

VICTORIAN **ombudsman**

**Own motion investigation into
unenforced warrants**

August 2013

Ombudsman Act 1973

**Ordered to be printed
Victorian government printer
Session 2010 - 13
P.P. No. 251**

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report of an investigation into unenforced warrants.



G E Brouwer

OMBUDSMAN

21 August 2013

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Executive summary

1. In 2011-12, 4.79 million infringement notices and 1.518 million warrants were issued in relation to offences committed in the state of Victoria relating to road safety and traffic, public order, industry regulation and environment protection. Road safety offences, such as speeding, drink driving and traffic light offences, were the highest category of offences.
2. Infringement Management and Enforcement Services (IMES) of which the Sheriff's Office is a unit, is responsible for the enforcement of unpaid infringement notices and warrants¹. However IMES is not keeping up with the number of warrants issued each year so a large percentage of warrants are not enforced and expire without payment.

In 2011-12, 4.79 million infringement notices and 1.518 million warrants were issued in relation to offences committed in the state of Victoria relating to road safety and traffic, public order, industry regulation and environment protection.

3. Since 2005, approximately two million warrants worth \$886 million have been 'written-off' as a result of the Sheriff's Office being unable to effectively enforce the number of warrants issued.
4. During the same period IMES has only cleared \$185 million cash for warrants which includes cash collected by Sheriff's Officers. For each warrant finalised by the Sheriff's Office five more are issued. This has resulted in a pool of 3.5 million warrants, valued at more than \$1.2 billion currently unexecuted and in a large percentage of cases, will not be executed before they expire after five years.

Since 2005, approximately two million warrants worth \$886 million have been 'written-off' as a result of the Sheriff's Office being unable to effectively enforce the number of warrants issued.

5. IMES' incapacity to respond to the large numbers of warrants being issued is not a new issue and has been raised in a number of reports, including:
 - In 1996 the Auditor-General reported that the value of uncollected fines and debts was continuing to rise².
 - In 1997 the Public Accounts and Estimates Committee made recommendations to improve the fines collection system.

¹ The Sheriff's Office, a unit of IMES, enforces warrants received from Victorian and interstate courts. The Sheriff and Sheriff's Officers are court officials for the purpose of the *Supreme Court Act 1986*.

² Victorian Auditor-General's Office, *Report on Ministerial portfolios* (1996), page 179, <www.audit.vic.gov.au>.

- In 1998 and 2003-04 the Auditor-General again raised concerns about uncollected fines.
- In 2005 the Auditor-General examined the Sheriff's effectiveness in actioning and clearing warrants³.
- In 2005 in my Own motion investigation into VicRoads registration practices I commented on uncollected fines and the impact of out-of-date address information on enforcement.
- In 2005 the Victorian Law Reform Commission noted concerns about the Sheriff's execution of warrants and enforcement action against recalcitrant offenders.
- In 2006 the Victorian Government introduced the *Infringements Act 2006* providing new sanctions for the Sheriff to deal with those who fail to pay fines or comply with court orders.
- A 2007 review of IMES Debt Management by PricewaterhouseCoopers noted that in 2000 IMES' gross debt was \$280 million and by 2007 had increased to \$640 million.

For each warrant finalised by the Sheriff's Office five more are issued. This has resulted in a pool of 3.5 million warrants, valued at more than \$1.2 billion currently unexecuted.

6. Despite these reports and recommendations, the number of unenforced warrants and debt to the state 'written-off' continues to rise.
7. In November 2011, the Victorian Attorney-General approved a program of works for fines reforms to the legislative framework that IMES operates under and the powers and sanctions available to the Sheriff.

The number of unenforced warrants and debt to the state 'written-off' continues to rise.

8. Some of the issues I have identified will be addressed by these reforms. However, IMES only commenced work on its proposed reforms in 2011 and the reforms are yet to be legislated and implemented. The reforms I refer to in my report should be prioritised by the government and where appropriate, implemented.
9. IMES also needs to:
 - consider increasing Sheriff's Officer numbers
 - develop efficient processes and procedures
 - use available powers where appropriate.

³ Victorian Auditor-General's Office, *Results of financial statement audits for agencies with other than 30 June 2004 balance dates, and other audits (2005)* <www.audit.vic.gov.au>.

10. At interview the Sheriff, Mr Brendan Facey (who is also Director of IMES), said that prior to his commencement as the Victorian Sheriff in October 2011 there had been issues with unenforced warrants. He said there had been 'an enormous program of things intended ... for years and years'.
11. While in the past offenders have taken advantage of the inability of the Sheriff's Office to enforce large numbers of warrants, when the reforms proposed by IMES are implemented together with my recommendations, IMES should be able to hold offenders accountable in the future.

Factors affecting enforcement of warrants

12. There are a number of factors that have contributed to the inability of the Sheriff's Office to enforce such a large number of warrants including:

Limited resources

13. There are 172 Sheriff's Officers to enforce warrants. If the number of unenforced warrants to be executed were shared equally amongst the Sheriff's Officers then this would average 20,400 each, an impossible task.

Out-dated Information Technology

14. The Sheriff's Office's IT system is 15 years old, has a number of deficiencies and is not compatible with a range of enforcement activities available to the Sheriff.

There are 172 Sheriff's Officers to enforce warrants. If the number of unenforced warrants to be executed were shared equally amongst the Sheriff's Officers then this would average 20,400 each, an impossible task.

Powers not utilised

15. Since 2006 the Sheriff's Office has had enforcement powers that it has not utilised that have proven successful in other jurisdictions. For example, the garnisheeing of wages and charging and selling of land and assets.
16. Despite having the power to make company directors liable for debts incurred by their companies since 2006, the Sheriff's Office has not used the power to any significant extent.

Problems with data sharing and reliability

17. In the past, the Sheriff's Office has relied heavily on address data held by VicRoads. It was not able to record alternative address data it obtained for offenders in its own database nor would VicRoads, until my investigation, update its database based on information received from the Sheriff.

18. There have been some issues with agencies, including VicRoads and the Victorian Electoral Commission, about sharing address details with the Sheriff. In response to my investigation both VicRoads and the Victorian Electoral Commission have said they are prepared to assist the Sheriff's Office with address data within the constraints of their legislation.

Poor enforcement strategies

19. IMES has no documented and systematic methodology for targeting, selecting and enforcing infringement warrants. Sheriff's Officers do not prioritise warrants but are driven by location and convenience, based on their own location and the addresses of offenders. There is neither guidance from supervisors nor any IMES policy.

Recommendations

20. I have made a number of recommendations to address expiring and unenforced warrants, including:
- The Government consider implementing the Fines Reform program as a priority.
 - The Department of Justice provide more detailed annual reporting regarding warrants that are outstanding, issued, finalised, cleared and expired.
 - IMES seek funding for additional Sheriff's Officers.
 - IMES introduce a comprehensive operating methodology for actioning warrants across all regions.
 - IMES utilise all legislative sanctions available to it in appropriate cases.
 - IMES revisit and extend its data matching activities.

Response by IMES

21. Mr Facey has said that IMES supports my recommendations. Further, Mr Facey said:

IMES has devoted significant priority to this issue since November 2011, when the Government approved the development of a broad program of works for fines reform to implement the Government's broader reform objective of shifting to a centralised model for the collection and enforcement of legal debt in Victoria.

Government allocated \$34.6 million in the 2013-14 State Budget to the delivery of, amongst other things, enhanced sanctions and more effective debt recovery processes.

I am firmly of the view that the proposed reforms will establish the necessary legislative and administrative frameworks to enable IMES to far more effectively manage the collection and enforcement of other legal debt under a centralised model, including all court fines, and, in the longer term, civil debts and victims compensation orders, following delivery of the ICT system.

...

Most Victorians issued with a fine pay on time and in full. The overarching voluntary compliance with the law reflects the public's confidence in the appropriateness of the infringements system for punishing and deterring relatively minor breaches of the law in an efficient, accountable and cost-effective manner.

...

The key objective of the Fines Reform program is to provide a framework for the transition to a centralised model and uniform processes for collecting and enforcing payment of all legal debt in Victoria. The frameworks and processes used to manage the collection and enforcement of infringements will form the basis of the legislative and operational requirements for a centralised legal debt collection and enforcement model.

The proposed fines system reforms encapsulate the Government's policy objectives to:

- simplify and streamline the enforcement processes in the infringements system
- increase payment rates and reduce debt arising out of unpaid legal debt
- seek to bring fine defaulters into contact with authorities earlier
- introduce new sanctions to reduce recidivism by recalcitrant offenders, and
- seek to provide other options to satisfy debt for those who cannot pay upfront or on a payment plan.

Response by the Department of Justice

22. Mr Greg Wilson, Secretary of the Department of Justice accepted, or accepted in principle, each of my recommendations. Mr Wilson said:

... the draft report raises a number of important issues and shortcomings in relation to unenforced warrants and acknowledges the work that the department has been doing to progressively address these.

As noted in the draft report, following the approval by Government to develop a broad program of works for fines reform in November 2011 the department has acted to fix a number of technical and legislative issues that have hindered the effective enforcement of outstanding warrants.

The Government announced in the 2013-14 State Budget the allocation of \$15 million in asset funding and \$19.6 million in output funding over four years for Fines Reform. The proposed Fines Reform program of works and the introduction of a new infringement management system are two key initiatives that will modernise the infringement system. As the draft report identifies, the proposed reforms will significantly enhance our ability to collect and enforce legal debt. This will include all court fines and, following the delivery of the new infringement management system, civil judgment debts and victims compensation orders.

The Fines Reform program and the new infringement system will boost automation and enable a broader range of sanctions to be used. I am confident that these measures will address the concerns raised and reduce the level of unenforced warrants.

Background

Enforcement of warrants by Sheriff's Officers is having a limited impact on Victoria's pool of 3.5 million unexecuted warrants valued at \$1.2 billion. As a result, many offenders are not being held accountable for their fines; there is little deterrent for failing to pay fines; and road safety is being compromised.

Uncollected fines and unenforced warrants valued at more than \$886 million have been lost to Victoria since 2005. Despite having been the subject of concern for nearly two decades, enforcement of warrants continues to be a significant, ongoing and increasing problem with more warrants currently being issued than finalised.

The warrant process

23. In Victoria there are more than 1,800 offences that can be dealt with by way of infringement notices. The *Infringements Act 2006* establishes a framework through which these infringements can be enforced.
24. The infringements system offers an alternative method for dealing with minor offences, giving the person to whom an infringement notice is issued the option of paying a fixed penalty, rather than proceeding to a court hearing.
25. Where an infringement is not paid in full or otherwise dealt with by the offender by the specified due date, the matter is referred to the Infringements Court. The Court makes enforcement orders for the payment of outstanding infringement penalties; orders and administers instalment payment plans and extensions of time to pay; and issues warrants for execution by the Sheriff.
26. Warrants are a type of court authorisation that commands an act by a Sheriff's Officer such as the seizure and sale of assets, suspension of a licence or registration or, as a final option, arrest and imprisonment.
27. While the vast majority of warrants are issued by the Infringements Court, Sheriff's Officers also enforce warrants issued by all Victorian courts, as well as interstate warrants.
28. In 2011-12, 1.518 million warrants were issued for offences committed in Victoria relating to road safety and traffic, public order, industry regulation and environment protection. Road Safety offences, such as speeding, drink driving and traffic light offences, were the highest category of offences.

