

A MORE FAIR AND EFFICIENT TOLL FINES SYSTEM FOR VICTORIA

Briefing Paper

This briefing paper is the work of a coalition of concerned community organisations who want to start a critical conversation on overhauling Victoria's toll fines system.

1. INTRODUCTION --- TIME FOR CHANGE.

It is time to change Victoria's toll fines system. The current system is placing unsustainable pressure on Victoria's Magistrates' Courts, support services, communities and families. The system delivers a disproportionate blow to people who for a variety of legitimate reasons are unable to pay the toll at a particular time, but who want to do the right thing.

The burden of fines on Victorian Magistrates' Courts was noted by the recent Royal commission into Family Violence. It suggested that consideration be given to changing the jurisdiction of infringement cases, to relieve some of the pressure on the courts so their time and resources can be better spent on the far more serious issue of family violence.

It is important to note that half of the impact on the Infringements Court and criminal justice system caused by infringements result from the use of privately owned toll roads.¹ Victoria criminalises private debt in this way; the scale and approach to enforcement is at odds with other Australian jurisdictions. And while the government is implementing considerable reforms to Victoria's fines system, these do not address the toll fines system.

In 2014 the Sentencing Advisory Council recommended the need to 'identify and implement potential solutions to the increasing burden of tolling infringement offences on the criminal justice system in Victoria' (recommendation 40).²

The workshop is focussed on addressing this recommendation and is challenged with developing solutions that can inform and change current practice, as well as inform the current negotiations on the Western Distributor contracts (which will extend the toll fines system for a significant further period). We hope this workshop can contribute to sound policy that strengthens communities through the equitable provision of transport.

This discussion paper has been prepared by a number of community legal centres and Victoria Legal Aid for the purposes of informing a workshop on the tolling infringements system. It represents the consolidated views of many in the legal assistance sector who deal with tolling infringement matters, based on the sometimes limited available information.

2. VICTORIA'S OUTSTANDING TOLL FINE DEBT

On 30 June 2015, Victoria's outstanding infringement warrant debt totalled \$1,686,597,696 – a 9.5% increase on the previous year's total.³ Warrants for toll fines made up \$686,924,234 of this figure or around 40% of the total debt.⁴ Outstanding toll warrant debt is rising exponentially, and increased 15% from 2013-14, and 80% since 2012.⁵

The outstanding infringement warrant debt is inflated on account of Victoria's toll fine system which adds between \$155 to \$342 to almost every single unpaid toll fee of e.g. \$2.20; an increase of over 15,000%. Almost every use of a toll road attracts a toll fee and therefore a driver can be fined thousands of dollars for one week's use of a toll road.

¹ In 2014-15, 1.7 million enforcement orders were made for all fines, tolling matters make up 49 per cent of all enforcement orders; see the 2014-15 Annual Report on the Infringements System, available at:

http://assets.justice.vic.gov.au/justice/resources/e9d3c72c-3ab2-427c-a036-7e7405c26796/2014_15_report_infringements_sys.pdf

² Sentencing Advisory Council, "Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria", 30 May 2014, available at: <https://www.sentencingcouncil.vic.gov.au/publications/imposition-and-enforcement-court-fines-and-infringement-penalties-victoria>.

