Thank you for giving the Victorian Council of Social Service the opportunity to make a submission to the Victorian Parliament Law Reform Committee Inquiry into Warrant Powers and Procedures.

The Department of Justice (DOJ) is currently conducting a review of the infringements notice system, and this is currently an area of special concern for VCOSS. Our submission thus pertains to Part 7 of the Committee’s Discussion Paper, in particular, the discussion at pages 63-6 regarding the Penalty Enforcement by Registration of Infringement Notice (PERIN) process and PERIN penalty enforcement warrants.

In general, the submission endorses the position of the PILCH Homeless Persons’ Legal Clinic, but VCOSS has highlighted some particular issues of concern.
Introduction: Fundamental Principles

The Victorian Attorney-General’s Justice Statement of May 2004 makes it clear that the Victorian Government is committed to modernising the Victorian justice system. The Justice Statement states that the Victorian Government recognises that ‘equality, fairness, accessibility and effectiveness are essential to the operation of any truly democratic society.’

As one of its ‘core values,’ fairness is described in the Justice Statement as ‘incorporating principles of natural justice and proportionate sanctions and remedies.’ In particular, DOJ is determined to ensure the ‘continuing fairness’ of the infringements process, while at the same time concerned to maintain an effective procedure for recovering unpaid fines.

VCOSS welcomes this approach to justice in Victoria. Many of these same principles have underpinned VCOSS’ submission to the Victorian Parliament Law Reform Committee, and VCOSS encourages the Victorian Government to consider this submission in the pursuit of its objectives.

The Infringement Notice System in Victoria

After forty years of operation infringement notices are now the main means of dealing with summary offences in Victoria. When first introduced they were limited to parking offences as citizens traded in “their day in court” in return for swifter disposal, a discounted flat monetary penalty and promise of a clean record. Since their introduction the system has grown such that in 2001-2 it was estimated that 3.5 million infringement notices were issued in Victoria for approximately 1200 offences provided for in 50 different pieces of legislation. Infringement notices have become so common as a law enforcement mechanism that it is perhaps easy to forget the legal context from which they emerged. Traditionally prosecution for minor offences allows the accused to mount a defence and for a sanction to be tailored to fit both the seriousness of the offence and the mitigating circumstances of which the offender is found guilty. Although an infringement notice generally offers a lower penalty, low income and marginalised community members would arguably receive lesser financial penalties under a case by case system, and issuing of warrants for non payment would decrease. VCOSS asserts that the current ‘one size fits all’ infringement model denies the substantive impact of fines on disadvantaged and marginalised members of the community. A compromise must be reached that reconciles operational efficiency with the reality of social inequality.

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1 Attorney-General’s Justice Statement, May 2004, Department of Justice, 7.
2 Attorney-General’s Justice Statement, May 2004, Department of Justice, 9.
4 Ibid.
5 Richard Fox, "On the Spot Fines and Civic Compliance", Monash University (Faculty of Law) and Department of Justice Victoria, 2003, 12.
**The Current System**

Currently unpaid fines are dealt with under the Penalty Enforcement by Registration of Infringement Notices (PERIN) system. VCOSS is concerned that the existing system results in unnecessary number of warrants being issued and unfairly impacts on disadvantaged members of the community.

The process is as follows…

- Fine is issued by an issuing agency (i.e. government bodies, public transport providers)
- If after 28 days, the fine is unpaid, a courtesy letter is issued
- If the fine is still not paid after a further 28 days, the matter is referred to PERIN court (part of the Magistrates Court). An enforcement order is issued for the amount of the unpaid infringement notice\(^6\). This increases the costs payable.

Once an enforcement order is issued: there are two ways the fine can be dealt with

1. Where the person did not commit the offence or had a valid reason, an application can be made for the revocation of the enforcement order by way of statutory declaration. If an enforcement order is revoked, the matter is remitted to the issuing agency. If the matter is not withdrawn it is referred to the Magistrates Court.

2. Where the person has ‘special circumstances’ that contributed to the person committing the offence or being unable to pay, the enforcement order can be revoked. “Special circumstances” include mental or physical illness, addiction, disorder or disability. The PERIN Court does not consider homelessness or mere inability to pay based on income alone a special circumstance in the relevant sense.

If an enforcement order is revoked the matter is remitted to the issuing agency for further consideration. If the matter is not withdrawn, it is referred to the Magistrates Court on the “Special circumstances list” which aims to identify and address the issues underlying the ‘offending behaviours’. If the defendant pleads guilty the Magistrate can then deal with the matter\(^7\).

However, if after the enforcement order is issued 28 days passes with no response, the PERIN court will issue a warrant. If payment cannot be made immediately, the Sheriff may grant a further 7 days notice\(^8\). If the 7 days passes with no payment, the sheriff is authorised to seize (non essential) goods to satisfy the fine. Where the person has no goods that can be sold, arrest will result. If the person qualifies for a ‘Custodial Community Permit’ (CCP) they may serve unpaid community work. If a person does not qualify for a CCP, a magistrate will determine the outcome and jail may result\(^9\).