The roles of IMES, Infringements Court and Sheriff

29. IMES is responsible for the enforcement of unpaid infringement notices and warrants. Its responsibilities include:
 - coordinating advice, direction and strategy for road safety, Sheriff and infringement policy and legislation

- monitoring and administering road safety and civil compliance revenue, debt and Budget Paper reporting
 - the functions of the Infringements Court.
30. The Director of IMES is Mr Brendan Facey. He is also the Sheriff of Victoria. The Sheriff and his officers derive their enforcement powers from the *Infringements Act 2006*⁴, the *Sheriff Act 2009* and from the warrants themselves.
31. The Sheriff's Office comprises the Sheriff and 172 other staff, including the Deputy Sheriff, regional managers, supervisors and Sheriff's Officers. Seven officers form the Tactical Investigations Unit, which targets corporate offenders with multiple warrants.
32. Most officers are located in eight Justice precincts across Victoria⁵.
33. In enforcing a warrant, Sheriff's Officers may:
- visit an offender's address
 - conduct a special operation such as a road block
 - wheel-clamp a vehicle
 - seize and sell personal property
 - suspend vehicle registration and/or driver licence
 - direct VicRoads not to renew a vehicle registration
 - arrest offenders
 - obtain a court order requiring an employer to deduct money from a salary
 - obtain a court order to charge a house or land (place a caveat over its sale or use of interest), and sell the property if payment is not made
 - declare a company director personally liable for warrants incurred by their company.
34. In most cases Sheriff's Officers are required to serve a 'Seven Day Notice' at the same time as serving a warrant on an offender. The notice provides the offender with seven days to finalise the warrant and Sheriff's Officers may not take enforcement action until expiry of the seven day period.
35. To satisfy a warrant, an offender may pay it in full, enter into a payment arrangement, do community work or go to prison.
36. A warrant is 'paid in full' and finalised when offenders pay the total amount. An offender may enter into payment arrangements to finalise warrants over time. In both cases, warrants are considered 'cleared for cash'.

4 Department of Justice, Fines (2013) <www.online.fines.vic.gov.au>.

5 In 2009, the Department of Justice regionalised its service delivery model, which resulted in the creation of Justice precincts across eight regions. These precincts house The Sheriff's Office, Community Corrections, Consumer Affairs Victoria staff and other departmental business units.

Revenue lost from unenforced warrants

Since 2005 an average of over \$110 million of warrants, and therefore debt owed to the state, has been 'written-off' each year as a result of the Sheriff's Office being unable to enforce the number of warrants issued. For every warrant finalised by the Sheriff's Office five more are issued. This has resulted in a pool of 3.5 million warrants that are yet to be executed, and, in a large percentage of cases, will not be executed before they expire after 5 years. Despite numerous reports and audits conducted and recommendations made regarding these issues since 2006, this situation has continued to exacerbate.

37. Since 2005, nearly two million warrants have expired without being enforced. This represents more than \$886 million, at an average of more than \$110 million each year in lost revenue. During the same period IMES has only collected \$185 million cash on warrants which includes cash collected by Sheriff's Officers. As of 30 September 2012, there was a pool of 3.5 million unexecuted warrants in Victoria. Infringement warrants, which are the majority of warrants enforced, expire after five years. \$162 million worth of this pool of unexecuted warrants were over 4.5 years old – a majority of which expired on 30 March 2013. These warrants may be reissued by the Infringements Court however this rarely occurs because there are too many other warrants to deal with.
38. A further contributor to the pool of unexecuted warrants are newly issued warrants which exceed those being finalised in the same period – mainly from offences detected by new fixed road safety cameras, and tolling. For every warrant finalised by Sheriff's Officers five new warrants are issued⁶. Warrants relating to City Link and Eastlink Tolling offences make up over 40% of the pool of unexecuted warrants. As at 30 September 2012 there were 1,429,848 tolling offence warrants outstanding.
39. In 2005-06 approximately half a million new warrants were issued. This has steadily increased to over 1.5 million in 2011-12.
40. After warrants expire, the value of the warrant is 'written-off' by IMES meaning that enforcement action is no longer taken and the fines are not collected.
41. The value of warrants cleared for cash is low compared to the value of warrants expiring each year, although cash clearance rates have generally increased since 2005, as outlined below:
 - 2005-06: \$16 million
 - 2006-07: \$18 million
 - 2007-08: \$24 million
 - 2008-09: \$24 million

⁶ In 2012-13, Sheriff's Office finalised 167,043 warrants compared to 813,167 new warrants issued in the same period. A further 73,859 warrants were finalised by other sources such as offenders paying of their own accord.

- 2009-10: \$31 million
- 2010-11: \$40 million
- 2011-12: \$ 40 million.

42. In response to my draft report, Mr Facey said:

The Fines Reform program will address this issue through a range of measures, particularly the fact that infringement warrants will no longer expire after five years.

Numerous reports and recommendations for action

43. IMES' inability to address the large numbers of warrants being issued is not a new issue but was identified in 1996 and subsequently raised again in a number of reports, including:

- In 1996 the Auditor-General reported that the value of uncollected fines and debts was continuing to rise with \$289.1 million in outstanding fines and costs owed to the state, \$85.1 million written-off; and a further \$116.9 million regarded as unlikely to be collected⁷.
- In 1997 the Public Accounts and Estimates Committee made recommendations to improve the fines collection system.
- In 1998 and 2003-04 the Auditor-General again raised concerns about uncollected fines.
- In 2005 the Auditor-General examined the Sheriff's effectiveness in actioning and clearing warrants and recommended the Sheriff:
 - (1) develop a comprehensive operating methodology to target and select warrants; and
 - (2) regularly analyse expiring warrants and focus on clearing warrants before they expire⁸.
- In 2005 in my *Own motion investigation into VicRoads registration practices*⁹ I commented on uncollected fines and the impact of out-of-date address information on enforcement.
- In 2005 the Victorian Law Reform Commission examined Victoria's warrant powers and procedures and made recommendations to address the fragmented legislative framework and noted concerns about the Sheriff's execution of warrants and enforcement action against recalcitrant offenders.
- In 2006 the Victorian Government introduced the *Infringements Act 2006* (the Infringements Act) to standardise the issuing and governance of infringement offences and to provide new sanctions for the Sheriff to deal with those who fail to pay fines or comply with court orders.

7 Victorian Auditor-General's Office, *Report on Ministerial portfolios* (1996), page 179, <www.audit.vic.gov.au>.

8 Victorian Auditor-General's Office, *Results of financial statement audits for agencies with other than 30 June 2004 balance dates, and other audits* (2005) <www.audit.vic.gov.au>.

9 Victorian Ombudsman, *Own motion investigation into VicRoads registration practices*, June 2005.

- A 2007 review of IMES Debt Management by external consultants PricewaterhouseCoopers noted that in 2000 IMES' gross debt was \$280 million and by 2007 had increased to \$640 million and that although 'the debt level rose, the level of recoverability did not rise at the same rate'.

44. Despite these reports and recommendations, increases in both the number of infringements issued and the number of offenders with multiple outstanding warrants has led to continuing increases in unpaid warrants and the 'written-off' debt to the state.

45. In response to my draft report, Mr Facey said:

The Fines Reform program will significantly expand on this work, allowing IMES to use other powers to enforce warrants contained in the *Infringements Act 2006*, such as the power to garnishee wages, as well as revolutionise the way that fines are enforced more broadly.

Factors affecting warrant enforcement

There are a number of factors impacting on the effective enforcement of warrants in Victoria. These include:

- 172 Sheriff's Officers are responsible for enforcing 3.5 million warrants
- Warrants are increasing but not the number of Sheriff's Officers
- Targets are not making any impression on outstanding warrant numbers
- Infringement warrants are issued six months after infringements occur
- Addresses are often out of date
- Poor methodology and lack of strategic planning in enforcement activities
- Limited direction provided to officers
- Leniency with payment orders for repeat defaults
- Incapacity to chase up payment order defaults
- Failure to use existing legislative powers
- Inadequate IT system
- Reduced administrative assistance to officers by Justice staff
- Agencies reluctant to provide address data.

Limited Resources

Sheriff's Officers

46. There are currently 172 Sheriff's Officers employed by IMES to enforce warrants. If the number of unenforced warrants to be executed were shared equally amongst the Sheriff's Officers then this would average 20,400 each, an impossible task.
47. The table below sets out the number of warrants requiring enforcement since 2004-05, their dollar value, and the number of Sheriff's Officers available to enforce the warrants.

Table 1 - Summary of warrant numbers, warrant values and Sheriff's Officer numbers

Year	Warrants issued (no.)	Value of warrants issued (\$)	Sheriff's Officers (FTE ¹⁰ no.)
2004-05	Not available	Not available	180
2005-06	438,414	\$112,480,020	Not available
2006-07	588,086	\$157,943,625	Not available
2007-08	733,994	\$197,346,915	151.4
2008-09	760,838	\$209,908,785	149.6
2009-10	892,524	\$257,882,290	145
2010-11	1,400,199	\$421,359,750	168.7
2011-12	1,518,775	\$470,597,136	178
2012-30 March 2013	1,265,477	\$436,638,488	172.7

Source: Information provided by IMES.

48. IMES identified insufficient staffing as a risk to achieving its goals in 2007. Sheriff's Officer numbers have increased since then, however this change has not kept pace with the increase of unenforced warrants over the same period. As the table shows warrants requiring enforcement have trebled from half a million in 2006-07 to one and a half million in 2011-12. The numbers of officers employed to enforce warrants has only increased by approximately 20 over the past five years.
49. IMES has also recently lost around 30 administrative staff which impacts on the support available to Sheriff's Officers.
50. In response to my draft report, Mr Facey said:
- It is important to note that Sheriff's Officers were exempt from the Sustainable Government Initiative, owing to the important work that Officers do in enforcing outstanding warrants.
- ...
- IMES is currently undertaking a significant recruitment exercise, which will see additional Sheriff's Officers employed and in the field before the end of 2013. This will bring the total number of Sheriff's Officers to close to 200.

Supervisors

51. Supervisors are responsible for the day-to-day management of teams of up to 12 Sheriff's Officers. There are 18 Supervisors responsible for the 150 Sheriff's Officers across the state, which equates to around one supervisor for every 8 officers.
52. Supervisors do not appear to provide strategic direction to Sheriff's Officers about how to prioritise and enforce infringement warrants. Officers are only told to prioritise civil warrants.

¹⁰ Full-time equivalent.

53. Supervisors also generally do not track infringement warrants although a 'Warrant Tracker' system is available and enables a supervisor to view officer case loads.
54. Officers have a weekly 'hand-in' with supervisors, where paperwork in relation to warrants is submitted, although it does not always involve a face-to-face discussion and often the supervisor simply records the officers' statistics.
55. Supervisors spend little time in the field observing or assisting their officers, despite the Sheriff's expectation that 75 per cent of their time should be spent doing so. Supervisors interviewed cited their administrative duties as the main factor inhibiting them from achieving this target.
56. Supervisors do not receive training to ensure an effective and consistent approach across regions and most supervisors interviewed had no previous supervisory experience. This is despite a 2007 Review of Sheriff's Operations Operating Procedures, by Mr Neil Comrie AO APM which recommended a Supervisors' Training Course and Manual be introduced for these reasons. The need for a manual had been identified in 2002 by The Sheriff's Office. However, a Supervisors' Training Course has not been implemented nor has a Supervisor's Manual been developed.
57. In response to my draft report, Mr Facey said:

... IMES is currently developing a Supervisor's training program, which will ensure that all Supervisors are well equipped to perform their duties.