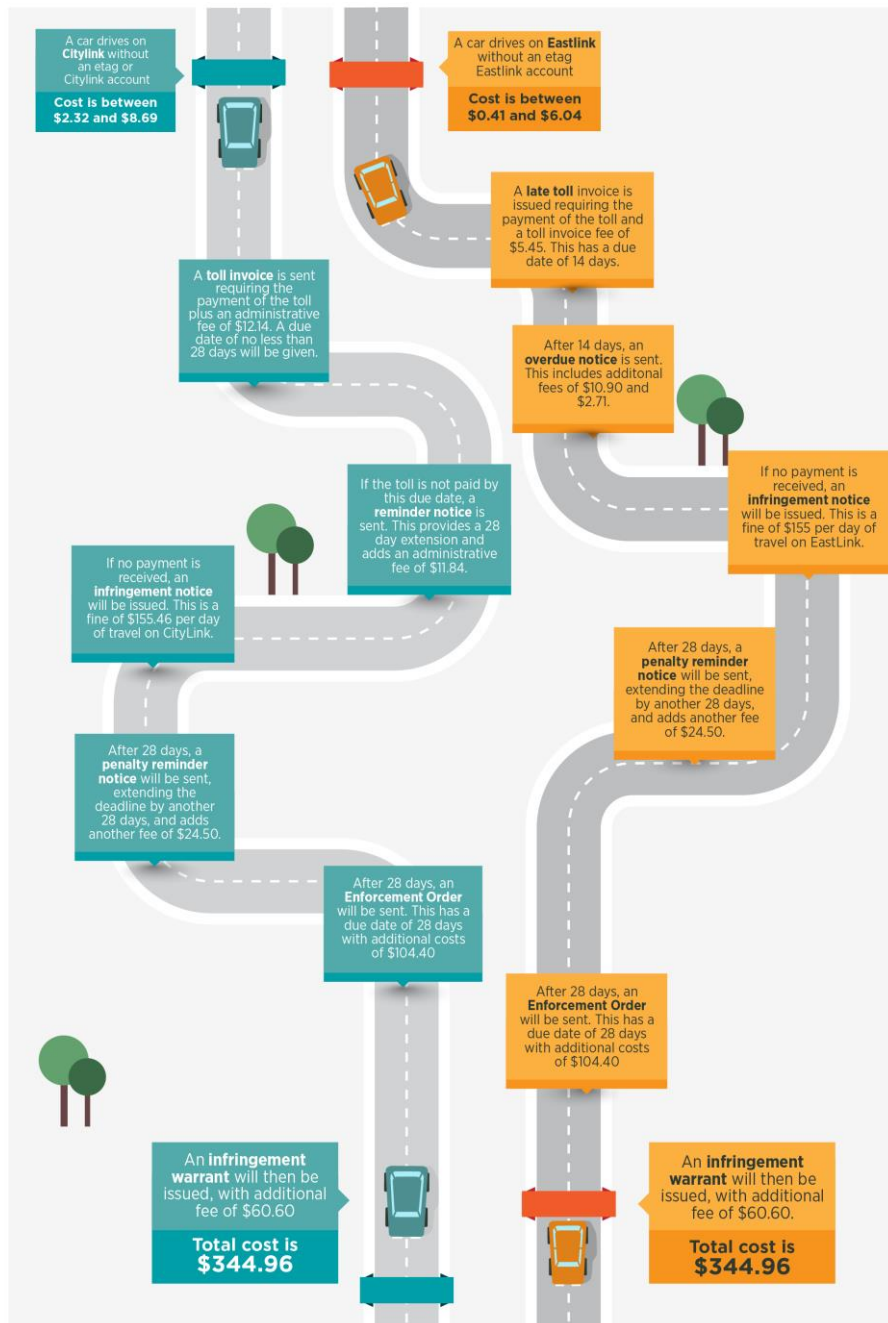
³ Department of Justice and Regulation, "Sheriff's LGA figures released today" Media Release, 23 December 2015.

⁴ Millar, R and Schneiders, B. <http://www.theage.com.au/victoria/toll-road-fines-ballooning-debt-turning-motorists-into-criminals-20160107-gm17wy.html>, published 7 January 2016.

⁵ Ibid.

In practice, toll fines are enforced as a group and drivers commonly receive large numbers of these warrants (e.g. 50 warrants = \$17,130, comprising as little as \$110 in toll fees and \$17,020 in enforcement costs). Figure 1 below illustrates the 'toll fine journey', showing the significant costs added to single toll fees throughout the process.

Figure 1 – Toll Fine Journey



The Victorian Ombudsman's recent investigation into public transport fare evasion enforcement specifically cited the complete lack of available data on the cost of the fines enforcement system.⁶ The report shows that the impact of fines on Victoria's justice system and the amounts recovered by government is not well-known or understood.

As a rough rule of thumb, legal assistance resources involved in enforcing toll fines would involve:

- Driver engagement with legal services:
 - single advice (45 minutes)
 - open case file to request medical or other reports, continued contact, making applications preparing for court (6 - 20 hours)
 - representation in court (2-6 hours)
 - follow up work arising out of court (1-5 hours)
- Medical or other support services' time to prepare reports (1-5 hours)

⁶ Glass, D. "Investigation into public transport fare evasion enforcement", May 2016, page 56, available at: <https://www.ombudsman.vic.gov.au/Investigations/Recent-Investigations/Investigation-into-public-transport-fare-evasion-e>.