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\(^7\) Jennifer Chamberlin, ‘Infringement Notice System in Victoria’, 7


\(^9\) Ibid.
Under the current infringement system the offenders do not have the option of paying off the fine instalments or articulating special circumstances until the matter has reached the PERIN court and further costs and penalties have been accrued. VCOSS believes that the automation of cases preventing the individualisation of sanctions, and the limited scope of the ‘special services’ provisions results in a disproportionate and discriminatory incidence of warrants and arrests targeting people experiencing homelessness, disability, disorder or severe financial hardship.

**Compliance**
The viability of the PERIN system depends on high levels of compliance. Research undertaken by Monash University's Richard Fox (Law school and Department of Justice) suggest that civic compliance rests largely on public perceptions of legitimacy and fairness of the infringement system\(^\text{10}\). The study revealed perceived sources of unfairness in the infringement system include:

- Imposing the same level of fines on people of vastly different means
- High level penalties for minor infringements
- The absence of opportunity of receiving a formal caution instead of a fine.
- The lack of opportunity to put ones case face to face with the agency\(^\text{11}\).

This study emphasises the importance of legal concepts of due process and procedural justice and suggests that perceptions of fair treatment are ultimately far more important to compliance than receiving favourable outcomes\(^\text{12}\). Whilst the general sample has very positive attitudes to the legitimacy of the law in general, findings indicated that respect and support for the infringement system or belief in its deterrent effect drops according to the degree of experience with it\(^\text{13}\). VCOSS asserts that there is increasing community concern at the harshness and inflexibility of the imposition of fines. The current system fails to accommodate socially and financially disadvantaged people, who may accrue large numbers of fines which they are simply unable to pay.

**Disadvantage and Fines**
Many financially and socially disadvantaged people (including young people, homeless people, people with disabilities and those experiencing poverty) are disproportionately susceptible to receiving fines for public space, public order and infringement notice offences\(^\text{14}\). This is due to a number of factors:

\(^\text{10}\) Richard Fox, "On the Spot Fines and Civic Compliance", 12.
\(^\text{11}\) Ibid.
\(^\text{12}\) Ibid.
\(^\text{13}\) Ibid.
• Financially and socially disadvantaged people are generally less aware of their rights or lack the resources with which to enforce them. They are therefore less likely to effectively justify their behaviour and provide an accepted excuse.
• In many situations the cause of a person’s status as homeless or disadvantaged may manifest in behaviours for which the person is fined i.e. drinking in public\(^{15}\).
• People who are financially and socially disadvantaged are often more “visible” and subject to a disproportionate level of scrutiny.
• Individuals and families on low incomes tend to prioritise essential needs such as housing, food and health costs over less intermediate priorities such as fines\(^{16}\).

Warrants and arrests for offenders who are literally unable to pay do not meet sentencing goals of rehabilitation and deterrence but rather perpetuate poverty and wastes resources\(^{17}\). There is evidence that state councils are losing money through delays and failure to recover unpaid fines\(^{18}\). Though fines have the attraction of producing revenue, the objective of the enforcement system cannot be to pursue that form of punishment at all costs\(^{19}\). As stated by Richard Fox of Monash University (Law school and Department of Justice) “any humane enforcement system accepts the concept of alternative forms of punishment where the preferred measure is clearly inappropriate in the circumstances”.

**Case Study**

* Amanda is a 26 year old single mother with two young children who is constantly moving because she can not afford to remain in a fixed address. She is sent a speeding fine but never receives it. Before Amanda knows it, a warrant has been issued for an Enforcement Order for her to pay the fine and that if she does not, any of her assists can be seized and a warrant issued. Amanda does not have any assistance and is therefore likely to face imprisonment\(^{20}\).*

**A More Equitable Approach to Court Imposed Fines: Day Fines**

Fines are used by Government agencies and courts as an administratively simple means to punish and deter minor offences. Levels of fines are set to create a deterrence to the majority in the community, but are not intended to cause ongoing financial hardship. In practice, the degree of deterrence that a fine represents is relative to an individual’s income. A fine of fixed amount represents a vastly different level of punishment for a family struggling to make ends meet as compared to a wealthy executive. In order to achieve the same deterrent effect to all, fines would need to individually tailored.

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\(^{15}\) Ibid.
\(^{16}\) Ibid, 10.
\(^{17}\) Ibid, 11.
\(^{18}\) LaTrobe University Law Students ‘The PERIN Court: A Discussion Paper’, 22.
\(^{19}\) Jennifer Chamberlin “Infringements Framework project”, 17.
The introduction of a ‘day fines’ system is a possible solution. First established in the Scandinavian countries in the 1920's, the day fines system is now used extensively throughout Europe and Latin America\(^{21}\). The day fine system determines the degree of punishment according to the real impact that a fine has on the offender, by linking the prescribed penalty to the offender's income level (adjusted to take into account liabilities and dependants)\(^{22}\).