Inadequate IT system

58. The information technology system currently used by IMES to manage the enforcement of infringement notices, court orders and warrants is the Victorian Infringement Management System (VIMS). It records information about the issuing, actioning and finalisation of warrants. It is run and maintained by an external provider. The system is around 15 years old.
59. VIMS has a number of inadequacies. It is an infringement management system, rather than a debtor management system. This means that criminal and civil matters relating to an offender are not automatically linked on the system.
60. The usefulness of the system is also limited by the fact that it can only store one address for an offender. As a result, the offender's address history and potential multiple addresses are not available to Sheriff's Officers.
61. It also causes delays when large numbers of Sheriff's Officers simultaneously attempt to access and obtain responses from the IMES Communications Centre.
62. VIMS' reporting capabilities are also poor. For example, I sought data from IMES in relation to the 10 offenders with the highest value of outstanding warrants. In particular, I requested details of the offenders' outstanding warrants and any action taken by IMES or the Sheriff's Office. It took IMES nine hours to develop the query in VIMS and develop a report in relation to one offender. IMES said that it would take another 4-6 hours to produce the report for each of the other offenders in the top 10.

63. Changes to the system are expensive and difficult. In a briefing to the Attorney-General, dated 23 April 2012, the department noted that VIMS did 'not enable all the legislative changes made in 2006 (such as garnisheeing wages, charging and selling real property, and transferring liability for warrants to company directors) and any future reforms to the Infringements System could be limited by the cost and time it would take to change the system'. The briefing also stated that these issues were addressed by the new IME system being developed.
64. Another example of VIMS hindering enforcement involves the power available to IMES to direct VicRoads to suspend an offender's licence or vehicle registration referred to as Registration Non-Renewal (RNR). Limitations with VIMS means that the RNR sanction cannot be used for offenders with more than one warrant.
65. To address inadequacies in VIMS in 2007, the State entered into a contract with an external provider to build a new information technology system (the IME System). This system was to increase the functionality of VIMS by:
- linking an offender's criminal and civil matters so Sheriff's Officers can view the total indebtedness, and action multiple warrants simultaneously
 - enabling garnisheeing of wages, charging and selling of real property, and the transferring of liability to company directors
 - increasing reporting capabilities
 - storing multiple addresses for an offender
 - implementing automated sanctions
 - enabling the new system to expand as required.
66. IMES' original forecasted budget for the project was \$45 million. The successful tender however was for \$24.9 million with a proposed implementation date of August 2009. Nearly four years later the project is still to be completed. Also, the cost of the project has nearly doubled to a projected \$44.6 million. The project is now expected to be implemented by the end of 2013.
67. The main reason offered for the delay and budget overrun was that detailed specifications for the system were not developed prior to the State entering into a contract with the external provider. A 2009 Ministerial briefing noted that 'only high level requirements for the system were documented' and the external provider was contractually required to 'clarify and document the requirements in detail'.
68. Poor planning of IT projects and the failure to develop robust business cases are issues that I have identified in a number of public reports involving IT systems. The most recent was my November 2011 joint investigation with the Victorian Auditor-General into ICT-enabled projects¹¹.

¹¹ Victorian Ombudsman, *Own motion investigation into ICT-enabled projects*, November 2011.

69. In response to my draft report, Mr Facey said:

IMES acknowledges that VIMS is inadequate, and no longer supports best practice enforcement of outstanding infringements, enforcement orders and warrants.

...

The IME system will allow IMES to utilise a range of new enforcement sanctions currently available in the *Infringements Act 2006* (but not enforceable in the current environment largely due to the limitations of VIMS). These include the power to garnishee wages and the power to charge and sell land.

Lack of automation regarding service of documents

70. Sheriff's Officers are often required to make a number of visits to offenders before they can enforce warrants. Sheriff's Officers must personally serve on offenders:

- seven day notices (warning of the imminent execution of an infringement warrant and required for some open court arrest warrants)
- a summons for oral examination
- an attachment of earnings order
- an attachment of debts order
- a notice of intention to direct VicRoads to suspend a driver licence (NOITS)
- a notice of intention to direct VicRoads to suspend the driver registration of a person (NOITS).

71. In addition, if the offender fails to take action once served with any of the above documents, the officer must attend the address again to enforce the warrant. Proposals have been raised regarding the automation of a number of these processes to reduce this burden. A Ministerial briefing dated 15 June 2011 noted that automating notices would free up time for Sheriff's Officers to make personal contact with offenders. The briefing suggests:

- expanding the automatic non-renewal scheme to commence before a warrant is issued
- introducing a requirement that outstanding infringement warrants must be paid before driver licence or vehicle registration will be renewed at VicRoads
- implementing the garnisheeing of wages
- implementing the ability to make company directors liable for the infringement warrants of companies that have been deregistered or are without assets
- make a charge on an offender's land.

72. Mr Facey said that he supports the use of automation wherever possible in the enforcement process. IMES has confirmed that the reforms will commence progressively from mid-2014. I discuss these proposed reforms later in my report.
73. In response to my draft report, Mr Facey said:
- The *Infringements Act 2006* provides that a number of notices must be served personally on offenders before a Sheriff's Officer can enforce a warrant.
- Although there are valid reasons for requiring such personal service, this requirement hinders the ability of Sheriff's Officers to effectively enforce warrants in a timely fashion.
- Fines Reform will lead to the automation of a number of these processes to reduce the burden on Officers in enforcing warrants.

Underutilisation of powers

74. Through the introduction of the *Infringements Act 2006* IMES gained a number of additional powers to enforce infringement warrants. To date it has not used a number of these, including powers to:
- deduct money direct from an offender's salary or to obtain money owed to an offender by a third party (garnishee power)
 - apply for a court order to charge an offender's real property¹² and sell it
 - declare a company director personally liable for fines incurred by the company while they were director to any significant extent.
75. This is despite the powers to garnishee and charge being established practices to enforce civil warrants in Victoria and used extensively in other Australian states and New Zealand to enforce criminal warrants. IMES said that the Victorian civil and criminal processes were 'similar' but that the legislation, process, purpose and context in Victoria are different to other jurisdictions.
76. Exercising these powers could have assisted IMES to substantially increase its recovery of infringement debts.

Garnishee power

77. The court may use the garnishee power to recover outstanding infringement warrants in excess of \$1,000. There are currently more than 235,000 offenders who could be the subject of this sanction.
78. IMES said it has not used these powers because of 'legislative barriers and [information technology] system constraints'. IMES clarified that the main barrier is the VIMS system and its inability to facilitate the process under the current legislation. This is in addition to the legislative requirement for a Registrar to formally examine an offender about their financial position and ability to pay before it can exercise this garnishee power.

¹² Property consisting of land or buildings.

79. IMES has cited the following reasons why it has not conducted these examinations or utilised its garnishee powers:
- the information technology system does not support it
 - registrars have not been trained to examine offenders
 - a Seven Day Notice must be personally served before an attachment order can be issued so the sanction is limited to offenders who can be located
 - IMES does not have interview facilities
 - interviews are considered as inefficient and labour and time intensive
 - there is no legislated 'protected earnings rate', that is a minimum income to ensure offenders can provide for themselves and dependants, and pay their debts and liabilities
 - it is unclear whether an attachment order may be used to garnishee money held in an offender's bank or financial institution (this order may be made¹³ by the Magistrates' Court regarding civil warrants).
80. Enforcement bodies in Queensland, New South Wales, Tasmania and South Australia report significant success in using this sanction, although none of these jurisdictions are required to 'examine' offenders as required in Victoria¹⁴. These states obtain information from documents already provided by an offender, oral and written financial statements and from previous BPay and cheque payments. In 2011-12, New South Wales issued 82,000 garnishee orders.
81. In response to my draft report, Mr Facey said:
- IMES agrees that the use of the garnishee power would improve the ability to recover outstanding fines from offenders.
- However, due to a number of constraints, particularly the outdated VIMS system, IMES has to this point been unable to use the power. A workaround has not been possible.
- With the introduction of the new IME system and the changes proposed in the Fines Reform program, IMES will be able to use this and other as yet unused powers to recover money from offenders. This will provide significant assistance to IMES in its efforts to address the pool of unenforced warrants.

Power to apply to charge and sell land

82. The Sheriff may apply to the Magistrates' Court for an order to place a charge¹⁵ over the real property of an offender who has more than \$10,000 worth of infringement warrants. This restricts the offender's ability to deal with their property¹⁶. If the warrant remains outstanding for three months after a charge is issued, a court may order the property to be sold to recover the debt.

¹³ Order 71 of the Magistrates' Court General Civil Procedure Rules 2010.

¹⁴ Position Paper – Fines Reform – Review of Part 9 and 10 *Infringements Act 2006* – Oral Examination and Attachment of Earnings and Debts Order, page 45 of 193.

¹⁵ An order placed over an offender's house or land, that allows for the sale of the property if a fine is not paid.

¹⁶ Such as sell or mortgage a property.

83. There are over 13,000 offenders with infringement warrants in excess of \$10,000 with a total value of \$366 million which could be subject to this sanction which has never been exercised by the Sheriff. This is despite the seizure and sale of real estate under the Supreme Court (General Civil Procedure) Rules 2005 being an established practice in the enforcement of civil warrants. IMES said that the rules under the *Infringements Act 2006* relating to charge and sale of land are completely different to those in the Supreme Court Rules.
84. IMES has not used these powers 'due to legislative barriers'. More specifically it advised that:
- there is an onerous legislative requirement that every enforcement tool available must be used before a court may order that land be charged which renders the provision 'prohibitive to use'.
 - making an application to the Magistrates' Court is 'not swift', is resource intensive and costly for the Sheriff and the Magistrates' Court.
 - the legislation lacks detail about the priority of the Sheriff's interests and the proceeds of sale.
85. Queensland, South Australia and Western Australia have all successfully used this sanction. The thresholds applied in these states for the use of this sanction range from \$5,000 to any outstanding debt.
86. Compared to other jurisdictions, Victoria has the highest threshold for the application of this sanction: \$10,000 and is the only state where a court, rather than the head of the enforcement body or an officer, is required to make the order to charge land.
87. In response to my draft report, Mr Facey said:
- The current legislation places an onerous burden on IMES to demonstrate that every enforcement tool available must be used before the charge and sale of land can be entertained.
- ... IMES considers that this power is essentially unworkable in its current form.
- Other jurisdictions do not face the same legislative or IT restrictions that IMES faces.
- The Fines Reform program will allow IMES to use the charge and sale power, adding a valuable enforcement tool to the options available to IMES.

Power to make company director liable for unpaid warrants

88. There are currently \$48.5 million of outstanding company warrants in Victoria. In the last two financial years, \$9.16 million of infringement warrants against insolvent companies were written-off because the companies did not have assets the Sheriff could seize.
89. Where a Sheriff's Officer makes a payment demand on a company offender and the company is unwilling to pay or there are no assets to seize, the matter is currently not pursued.