3. HOW PRIVATE DEBT IS HANDLED BY OTHER SYSTEMS

(i) The Victorian Water Sector

Water is an essential service used by all Victorians. Water businesses charge a fee for water service and usage, in part, like toll companies charge a fee for use of toll roads.

Unlike the criminal enforcement of toll fines, ratepayers who cannot pay for use of water will incur a debt that water businesses enforce through the civil debt enforcement system. As noted above, each day's use of a toll road attracts individual enforcement fees and costs. In contrast, any interest or late fees would be payable on their quarterly account. As outlined in Case Study 1 below, this represents a substantial difference in the total outstanding debt.

Ratepayers can also access hardship programs run by water businesses, government relief grants and receive referrals to support services. Hardship programs are encouraged and mandated through codes of practice, the Energy and Water Ombudsman of Victoria and good industry practice over a long period of time. Ratepayers are further protected by:

- section 12 of the Judgment Debt Recovery Act 1984 meaning a debt cannot be enforced against a person receiving government income where their assets do not exceed \$7,350; and
- for tenants, the Limitation of Actions Act 1958 preventing enforcement of a debt older than 6 years or judgment older than 15 years.

Despite the similarities between toll roads and water, considerable differences emerge in how toll road and water companies deals with unpaid fees.

Toll Roads	Water
Short-term payment plan may be offered to those who contact toll road company within 90 days of toll road use	Extensive hardship programs available including: <ul style="list-style-type: none"> • Debt waiver • Debt reduction • Capacity to pay • Payment matching • More time to pay • Assessment of water efficiency
No government relief available	Government relief grants available
Outstanding toll fees referred to Victoria Police after 90 days and become infringements	Referrals provided to support services including: <ul style="list-style-type: none"> • Social workers • Family violence support workers • Financial counsellors • Housing agencies • Gambling support workers
No community engagement programs	Community engagement programs undertaken
Enforcement of infringement through Infringements Court, Sheriff and Magistrates' Court	Enforcement of debt through civil processes – debt collection and Magistrates' Court (civil) proceeding in some cases. Some businesses can restrict supply
Potential imprisonment	Protection of <i>Judgment Debt Recovery Act</i> 1984 and for tenants <i>Limitation of Actions Act</i> 1958

Case Study 1 – Kate: a mother of two from Tarneit

Kate, a mother of two toddlers, has never received a fine before. She has recently undergone a stressful situation, with her son needing ongoing medical attention at the Royal Children's Hospital in Melbourne. Kate had some idea that she was driving on a toll road to reach the hospital, but throughout the stress of her son's illness, she thought she would work things out at a later date.

During this period, Kate had no time to open her mail or deal with outstanding financial issues, as she was trying to hold down her part-time job while caring for her sick son and other child. After a number of months, Kate's son's health improved and she was able to start getting her affairs back in order. She needed to deal with outstanding debts on her car finance and utilities, as she was fearful of their repossession or disconnection respectively. Kate finally made an appointment with a community legal centre to deal with the fines, and after the 4-week wait for an appointment, she saw a lawyer.

Kate had only opened a few of the numerous envelopes received; on seeing the lawyer, Kate discovered that she had 45 outstanding enforcement orders and warrants in her name, totalling more than \$10,000. To Kate, \$10,000 might as well have been \$1 million, there was no way she could pay, and the amount was too high for her to enter a payment plan.

If Kate's toll debt was a telephone bill, the penalty/enforcement fees would have been added monthly. Therefore, Kate would have paid around 5 amounts of penalty/enforcement fees for use over the 5 month period, and be facing a manageable debt less than \$1000 with hardship options. Victoria's toll fines system adds between \$155 to \$342 in enforcement costs to every day's use of the road – similar to adding \$155 to \$342 to a day's worth of phone calls – and resulting in an over-inflated debt. Kate faces the added consequences of imprisonment, seizure and sale of her car and cancellation of her licence and registration.