The day fines system varies between jurisdictions. However, the general framework is as follows…

- The seriousness of the offence is expressed in the number of fine units (paid in regular timed instalments) for which the offender must make payment.
- The amount of each fine unit would be determined by reference to the means of the individual offender, usually based on a portion of their discretionary income (i.e. one days income).
- The total monetary value of the fine is thus determined by multiplying the amount of fine units by the portion of the offender’s income\(^{23}\).

Sweden implemented a day fine system in 1931. Caps and thresholds are imposed on the number of day fines permissible for one offence. The method for calculating the number of day fine units is determined by the chief public prosecutor. Day fine unit amounts are calculated on the basis of one thousandth of gross annual income (about one-fourth of total daily income), with responsibilities for dependants, taxes, debts etc. taken into account to arrive at the final figure for the day fine unit. The offender must fill out a statement of means that may be cross-checked against the records held by the taxation authorities\(^{24}\).

**Benefits**

Under a day fines system, fines are proportionate to the gravity of the offence and relative to the offender’s means to pay. Those jurisdictions which have introduced a day fine system have experienced substantial reductions in warrants issued and accompanying rates of imprisonment for fine default,\(^{25}\) as well as increases in revenue due to increased payment rates.

In addition, academic commentary and government commissioned reports are in unanimous agreement that the majority of problems associated with the inequalities of fine imposition can

\(^{21}\) Ibid.
\(^{22}\) Tamara Walsh, "From Park Bench to Court Bench", Faculty of Law QUT in association with the Homeless Person’s Legal Clinic, 2004. 29.
\(^{23}\) Ibid.
be solved by the day fine system. Day fine systems have also met with significant community support and are generally regarded to operate with a high degree of fairness and legitimacy.

**Recommendations**

1. The Victorian Government implement a ‘Day Fines’ system on the above model for all court imposed fines.

**Infringement Notices: Hardship and discretionary Provisions**

While worthy in principle, a ‘day fines’ system would be costly to implement for general infringements. In 2001-2 it was estimated that 3.5 million infringement notices were issued in Victoria. Reform is needed that addresses the overly burdensome impact of fines on households in financial stress, while retaining a degree of administrative efficiency.

This reform could be achieved by implementing effective hardship provisions. Within such a framework, the recipient of a fine could apply for it to be reduced to a sum proportional to their income if the payment of the full amount would cause them hardship. The process allows a disadvantaged person to state their case before it reaches the Magistrate’s court. Hardship provisions should also be broader in scope that the existing ‘Special Circumstances’ provisions to ensure those who are genuinely unable to pay are not made the subject of unnecessary warrants or arrests.

Hardship provisions are an effective way to improve the equity of the cost of fines, but do not address people receiving fines inappropriately. People who are already marginalised in the community tend to receive an undue proportion of fines. In part, this can be attributed to discrimination on the part of authorised officers. However many fines, such as those for begging, criminalise activities that are only undertaken by people living in poverty. People who do not understand or are unaware of laws or who are unable to communicate easily with authorised officers are also more likely to be fined.

In order to prevent people receiving infringements in situations such as these, or to enable them to be more easily overturned, stronger guidelines are needed for issuing and enforcing authorities to exercise discretion.

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26 Tamara Walsh, “From Park Bench to Court Bench”, Faculty of Law QUT in association with the Homeless Person’s Legal Clinic, 2004. 29.. 50.
28 By contrast, this system would not be costly to implement where fines are set by a Magistrate. VCOSS believes Court imposed fines should be tailored to individual circumstances (see below).
**Recommendations**

1. The Victorian Government reform the infringements system to:

   - Include hardship provisions that enable people experiencing financial stress to apply for fines to be reduced to a sum proportional to their income.
   - Provide issuing and enforcing authorities with guidelines for exercising discretion to cancel a fine, significantly reduce a fine or impose a more appropriate penalty, in circumstances where there was no intent to offend and the person is in a category of disadvantage.

Such an approach would reduce invasive and unproductive warrant procedures by introducing a much needed measure of flexibility to the imposition and enforcement of fines, whilst preserving an effective procedure for recovery of unpaid fines consistent with the objectives of the Victorian Government as laid down in the *Justice Statement*

**Conclusion**

VCOSS asserts that the day fines system presents an innovative response to problems associated with the inequities of fine imposition in a court setting. The implementation of the day fines system in many overseas jurisdictions has resulted in higher payment rates and corresponding decreased enforcement costs\(^\text{29}\), as well as increased revenue. The day fines system enables realistic and fair fines to be imposed on offenders through evaluation of income whilst still maintaining a level of operational efficiency.

For minor infringement notices, however, such a system would involve major procedural changes and administrative costs. VCOSS therefore believes that the implementation of optional 'hardship' provisions, together with increased discretionary powers for ticket inspectors and police officers, are effective methods for reducing the undue hardship placed on disadvantaged groups through inflexible infringement rates and unnecessary warrant procedures.