90. An Infringements Court Registrar can declare a company director personally liable for outstanding infringement warrants incurred by a company while they were a director. In the Fines Reform position paper IMES¹⁷ said that it has never used this power because:
- its legal advice is that ‘a director could easily avoid liability’ because the ‘reasonable steps’ defence available to directors is unclear
 - an Infringements Court Registrar would require specialist legal advice in each case to determine director liability, a decision reviewable by the Supreme Court.
91. The process may be delayed by up to three months¹⁸ if the director applies for the warrant/s to be revoked after a notice of intention to declare the director liable has been issued. No other Australian state has legislation which enables company directors to be made personally responsible for the debts of the company.
92. Mr Facey said he has known about these sanctions but there were a number of factors which precluded their use in practice, including the complicated and inconsistent nature of the Infringements Act and the incompatibility of VIMS. He said there are six cases listed to test the director liability for companies sanction and previous legal advice was that the legislation was too difficult to use and required amendment.
93. In response to my draft report, Mr Facey said:
- ... IMES has used this power before, and is currently targeting a small number of company directors to test the application of the power.

Unreliable data and a reluctance to share information

Inaccuracy of VicRoads address data

94. Most warrants relate to traffic infringements. The addresses on these warrants are taken from VicRoads’ database at the time of the infringement.
95. Sheriff’s Officers do not routinely check warrant addresses with VicRoads before attending an address. VicRoads also charges IMES a fee of 16 cents for each address check it conducts. IMES stated that whether Sheriff’s Officers conduct the checks depends on operational requirements in each region and that some officers perform the checks as a matter of course.
96. Motor vehicle licence holders are required by legislation to update their details with VicRoads within 14 days of a change of address. VicRoads will only change its address data when information is provided by a licence holder. VicRoads assumes addresses are correct where correspondence it sends out is not returned.

¹⁷ Fines Reform Position Paper, page 118 of 193.

¹⁸ This is because the revocation application is initially heard by an Infringements Court Registrar and, if refused, may be referred to the Magistrates’ Court.

97. At times, a Sheriff's Officer may become aware of a current address for an offender, which is different to that held by VicRoads. However, VicRoads will not update its database with information provided by Sheriff's Officers because it is concerned that to do so would place the 'deemed service' of VicRoads' notices at risk¹⁹. VicRoads told my officers that in such situations, it is concerned about the prospect of court action by licence holders.
98. The Department of Justice said:
- Any updates made to the VicRoads database by VicRoads, does not impact on the Deemed service provisions under the *Infringements Act 2006*.
99. VicRoads also does not take action against licence holders who fail to update address records because this could lead to 'unintended consequences'. For instance, action against a person who has simply forgotten.
100. VicRoads said that as the Sheriff is able to direct VicRoads to suspend or cancel a licence when an offender fails to pay warrants, VicRoads prefers this method of targeting individual offenders rather than targeting the entire driving population.
101. In response to my draft report, Mr Facey said:
- IMES acknowledges that there are some issues surrounding addresses sourced from VicRoads, as the offender in question has failed to update their address with VicRoads despite the requirement to do so within 14 days of moving.
- Sheriff's Officers will often conduct their own checks prior to visiting an address, to ascertain if the address in VIMS is current.
- In addition, the new IME system will allow multiple addresses to be recorded for the first time, ensuring that Sheriff's Officers will have the greatest chance of locating offenders with outstanding warrants.
102. In response to my draft report, VicRoads:
- said it should take all reasonable steps to make its address records as accurate as possible
 - agreed that the Sheriff's Office may become aware of information not provided to VicRoads and there is merit in VicRoads confirming updated address information from agencies such as the Sheriff's Office
 - said in the future VicRoads will write to clients at both the address on record and the address advised to it by the Sheriff's Office requesting that the client confirm the correct address
 - noted that where clients fail to comply under the *Road Safety (Drivers) Regulations* VicRoads may require the client to provide evidence of their address and where appropriate will suspend the client's licence or permit

¹⁹ Under the *Infringements Act 2006*, documents served by post to an address held by a state government agency are deemed served. VicRoads is one such agency.

- said in relation to vehicles, VicRoads may require evidence of changes to the residential address of the vehicle's registered operator and any other addresses for the service of notices and will suspend the registration of a vehicle where this information is not provided
- said it will maintain contact with the Sheriff's Office to assess the impact of this process change.

Lack of cooperation between agencies on information sharing

103. The 2007 PriceWaterhouseCooper's review said IMES needed access to other information sources to confirm offenders' details and suggested access to the Victorian Electoral Roll, Housing Commission and Retail Tenancy data. The review suggested that IMES liaise with the government to resolve any barriers of privacy or cost.
104. IMES said that these and other agencies refused to provide address data on the basis of privacy concerns.
105. However, there appears to be no legal basis for such refusals. The *Information Privacy Act 2000* (the Privacy Act) protects 'personal information' including addresses. However, the right to privacy under the Privacy Act is not absolute and will give way to countervailing public interests including proper administration and the enforcement of laws.
106. This means that under the Privacy Act an agency may disclose an address if it reasonably believes that the use or disclosure is necessary for the purposes of a law enforcement agency to detect, investigate, prosecute or punish criminal offences or breaches of law imposing penalties or sanctions. IMES is one such law enforcement agency.
107. IMES also has express power to require the production of information under warrants authorised by courts. The *Infringements Act 2006* provides the Sheriff with the power to request information to assist in warrant enforcement and the Sheriff's Act gives Sheriff's Officers the power to require certain information. Agencies are generally only exempt from providing information to the Sheriff's Office relating to a warrant where exceptional circumstances apply.
108. In response to my draft report, Mr Warwick Gately AM, the Victorian Electoral Commissioner said:
- ... in 2009, IMES worked with the VEC in relation to providing IMES with access to the personal details of people enrolled on the register of electors.
- Further, that an initial protocol was proposed by IMES with respect to elector data, which ultimately was not agreed to by the VEC. I confirm that the VEC informed IMES of its decision that the information would not be disclosed under the proposed protocol and that the preferred method for the VEC was for the provision of information to be assessed on a case-by-case basis.
- ...

... I am very open to further reviewing and developing the protocol with IMES whereby the register of electors is accessed initially by VEC officers on a case by case basis to confirm or update address details against particular individuals as opposed to the continuous provision of the State electoral roll to an agency over which I cannot exercise control.

109. In response to my draft report, Mr Facey said:

IMES has made a number of attempts to work with other agencies to have access to current address information.

For a number of reasons, these efforts have largely been unsuccessful.

...

IMES is continuing to look at ways to obtain the best address information, such as entering into arrangements with telecommunication companies.

Lack of coordinated enforcement strategies

Ineffective targets

110. The Department of Justice sets targets in relation to the enforcement of warrants across the state. These targets form the basis of targets set by IMES for the various regional offices, although officers are not set individual targets. Despite regional targets being met or exceeded, the number of unexecuted and expired warrants continue to increase.
111. The Victorian Government's annual budget papers report on the Department of Justice's progress against targets. Until 2005-06, the budget papers reported on 'warrants actioned' and warrants 'cleared' within 12 months of issue.
112. A 'warrant actioned' includes any action taken on a warrant and can include Sheriff's Officers attempting execution. A warrant is 'cleared' when it is paid; an offender is bailed to appear in court; a Sheriff's Officer determines the offender has no assets (*nulla bona*); or the matter is otherwise finalised. However, in 2005-06, reporting on the number of 'warrants cleared' ceased and only the number of 'warrants actioned' is now reported. The number of warrants actioned has generally exceeded annual targets and has increased from approximately 410,000 in 2002-03 to over 1 million in 2010-11.
113. IMES's budget reporting raises two issues. The first is whether 'actioned' warrants is an appropriate performance measure. By this measure, a warrant worth \$1 million is given the same value as a warrant worth \$100 and an officer can meet these targets by finalising multiple warrants as 'offender left addresses' rather than get a single warrant paid in full. It does not measure the effectiveness of IMES in clearing warrants for cash, the timeliness of enforcement action, or the number of warrants that expired without enforcement.
114. The second issue is why IMES ceased reporting on warrants cleared within 12 months. IMES said although the measure was appropriate pre-tolling, to report on it now would inform the community they could get away with not paying warrants by ignoring them.

115. The regional targets set by IMES have three key performance indicators (KPIs):
- warrants actioned
 - warrants finalised
 - warrants paid in full.
116. 'Warrant finalised' includes any result that clears the warrant from VIMS.
117. In 2011-12 Sheriff's Officers met and exceeded two of their three KPIs - warrants actioned²⁰ and warrants finalised. The warrants paid in full KPI was nearly met.
118. The Sheriff's Office Activity Annual Report 2011-12 acknowledged that while arresting and bailing offenders with multiple warrants helped officers meet the 'warrants finalised' target, as these offenders did not tend to make payments, this action did not contribute to 'warrants paid in full'. Also, offenders who paid their warrants in full usually had less than five warrants and so, contributed less to the 'warrants finalised' targets. IMES said that Justice outcomes can also be achieved by arresting and bailing offenders.
119. The report proposed that:
- targets be reviewed to determine the most appropriate way to measure performance
 - consideration be given to tailoring targets to regions
 - demographic information such as socioeconomic levels be taken into account.

These recommendations are yet to be actioned.

120. In response to my draft report, Mr Facey said:

IMES is continually reviewing methods to best measure Sheriff performance. In this context, the warrants finalised and warrants paid in full targets, which form a percentage of the warrants actioned target, provide Sheriff's Officers with significant incentive to take actions to finalise a warrant.

Although the Budget Papers no longer report on warrants cleared, the warrants finalised target is in essence the same target, as both identify enforcement activity that clears a warrant from VIMS.

Given the significant change that will come from IMES and Fines Reform, the current approach to targets and metrics will change.

121. The Department of Justice said:

This report was finalised in April 2013, which coincides with the consultation for the Ombudsman investigation. Implementation work of appropriate recommendations will commence shortly.

²⁰ First target was 800,000 and actual was 834,963. Second target was 195,103 and actual was 269,895. Third target was 20 per cent and actual was 17 per cent.

Lack of enforcement methodology

122. Apart from the allocation of civil warrants to Sheriff's Officers by supervisors, IMES has no documented and systematic methodology for targeting, selecting and enforcing criminal warrants. This is despite a recommendation by the Auditor-General in 2005²¹ that such a methodology be developed, which the Department accepted.
123. Lists of infringement warrants are provided by IMES at the request of supervisors or officers, and allocated to officers. Requests made for lists of offenders are often driven by the individual preference of the supervisor/officer involved. The more common requests are for: offenders with more than 50 or 100 warrants; offenders who have been in contact with Sheriff's Officers or Victoria Police within the last 30 days; and offenders within certain postcodes.
124. Sheriff's Officers generally do not prioritise warrants but are driven by location and convenience, based on their own location and the addresses of offenders. There is neither guidance from supervisors nor any IMES policy.
125. In 2005, the Auditor-General recommended that IMES analyse ageing warrants and clear warrants before they expire. In responding to the Auditor-General's report the then Secretary of the Department of Justice said the most effective approach was to target recent warrants, check for older warrants when a new infringement occurred, and focus on multiple warrants.
126. Expiring warrants are not given priority by officers because they say that old addresses are unreliable and there are so many other warrants needing enforcement. In addition, the warrant expiry dates do not appear on the lists of warrants generated by VIMS. Expiry dates only appear on printed warrants. Officers are therefore unable to identify those warrants nearing expiry from the lists provided to inform their enforcement activities.
127. Officers are not generally given direction about which enforcement method to use, although operational manuals provide some guidance in requiring that a demand for payment from the offender must always be made.
128. A number of enforcement methods that have proved successful in the past have been underutilised by IMES in recent years. For example, in 2011-12 around 89 per cent of people took action on their infringement warrants after a wheel-clamp (for warrants in excess of \$500) was applied to their vehicle and 47 per cent paid their warrants in full. However, the number of times this sanction was used dropped by 28 per cent from 3,592 in 2010-11 to 2,588 in 2011-12. IMES said that from 2010-11 to 2011-12 the percentage of offenders paying in full increased by five per cent to 47 per cent.