(ii) Toll fines in New South Wales

Enforcement of toll fines in New South Wales has a much greater emphasis on civil enforcement. Civil debt enforcement options for outstanding toll fines are similar to those in debt matters, such as court examination of financial circumstances, property seizure, garnishee orders and imposing a charge on real property. Sanctions and penalties for non-payment of toll fines also include cancellation of a driver's licence or vehicle registration and community service orders (unpaid community work).

It is important to note that New South Wales made changes to its fines enforcement system following recognition that a large number of prisoners were incarcerated due to fines, and a death in custody of a prisoner serving a sentence for unpaid fines.

4. IMPACT ON COMMUNITY, INDIVIDUALS, LEGAL ASSISTANCE SERVICES AND THE JUSTICE SYSTEM

Impact on the local community

The 11 Local Government Areas recording the highest outstanding infringement warrant debt in the 2014-15 financial year were all outer suburbs of Melbourne:⁷

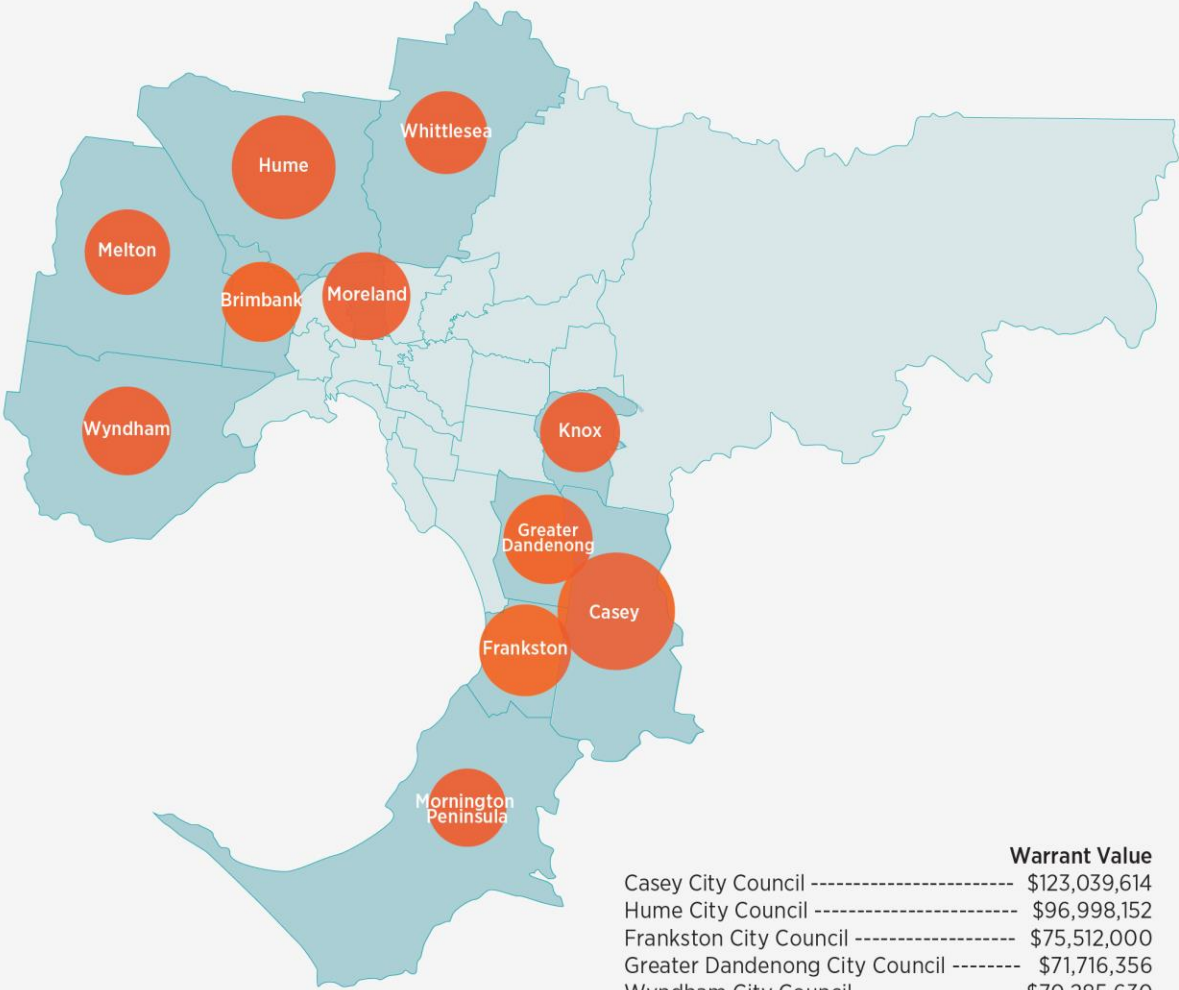
Figure 2 – list and map (overpage) of local government areas recording highest infringement warrant debt 2014-15⁸

