendations specifically deal with those issues; at the infringement notice stage in relation to early intervention or diversionary strategies, the development of protocols and procedures for withdrawing or cancelling infringement notices; a broader basis for revocation needs to be provided for at the PERIN court stage itself, and the withdrawal upon evidence of special circumstances needs to be more broadly conceived.

Mr DALLA-RIVA — There would be tens of thousands of fines issued, and I am just trying to put it into the context of the concerns that you have got. It might account for a small amount — and I hope it would — but clearly it is a difficult issue which subsequently leads to imprisonment and the like. Are you recommending something? Again, this is probably similar to the previous witness, after all your recommendations what are you actually after? What would be your ideal in terms of the relationship that would be established so that your body or the previous witnesses’ body goes to it and says, ‘We have three or four clients who we need to help and work’.

Obviously the evidence you have given us shows that there is nobody wishing to take responsibility, you are bouncing around, you are spending — I think the previous witness said — 149 pages of documentation just trying to deal with one client. Are you advocating or suggesting that within the PERIN court there needs to be a separate body or attachment to the PERIN court system so that there is this linkage between your agencies and others and the Magistrates or PERIN court?

Mr LYNCH — I would advocate very strongly that what is needed is overarching infringement notice legislation which deals with the offences in respect of which infringement notices will be issued, the process, procedure and protocols associated with the issue of infringement notices, the processes and procedures associated with the withdrawal of infringement notices —

Mr DALLA-RIVA — I have heard all of that, but who does it? You are still talking it up. I need the practicalities of what you saying.

The CHAIR — How would it become operational?

Mr DALLA-RIVA — Yes, how would it become operational?

Mr LYNCH — I think that the PERIN court would be an appropriate body that is empowered under that form of legislation to oversee the entire infringement system.

Mr DALLA-RIVA — It is now but it is not effective. You are presenting evidence as the previous witnesses or others have. On one hand you say, ‘Stick it with the PERIN court’, but on the other hand it is still not effective.

Mr LYNCH — Broadly speaking, the system works pretty efficiently and expeditiously for most people.

Mr DALLA-RIVA — That is right.

Mr LYNCH — Where it does not work is in respect of people who have special circumstances.

Mr DALLA-RIVA — So how do we deal with it?

Mr LYNCH — Our recommendations are particularly geared towards achieving amendments to the current system or principles underpinning the reform of any system to enable it to approach people more flexibly.

Mr DALLA-RIVA — I understand, accept and think the concept is great. It is the practicality of the application in the real world that worries me — well, it does not ‘worry’ me, but I need some guidance as to what you want. I understand the legislative framework, I understand the PERIN court but do you want something attached to the PERIN court that says, ‘This will be the linkage between us and the PERIN court system’? Is that your recommendation more broadly in a sense?

Mr LYNCH — I would want a system where consumers had one point of contact. At present they have multiple points of contact. They have contact with issuing agencies, they have contact with the PERIN court, they have contact with civic compliance, they have contact with the sheriff’s office, and there is a real lack of coordination between those departments. Consumers should have one point of contact and one point of contact only. If there are various divisions or units within that point of contact, then it is imperative that that body itself be responsible for the effective coordination of those units, not that consumers be forced to navigate their way around the system. Given the legislative basis of the PERIN court and its obligation to act judicially, the PERIN court is the appropriate body to provide that form of oversight.

The CHAIR — Are there any other comments you would like to make before we conclude?

Mr LYNCH — No further substantive comments, just to thank the committee for the opportunity to present evidence and for listening to our recommendations.

The CHAIR — Thank you. You have made an excellent submission and it has given us a lot of food for thought. Thank you for your time.

Witnesses withdrew.