²¹ Victorian Auditor-General's Office, *Results of financial statement audits for agencies with other than 30 June 2004 balance dates, and other audits (2005)*, <www.audit.vic.gov.au>.

129. Mr Facey said that there were a number of factors influencing the reduced use of wheel clamps, including:
- a change in government policy;
 - because IMES has more success with special operations; and
 - industrial action following IMES' decision to remove cars from officers and to car pool.
130. Similarly, the use of licence and registration suspension sanctions dropped from 3,468 in 2009-10 to 1,092 in 2010-11 (nearly 70 per cent) despite the use of this sanction encouraging individuals to act to clear warrants in 97 per cent of cases²².
131. Although IMES has identified tolling warrants issued for failing to pay City Link and EastLink tolls as 'a significant and increasing proportion of outstanding infringement debt'²³, IMES does not target them in its enforcement operations. This is despite tolling warrants accounting for over 40 per cent (over 1.4 million) of the pool of nearly 3.5 million unenforced warrants.
132. Tolling offenders tend to have multiple infringements or warrants. As at 30 September 2012, there were 1,429,848 outstanding tolling warrants valued at over \$380 million. Tolling warrants have the lowest payment rate of all infringements.
133. IMES has only conducted one tolling operation to date – in January 2013. The operation checked 3000 Automatic Number Plate Recognitions and identified 38 people with 614 outstanding warrants totalling \$175,000. More than \$66,000 worth of fines was paid on the day.
134. The Department of Justice said:
- While IMES has only conducted one operation on a toll road, all operations that Sheriff's Officers conduct target individuals with outstanding tolling warrants.
135. The initial invoice for using a toll road without an active toll account is approximately \$15. If unpaid, it can escalate to an infringement notice for \$144 and a warrant for \$300.70.
136. The 2007 PricewaterhouseCoopers review suggested IMES negotiate settlements or discounts on tolling warrants in addition to discounts for early payment and the discounting of penalties and charges on the basis that they were disproportionate to the original fine. The review noted that the original infringements did not relate to dangerous driving offences.
137. The review suggested IMES liaise with City Link regarding early intervention for tolling warrants in addition to the adequacy of information provided by City Link. IMES did not act on this suggestion. However, in response to my recommendations, IMES has agreed to take action in relation to the issue of unenforced tolling warrants which will include liaising with VicRoads.

²² Attorney-General's Annual Report on the Infringements system 2010-11, page 26.

²³ IMES, *Position paper – fines reform, enforcement of tolling avoidance infringement fines* (2012), page 162.

138. In response to my draft report, Mr Facey said:

There are a number of key challenges that IMES will face in the coming years, including the continual growth of tolling-related warrants, and the expiry of a large number of warrants each year.

In this context, the Fines Reform program will put in place measures to allow for the early identification of offenders with growing numbers of warrants, and will remove the current provision so that infringement warrants do not expire.

... IMES is currently in the process of developing an overarching debt management strategy to identify the key areas of focus for the business in the coming years.

A key part of this strategy is preparing for the improved enforcement environment that will be present when the new IME system and the Fines Reform program are in place.

... IMES currently utilises some of the sanctions available in the *Infringements Act 2006*, including wheel clamping, suspension of licences and registrations, and preventing offenders from registering their vehicles. This is in addition to the normal enforcement powers of seizure of assets and arresting offenders.

In addition, technological advances have improved the ability of Sheriff's Officers to locate and intercept offenders, particularly the introduction of Automatic Number Plate Recognition technology.

Once the new system and Fines Reform are in place, Sheriff's Officers will have a raft of measures available to them to enforce warrants.

Case study – Top 10 offenders

139. In the Fines Reform position papers IMES said a small number of offenders are responsible for a significant proportion of the state's total infringement debt – 6.64 per cent of offenders owe 30 per cent of the debt worth \$434.8 million.

140. The table below identifies the top ten offenders and the total value and numbers of warrants against each. Collectively these offenders are responsible for 6,497 warrants totalling over \$1.7 million in value.

Table 2 - The top 10 offenders and the total value and numbers of warrants against each

Offender	Total value of warrants (\$)	Warrants (no.)
1.	\$222,646	807
2.	\$218,142	830
3.	\$211,397	798
4.	\$179,583	634
5.	\$172,417	645
6.	\$160,877	609
7.	\$159,983	552
8.	\$155,114	540
9.	\$147,510	547
10.	\$144,850	535
TOTAL	\$1,772,517.00	6,497

Source: Information provided by IMES.

141. Mr Facey said that as such offenders generally cannot pay their warrants, they are bailed to appear before a Magistrate and their warrants are usually written off. IMES said that once the matter is before the court, it is no longer a matter for the Sheriff.
142. The Department of Justice has clarified this issue by stating:

The reference to warrants being 'written off' after an offender is arrested is incorrect. It is correct to say that once the warrants are executed by the Sheriff's Office, the matters proceed to the Magistrates' Court where the Magistrate will deal with the offender under s. 160 of the *Infringements Act 2006* (including possible imprisonment).

Case study 1 - Offender 4

The offender had 634 warrants outstanding worth \$179,583. Sheriff's Officers from the region were able to obtain a \$50,000 cheque and possession of seven motor vehicles from the offender. In addition, a further \$50,000 and four motor vehicles were recovered in relation to fines of the offender's son. The supervisor in charge of the operation said there had been issues with identifying the offender who had a similar name to his son; a number of warrants had been issued against the trading name of the offender's business rather than the offender and had to be reissued; and all warrants had to be recalled and re-served due to a computer glitch. Mr Facey said this was an unusually good result because the offender owned a car yard. In this case, the warrants were enforced the day after publication of a newspaper article which listed the state's top 12 offenders.

143. The Department of Justice said:

... the region responsible for enforcing the warrants against this offender undertook significant preparatory work for a period of three months before the warrants were enforced.

The timing of activities by the sheriff's officers was not related to the press article, referenced at the end of the case study. It is also important to note that the result of this enforcement, i.e. payment of a large amount of money, was highly unusual. For offenders with outstanding amounts at this level, it is much more common for other sanctions to be applied, such as arrest and bail to appear in the Magistrates' Court.

Case study 2 - Offender 9

The offender had 547 warrants outstanding worth \$147,510 dating from July 2007. IMES sent approximately 3,500 letters required by legislation to be sent to him. In June 2011, IMES confirmed the offender had a 'left address', meaning they could not locate him. In May 2012 a wheel clamp was applied to the offender's motor vehicle but was later removed because the car was subject to third party finance. In March 2013 the offender was identified as having 15 aliases and is now being pursued by the Tactical Investigations Unit²⁴. In this case, the thousands of reminder actions taken by IMES were ultimately ineffectual.

Warrants expiring before they can be actioned

144. As noted earlier in this report, approximately two million warrants have expired without being executed since 2005.
145. Sheriff's Officers enforce both civil and criminal (including infringement) warrants, but by far the great majority of warrants enforced are infringement warrants.
146. Most persons issued with an infringement have at least 112 days to pay the fine or take other action, and 56 days to pay or deal with any subsequent enforcement order issued. Taking into account administrative actions and grace periods 205 days, or over six months, can elapse from the time an infringement notice is issued by an enforcement agency to the warrant being issued to the Sheriff by the Infringements Court.
147. Consequently, warrant addresses are often out of date when they reach Sheriff's Officers. In 2010-11, approximately 22 per cent of all infringement related mail was returned to sender and 30 per cent of warrants Sheriff's Officers attempted to enforce could not be executed because address information was wrong.
148. In response to my draft report, Mr Facey said:
- Under Fines Reform, the time that an offender will have to deal with their matters will be substantially reduced, ensuring that, if a matter becomes a warrant, it is more likely that the address will still be current.
- In addition, Fines Reform will result in infringement warrants no longer expiring, ensuring that Sheriff's Officers will be able to pursue all warrants without the possibility of them expiring.

²⁴ A special unit of IMES consisting of seven officers who target corporate and high value debt, and difficult to locate offenders with multiple fines.

Issues with payment orders

149. Where an offender cannot pay an infringement warrant, a Sheriff's Officer may provide them with a payment order application. Payment orders extend the due date for a warrant penalty and allow an offender to pay by instalments. If the application is approved by the court, the warrant is withdrawn. Although the warrant is withdrawn the enforcement order remains in place. A new warrant is issued upon any subsequent default of the payment order.
150. An application may be refused by the court if an offender has defaulted on a payment order more than twice in the past five years. However applications for up to 10 payment orders have been granted, despite a history of defaulting. As a result, some offenders have become adept at delaying action on warrants by entering into multiple payment plans and then defaulting, as illustrated in the following case study:

Case study 3

From 1990 to 2006, Mr X was issued with 42 warrants, valued at thousands of dollars, for failing to pay infringement notices. Twenty-four of these warrants expired without enforcement. From 1994-2012, Mr X defaulted on 14 payment plans.

151. The court assesses payment order applications on the basis of limited information – whether the offender is willing to agree to pay regular and minimum instalment amounts. Offenders are not examined in relation to their income or assets and overall capacity to maintain the payment order.
152. Consequently, payment order applications may be approved for offenders who do not have sufficient financial capacity to maintain the payments, and when they subsequently default a further fee of \$55 is added to the original debt. This failure of the court to assess an applicant's capacity to address a fine could also lead to payment order applications being approved unnecessarily for offenders who do have the means to address a debt.
153. There is a high level of non-compliance with payment orders. For instance:
- no payment is received for 20 per cent of orders
 - 25 per cent of orders are defaulted on within three months
 - within a year, most payment arrangements are in default or have been revised to add new matters or accommodate missed payments
 - only 25 per cent of payment arrangements are discharged in full without default or revision²⁵.

²⁵ IMES' statistics include analysis of payment plans issued at the infringement stage by Civic Compliance Victoria.

154. However, IMES has found high levels of compliance with Centrepay and direct debit arrangements from offenders' bank accounts. Centrepay is the automatic deduction from Centrelink benefits and applies to infringement warrants. Only 0.25 per cent of the 5,247 direct debit arrangements approved since February 2010 were cancelled and the default rate for Centrepay is between 0.1 and 0.7 per cent.
155. If an offender fails to pay two consecutive instalments, Civic Compliance Victoria²⁶ (CCV) sends a letter warning they are about to default and they should contact CCV. Although lists of defaulters are provided to the regions, there is no systematic or timely follow-up by Sheriff's Officers.
156. Company offenders cannot apply for payment orders to settle infringement warrants. If the company cannot pay and has no seizable assets, the warrant is likely to be written-off. This is a missed opportunity to recover monies and hold the company to account.
157. In response to my draft report, Mr Facey said:
- The new IME system will address a number of the observations made in the draft report ... as options such as direct debit will be more widely available.