Local Government Area	Total warrant value
1. Casey City Council	\$123,039,614
2. Hume City Council	\$96,998,152
3. Frankston City Council	\$75,512,000
4. Greater Dandenong City Council	\$71,716,356
5. Wyndham City Council	\$70,285,630
6. Moreland City Council	\$69,245,087
7. Melton City Council	\$65,157,948
8. Whittlesea City Council	\$ 61,645,669
9. Knox City Council	\$57,851,348
10. Brimbank City Council	\$57,641,317
11. Mornington Peninsula Shire Council	\$55,653,933

⁷ Ibid above at 3.

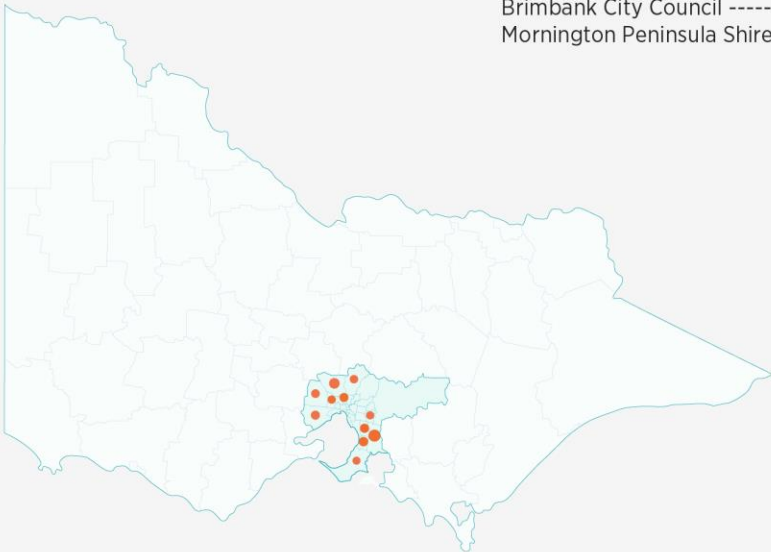
⁸ Ibid.

Melbourne Metro



	Warrant Value
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Regional Victoria



More than 99% of toll road users pay for their use of the toll road: at the time of use, soon after or in response to an infringement. It follows that for every outstanding toll fine, residents are paying multiple more in fines and toll fees. \$700 million in outstanding toll fine warrants is therefore owed by a very small proportion of toll road users, most living in Melbourne's outer suburbs. This represents millions of dollars being dragged from outer urban areas without equivalent reinvestment. Pressure is also added to community support services in outer urban areas, and money drawn from local councils and local business owners.

Case Study 2 – Hadeel: a migrant from East Africa working for government

Hadeel migrated from east Africa to Australia with her parents, siblings and two young children. Hadeel worked in a low-paid administrative role in a government agency in the city and took public transport to work. Her income was used to support the entire family. The family had use of a vehicle registered in Hadeel's name but which Hadeel used only rarely. All adult family members shared use of the vehicle and drove it frequently while Hadeel was at work and on weekends.

Hadeel's parents spoke very little English and did not know that use of certain roads was tolled. They frequently visited family in the outer eastern suburbs, using Citylink to get from the outer western suburbs. Over a period of four years, 138 infringements were incurred by her family members, totalling more than \$19,000 for toll road use. All the infringements were issued to Hadeel as the registered owner of the vehicle.

Hadeel did not become aware of the infringements until the Sheriff clamped the wheels of the vehicle while Hadeel – then heavily pregnant – was at the supermarket with her children. By this time, with the addition of enforcement costs, the toll matters totalled more than \$41,000.