Special Operations

158. IMES conducts special operations to locate offenders including:
- road blocks with Victoria Police
 - the use of Automated Number Plate Recognition technology and wheel clamping in car parks.
159. Operations are organised on an ad hoc basis by regional managers and supervisors. There are no guidelines as to when, where and how often operations should be undertaken.
160. In 2011-12, IMES conducted over 400 operations that identified offenders with 103,678 infringement warrants, only some of which were paid. The total amount collected was over \$3.6 million. Each operation brought in, on average, \$9,000.
161. IMES said special operations are a deterrent to the community and encourage offenders to pay their warrants. In addition, the Sheriff reinforces this message by highlighting the operations with local media outlets after operations.
162. However, I consider the deterrent effect of operations is limited by a lack of visibility of Sheriff's Officers. Sheriff vehicles and Department of Justice vans are not routinely badged, to identify the agency.
163. I consider that the Sheriff needs to have a more visible presence at operations and to promote the work of his officers through advertisements. In this regard, the New Zealand Collections Unit uses regular television advertising campaigns.

²⁶ The role of Civic Compliance Victoria (CCV) is to recover unpaid fines on behalf of police, local councils, and other authorities. CCV is operated by a private company on behalf of the Department of Justice subject to a contractual arrangement.

164. In addition, when current address information is collected or notices issued at special operations, they are not given priority. Warrants are simply returned to the pool, rather than being brought to the attention of the relevant regions for more immediate action given the up-to-date nature of the information gathered.

165. In response to the draft report, Mr Facey said:

The Sheriff's Office is currently in the process of badging the majority of Sheriff vehicles, to ensure that Officers obtain the greatest exposure when performing their duties, not just during special operations, but at all times. A small number of vehicles will remain unbadged for operational reasons.

... during special operations, Sheriff's Officers are clearly visible by their uniform and the use of badged vehicles.

In addition, IMES has dramatically increased the exposure of the Sheriff's Office in the past two years through an active engagement with the media.

Data matching trials

166. IMES has approached government agencies to trial data matching to improve address accuracy.

167. In 2005 and 2009, the Victorian Electoral Commission (the VEC) declined the Sheriff's request for a copy of the electoral roll so that VIMS could be updated. However, in 2009 the VEC agreed to 'consider individual requests made under the *Sheriff Act 2009* on a case-by-case basis.' IMES did not pursue this matter. The Acting Victorian Electoral Commissioner said the VEC would assist IMES on a case by case basis on the basis of an agreed arrangement. I note that the VEC has done so with other state agencies.

168. In response to my draft report, Mr Facey said:

IMES is currently negotiating for access to several other address sources, particularly telecommunication records, which should prove extremely useful once the arrangements are formalised.

...

The IME system will permit the storage of a number of addresses ...

169. In his recent response, the Electoral Commissioner Mr Warwick Gately AM said:

... I am very open to further reviewing and developing the protocol with IMES whereby the register of electors is accessed initially by VEC officers on a case by case basis to confirm or update address details against particular individuals as opposed to the continuous provision of the State electoral roll to an agency over which I cannot exercise control.

170. The Department of Justice said:

The Department considers that a case by case assessment of address information does not represent an appropriate allocation of resources, given the significant volumes in the infringements system.

171. In 2005, 2007 and 2010, IMES approached a number of local councils for trial data matching and only one council cooperated. IMES said the trial with this council was unsuccessful because the council's address data did not assist in locating additional offenders. IMES said other councils refused to provide their data to the Sheriff owing to concerns about data privacy but IMES did not pursue this matter.
172. The cost of data matching exercises may also be an issue. IMES said that data matching requires programming and development by agencies, which has costs.
173. The Victorian Attorney-General has sought access to Commonwealth agencies' data in order to assist Sheriff's Officers to locate offenders.
174. A 2012 Ministerial briefing to the Victorian Attorney-General noted the Commonwealth had advised IMES that Centrelink, Medicare and the Child Support Agency provide information 'in relation to ad hoc individual requests, but that regular automated data matching to locate fine defaulters will not be further considered'. The briefing also stated that the sharing of taxpayer information held by the Australian Taxation Office was also limited under the *Taxation Administration Act 1953* (Cth).
175. At a subsequent meeting last year, the State and Territories Attorneys-General 'called on the Commonwealth to continue to explore greater data sharing' to assist jurisdictions in the enforcement of fines. Subsequently, the Victorian Attorney-General wrote to the Commonwealth Attorney-General seeking 'more assistance from the Commonwealth to help the states access contact information for fine defaulters held by Commonwealth agencies, including Medicare, Centrelink, the Child Support Agency and the Australian Taxation Office'.
176. In May 2012, IMES proposed trialling access to telecommunications records to locate offenders however this trial is yet to be approved.
177. IMES now proposes to conduct data-matching with:
- the Residential Tenancies Bond Authority
 - the Department of Environment and Primary Industries
 - the Victorian Electoral Commission
 - telecommunication providers.
178. IMES said negotiations can commence immediately as they are not dependent on legislative change. IMES said that negotiations are underway to conduct data-matching with identified agencies.
179. IMES also proposes to seek legislative change to enable it to obtain information from credit reporting agencies, a power which is currently available to the New South Wales State Debt Recovery Office.

Proposed action by IMES

Despite the numerous reports, audits and recommendations made over the last six years, the most significant action taken by IMES to address the failure to enforce warrants is its recent drafting of the Fines Reform program. However this project has been in progress since 2011, is yet to be made law and implemented, and its impact on warrant enforcement remains to be seen.

Fines Reform program

180. In November 2011, the Minister approved a program of reforms designed to reduce the number of unenforced warrants – the proposed Fines Reform program. The reforms include:

- simplifying and streamlining enforcement processes
- increasing payment rates and reducing debt from unpaid debt
- bringing offenders into contact with authorities earlier
- introducing new sanctions to reduce recidivism by recalcitrant offenders.

181. The Sheriff, Mr Brendan Facey said:

To deliver on infringement system objectives, the fines reform package focuses on:

- making the infringements system easier for fine recipients to understand by simplifying language, establishing an administrative body as a central understandable point of contact, streamlining enforcement processes and providing the public with clearer information about the system
- making the infringements system more effective for fine defaulters by shortening the time they have to pay and tailoring the lifecycle to reflect actual payment patterns, making it tougher by moving sanctions for non-payment closer to the issue of the fine, and implementing new and stronger sanctions for non-payment
- providing an alternative to payment ...
- proactive management of high value debtors ... offenders will have no excuse for allowing their infringement debts to mount up without taking action. For those who are unable to take the initiative to resolve their matters, the package includes proposals for the Department to make contact with these offenders, advise them of options, and take a case-management approach to sanctions.

182. Key initiatives included in the Fines Reform program and other enforcement priorities include:

- targeting of offenders with multiple warrants
- improving the quality of offender addresses by accessing an increased number of address sources, and storing multiple addresses
- conducting special operations at tolling roads
- joint tolling operations with the Victorian Taxi Directorate targeting taxi drivers with multiple warrants

- shortening the infringement lifecycle from 168 days to 77 days to increase the currency of addresses when warrants are received by Sheriff's Officers for enforcement
- introducing the non-expiry of infringement warrants
- negotiating with VicRoads to encourage VicRoads to:
 - o enforce penalties when individuals fail to update their address
 - o update its data when advised of new addresses by third parties, including Sheriff's Officers
- removal of the requirement for a suite of notices to be served personally on offenders, including Seven Day Notices and Notices of Intention to Suspend Licences
- reducing the deemed service period from 14 days to seven days
- the establishment of minimum earnings rates and ability for any amount held by an offender in a bank or financial institution to be garnished
- the power to charge property being available to enforce the payment of open court fines
- powers allowing the Sheriff to apply to sell real property
- provision for issuing a notice declaring an unpaid company fine a debt payable to the state, and the ability to recover unpaid fines from companies that are insolvent
- introduction of new options for payment orders including:
 - o legislative and operational changes to enable offenders to consolidate warrants
 - o developing the new IME System to enable payments by telephone, online and in person
 - o making payment orders available to companies
 - o introducing stricter terms and conditions for defaulters, including an upfront deposit or direct debit
 - o introducing automatic driver licence or registration suspension for offenders who default, and offenders required to pay a number of instalments before sanctions are lifted
 - o Sheriff's Officers may approve applications.

183. The Fines Reform program has been approved in principle and in March 2013 the Attorney-General said the Bill would be introduced into Parliament in late 2013 or early 2014. The cost of implementing the reforms is expected to be \$15 million in capital costs and \$19.6 million in operating costs.

184. In response to the draft report, Mr Facey said:

... IMES considers that the Fines Reform program will address the vast majority of the issues identified in the draft report.

Strategies in other jurisdictions

Enforcement agencies in other Australian states and New Zealand utilise different strategies and sanctions to enforce warrants which are not used in Victoria. These include engaging external contractors to contact and locate offenders and placing restrictions on international travel for offenders. A number of these strategies and sanctions warrant further exploration by IMES.

Engaging external contractors

185. The Office of State Revenue is responsible for collecting outstanding fines and revenue in New South Wales. In February 2012, it commenced trialling contractors to assist in recovering state debt from 200,000 offenders. It paid contractors a fee per offender to:
- conduct data washing (identify and replace inaccurate address information)
 - conduct skip tracing (locate an offender)
 - send correspondence to an offender
 - make telephone calls to locate and speak with an offender.
186. For every \$1 the Office of State Revenue spent, it reported that it received a \$5-7 return.
187. In 1990, IMES trialled private contractors to locate offenders, but said it was 'highly unsuccessful, with only 11 per cent of defaulters ... located'. However, given the changes in technology in the last 20 years including the availability of information online and through social media, I consider IMES should revisit the use of contractors.
188. In his response to my draft report, Mr Facey said IMES plans to investigate this option further in the near future.

Restricting international travel

189. The New Zealand Government has introduced restrictions on international travel for offenders with unpaid fines.
190. New Zealand police can intercept offenders as they pass through Customs and offenders are given the option to pay the New Zealand Collections Unit by credit card or cash. If they do not, police may arrest offenders and remand them in custody or bail them to appear in court. They are prevented from travelling²⁷.
191. The New Zealand Collections Unit also has access to arrival card data provided by passengers entering New Zealand. As a result, offenders are identified and written to by the Collections Unit and given two weeks to pay their fines.

²⁷ New Zealand Ministry of Justice, *Fines - common questions* (2013) <www.justice.govt.nz/fines>.

192. The New Zealand Collections Unit said it has good debt collection outcomes because they share information with other government agencies such as Customs, the Taxation Department and Centrelink. It also credits its regular television advertising campaign with encouraging offenders to pay their warrants. IMES said that restrictions on international travel are the responsibility of the Commonwealth Government.
193. The Australian States and Territories raised this strategy with the Commonwealth Attorney-General in 2012. It was referred to the Minister for Foreign Affairs and Trade and remains with the Minister.
194. In response to my draft report, Mr Facey said:
 - The Victorian Government can make representations to the Commonwealth on this issue, as has occurred already, but has no authority to implement such a change.

Conclusions

Revenue lost

195. IMES has known about the issue of the increasing numbers of unenforced warrants – which can also be expressed as lost state revenue – for a number of years. Despite this, IMES has not effectively managed the issue.
196. As existing warrants are not being enforced and new warrant numbers increase, the number of unenforced warrants has become overwhelming. This has resulted in a significant loss of revenue for the state as each year over \$110 million worth of warrants expire without being enforced.

Lack of resources

197. Sheriff's Officer numbers are low and have not significantly increased in recent years. At the moment, for each officer, there are 20,400 warrants requiring enforcement and for every warrant finalised, five more new warrants are issued. This is simply unmanageable and clearly more Sheriff's Officers are needed.
198. There are now so many outstanding warrants that even though Sheriff's Officers meet regional targets, this does not significantly reduce the pool of unexecuted warrants.
199. In response to my draft report, Mr Facey said:

In recent years, IMES has undergone a program of Sheriff recruitment, which will see a further expansion with the recruitment of additional Sheriff's Officers by the end of 2013.

... the Fines Reform program includes funding for additional staff, which will include more Sheriff's Officers.
200. Since 2011, IMES has been developing position papers for the Victorian Attorney-General to recommend legislative and operational change to enable it to fully utilise these sanctions. Implementation of these reforms will also require changes to IMES' yet to be introduced IT system. However, these reforms are months, and possibly years, away from being implemented.
201. In 2011, I reported to Parliament on my own motion investigation into ICT-enabled projects²⁸. The report examined ten ICT-enabled projects managed by the Victorian public sector to identify why so many projects are over budget, delayed and not meeting objectives.
202. My investigation identified that the IME system suffered from a number of the problems that I reported on in November 2011. In particular, the department's failure to identify detailed requirements before entering into the contract led to an underestimation of the effort required, increased costs and significant delays.

²⁸ Victorian Ombudsman, *Own motion investigation into ICT-enabled projects*, November 2011.

203. It is also concerning that the department entered into a contract to build the system for \$24.9 million, when it had initially expected the project cost to be around \$45 million (the current project cost). The external provider's low original offer should have signalled to the department that the vendor may have underestimated the effort required to build the system.

Underutilisation of powers

204. While significant sanctions including garnisheeing wages, have been available to IMES since 2006 they have not been used to enforce infringement warrants. Given the substantial value of warrants that have expired or remain unenforced, this has been a missed opportunity.
205. There have been numerous reasons given for not using these powers; however, they have been used successfully in other Australian states. These powers could have, and in my view, should have been used in Victoria some years ago. IMES has referred to legislative and procedural barriers to the enforcement of these sanctions. However, these barriers and obstructions are now being addressed by the Fines Reform program.
206. I do not consider the impediments to IMES using all its available enforcement powers are as significant as have been presented. These powers, and in particular the garnisheeing of wages and debts owed by third parties, could have been exercised on numerous occasions if IMES had developed a manual work-around to deal with IT system limitations; trained Infringements Court Registrars to conduct oral examinations; and introduced secure interview rooms. In addition, the power to charge and sell land should also have been utilised. In this regard, I consider that the \$10,000 threshold for using this sanction is too high and should be reduced to \$5,000, in line with other states.
207. IMES should garnishee the wages of offenders who default on a payment order, as is the practice in New South Wales, Queensland and Tasmania. The payment order and direct debit application would provide the information necessary to make a garnishee order: employment/income details, bank account details, expenses, assets and liabilities. Offenders should be advised that defaulting on a payment order may result in their wages being garnisheered. In addition, IMES should implement automatic correspondence to offenders on payment orders when new warrants are issued against them. The correspondence should encourage the offender to settle the new warrant by adding it to the existing payment order. However, IMES disagreed that it has access to sufficient information to enable the garnisheeing of wages.
208. In my view, the success of direct-debit and CentrePay arrangements justifies a requirement for offenders wishing to apply for a payment order (not just defaulters) to enter into such an arrangement unless there are exceptional circumstances. Such a requirement is particularly the case for infringement warrant offenders who have been given several opportunities to settle their obligations before they escalate to the warrant stage.

209. While Victoria is able to hold company directors liable for unpaid warrants IMES failed to fully capitalise on this opportunity and has not used this sanction to any significant extent. Since the power became available in 2006-07, over \$21 million in company infringement warrants has been written off on the basis that nothing more could be done to pursue them.
210. IMES said that it has used this power to make company directors liable and is currently conducting a trial of that power.
211. In response to my draft report, Mr Facey said:
- IMES agrees that the use of these powers would improve the ability to recover outstanding fines from offenders.
- ... There have been significant issues with implementing these powers in the current operating environment, particularly given the current limitations with VIMS and the restrictive legislative environment (which is different to that present in other jurisdictions).
- The new IME system will remove a number of these restrictions, and coupled with the Fines Reform program, will allow IMES to expand the use of all available sanctions, not just the three powers identified.
- ... IMES is currently using the power to make company directors personally liable for company fines. The introduction of the IME system will allow IMES to expand the use of this power.

Sharing of information / unreliable data

212. Out of date address data is a major factor leading to the inability of Sheriff's Officers to enforce warrants. In this regard, IMES relies heavily on VicRoads for the current addresses of offenders. However IMES has not pursued this issue with VicRoads to ensure the integrity of the address information upon which it relies.
213. In response to my investigation both VicRoads and the Victorian Electoral Commission have agreed to liaise with the Sheriff's Office in relation to addresses of offenders.
214. VicRoads has agreed to take steps to ensure the accuracy of address data and to ensure motor vehicle drivers licence addresses are accurate.
215. The Victorian Electoral Commission has also said that it will conduct searches of the electoral roll for the Sheriff's Office.
216. IMES is also intending to conduct data sharing trials with other agencies including telecommunication companies.

Lack of coordinated enforcement strategies

217. IMES does not have in place a methodology regarding the selection, prioritisation and enforcement of warrants and sanctions. The current approach is largely ad hoc and driven by the convenience and location of Sheriff's Officers. They do not prioritise expiring warrants or tolling warrants despite the latter having been identified as the major source of new warrants. Further, warrants in remote areas are unlikely to be enforced.

218. The performance measures in the annual budget papers which refer to warrants ‘actioned’ are so broad as to be meaningless. There is no measure of IMES’ effectiveness in clearing warrants for cash, the timeliness of enforcement action or the number of warrants that expire without enforcement action.
219. The Department of Justice said:
- Two of the three Sheriff’s performance targets specifically measure cash clearance, being warrants finalised and warrants paid in full.
220. I also question the effectiveness of the contradictory regional targets to which the officers are subject. One target encourages Sheriff’s Officers to focus on multiple and high value warrants to ‘finalise’ warrants even though such offenders are unlikely to be able to pay. Another target leads officers to focus on offenders with one or two warrants to satisfy ‘paid in fulls’ because they are the most likely to pay although the total value of the warrants is lower than if they targeted offenders with more warrants.
221. At the local level, Sheriff’s Officers are not being provided with strategic direction from supervisors particularly in relation to enforcement methods. This is important because some effective methods, such as wheel-clamping and the suspension of offenders’ registration and licences, are potentially underutilised.
222. Sheriff’s Officers need to work more strategically if they are to have any impact on the volume of outstanding warrants, and supervisors need to provide this tactical direction.
223. Given warrants worth tens of millions of dollars are expiring each year, it is imperative that strong sanctions exist to encourage offenders to take action to finalise their warrants without the need for direct intervention by Sheriff’s Officers.
224. Offenders who default on payment orders are not being held to account for their behaviour and offenders are not seeing any consequences as a result of their defaults. A culture where Sheriff’s Officers have no strategy to follow up defaults and give them little priority needs to be addressed.

Automating enforcement processes

225. Much of the work of Sheriff’s Officers is manual. To assist Sheriff’s Officers and ensure their time is spent most effectively IMES should automate enforcement processes and sanctions in particular to remove the requirement of personal attendance by Sheriff’s Officers on offenders.
226. I am aware that IMES conducted some address data-matching trials with agencies. However in relation to requests made to state agencies, there does not appear to have been any systematic approach to targeting agencies nor has IMES tested the legislative basis for the reasons given for an agency’s non-participation.

227. A trial regarding access to telecommunications records, which I consider to be an effective source of current address information, in order to assist Sheriff's Officers locate offenders, is yet to commence. Such a trial should have been prioritised as there are no legislative constraints to its commencement. IMES said it is currently negotiating routine access to telecommunications records and awaiting final Commonwealth approval.

Visibility of Sheriff's Operations

228. Special operations have been an effective way of locating offenders and enforcing warrants but in my view IMES can obtain even greater value from them. It is vital that current address information captured at the operations is prioritised and quickly acted upon to take full advantage of its currency. Regions need to have a more cooperative approach to the sharing of information and IMES should establish processes to facilitate this.
229. Sheriff's Officers also need to be more visible to the public at operations to be an effective deterrent and an advertising campaign would very quickly bring the activities of Sheriff's Officers to the public's attention. Using marked motor vehicles is one way of raising the profile of the Sheriff's activities.

Ideas from other jurisdictions

230. I have also noted the success of the NSW Office of State Revenue's trial of external contractors to locate offenders. Given the changes in technology since IMES' last trial in 1990, I consider that IMES should now consider a further trial.
231. The threat of restricting international travel is also highly likely to provide encouragement to offenders to pay fines. IMES should continue to explore this sanction.

Proposed action

232. The initiatives outlined in the Fines Reform program are encouraging and may address many of the issues identified in my investigation. Consideration should be given to implementing them promptly.
233. In this regard I note that the 2013-14 Victorian state government budget includes provision for \$57.9 million over the next four years for 'Infringements for and Enhancing Community Safety', and includes initiatives to reform 'the collection and enforcement of legal debt in Victoria'²⁹. IMES confirmed that the Fines Reform program received funding in this year's budget.

²⁹ Building for Growth, 2013-2014 *Victorian Budget*. Service Delivery. Budget paper No. 3, pages 31-33.

Summary of recommendations

I recommend that IMES:

Recommendation 1

Seek funding for additional Sheriff's Officers.

IMES' response

IMES supports the recommendation to increase the numbers of Sheriff's Officers.

Department of Justice response

The department supports the recommendation ... and IMES is currently recruiting Sheriff's Officers to commence by the end of 2013.

Recommendation 2

Document and introduce a comprehensive operating methodology to target, select and enforce warrants to apply across all regions.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department supports the recommendation ... and is developing an overarching debt management strategy to identify the key areas of focus for the coming years.

Recommendation 3

Examine opportunities to increase public awareness of the Sheriff including by clearly badging Sheriff's Operation's cars and vans, have increased signage at Special Operations and consider an extensive advertising campaign.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department supports the recommendation.

Recommendation 4

Make use of current address information obtained at Special Operations by developing a system of promptly transferring information to the relevant regions.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department supports the recommendation.

Recommendation 5

Liaise with CityLink regarding the possibility of discounts and early intervention for tolling infringements.

IMES' response

IMES recognises that outstanding tolling warrants will continue to represent a significant problem in coming years.

The Fines Reform program will allow IMES to identify offenders with tolling warrants at an early stage, minimising the chance that offenders will accumulate large numbers of tolling warrants.

However, any recommendation to amend the current tolling arrangements in relation to discounts would require legislative change and possible change to the relevant Toll Deeds, which are well beyond IMES' remit.

VicRoads is the agency responsible for these Acts and Deeds.

Department of Justice response

The department recognises that outstanding tolling warrants will continue to represent a significant challenge in coming years. The Fines Reform program will allow IMES to identify offenders with tolling warrants at an early stage, minimising the chance that offenders will accumulate large numbers of tolling warrants.

However, any recommendation to amend the current tolling arrangements in relation to discounts would require legislative change and possible change to the relevant Toll Deeds. The department will discuss the issue with the agency responsible, VicRoads.

Recommendation 6

Ensure that the expiry dates of warrants appear on warrant lists provided to Sheriff's Officers.

IMES' response

The Fines Reform program will ensure that infringement warrants no longer expire, so IMES considers that the issue identified in this recommendation will no longer exist under Fines Reform.

Department of Justice response

The Fines Reform program will ensure that infringement warrants no longer expire, so the department considers that the issue identified in this recommendation will no longer exist under Fines Reform.

Recommendation 7

Review the \$500 threshold for wheel clamping.

IMES' response

IMES supports the recommendation.

IMES can advise that this review has already taken place, and the \$500 threshold will be removed. As such, wheel clamping will be available for all offenders.

Department of Justice response

The department advises that a review of the \$500 threshold for wheel clamping is complete as such, wheel clamping will be available for all offenders.

Recommendation 8

Develop and implement a Supervisors' Training Course and manual.

IMES' response

IMES supports the recommendation.

IMES is currently developing a training course and manual for Supervisors, which will be finalised by the end of 2013.

Department of Justice response

The department advises that the recommendation to develop and implement a Supervisors' Training Course and manual is underway and will be finalised by the end of 2013.

Recommendation 9

Require that Sheriff's Officers check VicRoads' address holdings before attending at an address to enforce a warrant.

IMES' response

IMES supports the recommendation.

[A] number of Officers already operate in this manner when enforcing warrants.

Department of Justice response

The department supports the recommendation.

Recommendation 10

Garnishee the wages of offenders who default on a payment order.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department supports the recommendation.

Recommendation 11

Implement automatic correspondence to offenders on payment orders when new warrants are issued against them, encouraging the offender to settle the new warrant by adding it to the existing payment order.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department supports the recommendation

Recommendation 12

Review the level of administrative support provided to The Sheriff's regional offices.

IMES' response

IMES supports the recommendation.

[A] review is currently underway.

Department of Justice response

The department supports the recommendation

Recommendation 13

Consider (1) extending the use of the non-renewal of registration power to all offenders who have driver licences and vehicle registrations, and (2) introducing a general requirement that all outstanding infringement warrants must be paid before driver licence or vehicle registration will be renewed at VicRoads.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department advises that the IME system will allow the non-renewal of registration power to extend to all offenders with a driver licence or vehicle registration. The recommendation to introduce a general requirement that all infringement warrants must be paid before VicRoads will renew a driver licence or vehicle registration is an area under VicRoads responsibility.

Recommendation 14

Consider data matching with other Victorian government agencies, including:

- the Department of Human Services (Office of Housing and Child Protection) which holds address information for public housing clients and families that have come into contact with the department
- the State Revenue Office, which is the Victorian Government's major tax collection agency.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department is currently investigating data matching opportunities with a range of agencies, including telecommunication companies and Australia Post. However, it is not envisaged that this will include Child Protection, given the sensitivity of information held by that agency.

The department will continue to investigate possibilities for accessing accurate information from multiple sources to improve the ability to locate offenders.

Recommendation 15

Recommence negotiations with the Commonwealth to access data held by Centrelink, Medicare and the Child Support Agency.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department is continuing negotiations with the Commonwealth to access data held by Centrelink, Medicare and the Child Support Agency.

Recommendation 16

Commence a trial regarding access to telecommunications records.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department has commenced negotiations with the Commonwealth to gain access to telecommunications records on an ongoing basis, and awaits final approval by the Commonwealth.

Recommendation 17

Develop guidelines for a more systematic approach to Special Operations.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department supports the recommendation

Recommendation 18

Consider trialling the use of contractors to locate, and send correspondence to offenders.

IMES' response

IMES supports the recommendation.

Department of Justice response

The department supports the recommendation

Recommendation 19

Continue negotiations with the Commonwealth regarding the possibility of restricting air travel for offenders who fail to pay their warrants.

IMES' response

IMES supports the recommendation.

Department of Justice response

The issue of restricting air travel for offenders who fail to pay their warrants has been raised with the Commonwealth, and the Department/State of Victoria will continue to pursue this option.

I recommend that VicRoads:

Recommendation 20

Write to drivers who appear to have failed to update their address requesting evidence of the driver's current address; and if they fail to respond, record the address as obsolete and suspend the driver's licence.

VicRoads' response

It is agreed that Victorian enforcement agencies such as Victoria Police and the Sheriff's Office may as a result of their investigations become aware of address information that has not been provided to VicRoads. There is merit in VicRoads confirming updated address information from such agencies on which it might reasonably rely.

In future, VicRoads will write to the client at both the address on record and the address newly notified by the Sheriff's Office, requesting that the client confirm the correct address. In the event that the person fails to comply, the power exists under the Road Safety (Drivers) Regulations for VicRoads to require the person to provide evidence of their address for the service of notices. Where appropriate, VicRoads will act to suspend the licence/permit if the person fails to comply.

In the case of vehicles, VicRoads may require evidence in a form acceptable to it, verifying a change to the residential address of the vehicle's registered operator and, if there is another address for the service of notices on the registered operator, that address. VicRoads will act, where appropriate, to suspend the registration of a vehicle where the registered operator had failed to give the information or evidence requested.

Department of Justice response

The department would support any measure that improves the accuracy of information held by VicRoads.

Recommendation 21

Review the operational restriction preventing VicRoads from updating its address holdings on the basis of advice from Sheriff's Officers that a person has changed address.

VicRoads' response

Given the need to develop the new process, supporting documentation and training in co-operation with the Sheriff's Office, a lead-time of three months will be required to implement the change. VicRoads will maintain contact with the Sheriff's Office to assess the impact of the changes, post-implementation.

Department of Justice response

Any proposal that could improve the accuracy of address information held by the department and VicRoads would be a positive step.

I recommend that the Minister consider:

Recommendation 22

Prioritising implementation of the Fines Reform program referred to in my report.

Department of Justice response

Both the department and the Attorney General are committed to making fines reform a high priority. This is demonstrated by the \$34.6 million in funding made available through the 2013-14 Victorian Budget and the Attorney-General's public statements about the significance of the project.

Recommendation 23

Reducing the legislative threshold for use of the power to charge land from \$10,000 to \$5,000.

Department of Justice response

The recommendation to reduce the threshold for the power to charge land from \$10,000 to \$5,000 would need to be further examined for cost effectiveness. In a number of instances, the cost to the department of using the power in its current form would far exceed \$5,000, meaning it would not be cost-effective. Fines Reform and the new IME system will significantly improve the ability of the Department to utilise the power in appropriate circumstances.

Ombudsman's Reports 2004-13

2013

Whistleblowers Protection Act 2001
Investigation into allegations of improper conduct by a Magistrates' Court registrar
May 2013

2012

Own motion investigation into the governance and administration of the Victorian Building Commission
December 2012

A section 25(2) report to Parliament on the proposed integrity system and its impact on the functions of the Ombudsman
December 2012

Whistleblowers Protection Act 2001
Investigation into allegations concerning rail safety in the Melbourne Underground Rail Loop
October 2012

Whistleblowers Protection Act 2001
Investigation into allegations of improper conduct by CenITex officers
October 2012

Whistleblowers Protection Act 2001
Investigation into allegations of improper conduct involving Victoria Police
October 2012

Whistleblowers Protection Act 2001
Investigation into allegations against Mr Geoff Shaw MP
October 2012

Investigation into the temporary closure of Alfred Health adult lung transplant program
October 2012

Investigation into an alleged corrupt association
October 2012

Whistleblowers Protection Act 2001
Investigation into allegations of detrimental action involving Victoria Police
June 2012

Own motion investigation into Greyhound Racing Victoria
June 2012

The death of Mr Carl Williams at HM Barwon Prison - investigation into Corrections Victoria
April 2012

Whistleblowers Protection Act 2001 Conflict of interest, poor governance and bullying at the City of Glen Eira Council
March 2012

Investigation into the storage and management of ward records by the Department of Human Services
March 2012

2011

Investigation into the Foodbowl Modernisation Project and related matters
November 2011

Investigation into ICT-enabled projects
November 2011

Investigation into how universities deal with international students
October 2011

Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)
October 2011

Investigation into the Office of Police Integrity's handling of a complaint
October 2011

SafeStreets Documents - Investigations into Victoria Police's Handling of Freedom of Information request
September 2011

Investigation into prisoner access to health care
August 2011

Investigation into an allegation about Victoria Police crime statistics
June 2011

Corrupt conduct by public officers in procurement
June 2011

Investigation into record keeping failures by WorkSafe agents
May 2011

Whistleblowers Protection Act 2001
Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee
May 2011

Ombudsman investigation – Assault of a Disability Services client by Department of Human Services staff
March 2011

The Brotherhood – Risks associated with secretive organisations
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment
February 2011

Whistleblowers Protection Act 2001
Investigation into the failure of agencies to manage registered sex offenders
February 2011

Whistleblowers Protection Act 2001
Investigation into allegations of improper conduct by a councillor at the Hume City Council
February 2011

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Investigation into the issuing of infringement notices to public transport users and related matters
December 2010

Ombudsman's recommendations second report on their implementation
October 2010

Whistleblowers Protection Act 2001
Investigation into conditions at the Melbourne Youth Justice Precinct
October 2010

Whistleblowers Protection Act 2001
Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments
June 2010

Own motion investigation into Child Protection – out of home care
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat
April 2010

Whistleblowers Protection Act 2001
Investigation into the disclosure of information by a councillor of the City of Casey
March 2010

Ombudsman's recommendations – Report on their implementation
February 2010

2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police
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Brookland Greens Estate – Investigation into methane gas leaks
October 2009

A report of investigations into the City of Port Phillip
August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing
July 2009

Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council
June 2009

Whistleblowers Protection Act 2001
Investigation into the alleged improper conduct of councillors at Brimbank City Council
May 2009

Investigation into corporate governance at Moorabool Shire Council
April 2009

Crime statistics and police numbers
March 2009

2008

Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services
August 2008

Investigation into contraband entering a prison and related issues
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Conflict of interest in local government
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Conflict of interest in the public sector
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Investigation into VicRoads' driver licensing arrangements
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Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
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Investigation into the use of excessive force at the Melbourne Custody Centre
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Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract - CNG 2007
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Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint
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Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong
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Conditions for persons in custody
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Review of the *Freedom of Information Act 1982*
June 2006

Investigation into parking infringement notices issued by Melbourne City Council
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Improving responses to allegations involving sexual assault
March 2006

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Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
December 2005

Whistleblowers Protection Act 2001 Ombudsman's guidelines
October 2005

Own motion investigation into VicRoads registration practices
June 2005

Complaint handling guide for the Victorian Public Sector 2005
May 2005

Review of the *Freedom of Information Act 1982* Discussion paper
May 2005

Review of complaint handling in Victorian universities
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton
March 2005

Discussion paper on improving responses to sexual abuse allegations
February 2005

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Essendon Rental Housing Co-operative (ERHC)
December 2004

Complaint about the Medical Practitioners Board of Victoria
December 2004

Ceja task force drug related corruption - second interim report of Ombudsman Victoria
June 2004