Hadeel was unaware of the infringements because the correspondence was sent to previous addresses as the family moved multiple times and Hadeel was unaware of the requirement to update her address with VicRoads. By this late stage in the process, Hadeel could not nominate the drivers who incurred the infringements due to the strict time limit for this process.

Hadeel was assisted by a community legal centre to apply for revocation of the infringements on the basis that she was not the driver. This took more than 18 months to resolve, with Hadeel attending the Melbourne Magistrates' Court on at least five separate occasions. The toll matters were ultimately revoked but as a result Hadeel ended up with 138 findings of guilt on her criminal record. She was sentenced to a good behaviour bond in addition to the mandatory order that she pay the road operator a \$40 administrative fee in respect of each toll offence, which totalled \$5,520.

Hadeel was required to disclose these criminal matters to her employer which led to her losing her job, plunging the family further into financial hardship.

Impact on individuals

People with large toll fine debts represent a broader cross-section of the community than traditional community legal centre or legal aid clients, as outlined in the six hypothetical case studies throughout this paper. Many are the working poor with competing expenses, or people suffering a temporary crisis such as family violence or family breakdown. A toll fee or fine doesn't need to be paid immediately, and large debts often accumulate due to drivers having more pressing issues to deal with or expenses with immediate consequences such as energy bills, petrol or rent. A significant number of drivers who don't pay for use of the toll road also suffer special circumstances such as a mental health condition. In this context, it is easier to understand how paying the toll invoices may be easily forgotten or 'put aside.' Other 'offenders' may not have been the driver but are deemed responsible by law.

Case Study 3 – Daphne: a pensioner grandmother

Daphne is a pensioner in her '60s. A couple of months after Daphne's husband passed away, she offered to drive her grandson to school, to help her daughter who was starting a new job.

Daphne's husband used to take care of the money and things like e-Tags. As she drove her grandson to school via Eastlink during the next few weeks, Daphne heard the e-Tag beeping and didn't give it another thought. When the notices arrived saying she owed money, she thought they were a mistake. She meant to call and tell them so, but things were getting on top of her and she didn't follow it up. She put aside all the mail she received and when nothing further happened, she figured the mistake had been fixed.

When Daphne was stopped in a roadblock operation by the Sheriff and told she owed almost \$5,000, she started crying. Her grandson was in the car with her, so she tried to pull herself together, but the Sheriff's officers said they were wheel-clamping her car unless she could pay the fines on the spot. Seeing how distressed Daphne was, the officers instead issued a 7 day notice, meaning that if she didn't pay the full amount in 7 days, the Sheriff could wheel clamp or seize her car, or arrest and bail her to appear in court.

Daphne's pension was less than \$800 a fortnight, she had very little savings and no credit card. In total, she had 15 fines totalling almost \$5,000 due to enforcement costs. Daphne couldn't believe it when she worked out that had her e-Tag account been up-to-date, those 15 trips would have cost less than \$100. Instead Daphne will need to attend court to resolve her outstanding toll fines.

Many of these people engage with legal assistance services once their lives are back on track, yet this is often late in the process, such as when the sheriff is involved. Data obtained under freedom of information shows that of 1.14 million fines issued in 2014-15, around 75% remained unpaid and progressed to later stages of enforcement. For most appearing in court with toll fines, Magistrates regularly discharge a substantial part (up to two-thirds) of the total debt. The remaining third is still very large, meaning respondents sign up to instalment orders. An instalment order requires stability and regularity yet often it's the absence of stability and regularity that leads to the toll fines being incurred and accumulating. Breach of an instalment order can lead to imprisonment, as can having outstanding infringement warrants.

Case Study 4 – Geoff: a courier from Melbourne’s North

Geoff is 62 years old and works hard as a courier. He is married with two adult children. Geoff has worked as a sub-contractor for courier companies for many years. These companies impose very strict delivery times; being only a few minutes late can cost Geoff his contract. Without travelling on Citylink, Geoff would never make his deliveries on time.

In late 2010, Geoff’s wife was hospitalised with a life threatening illness. While Geoff was caring for his wife, he started falling behind on the bills and missed a few payments. As the bills piled up, Geoff made sure to keep on top of his utilities and other essentials but any bill that could wait was put on the bottom of the pile.

In only a few months, Geoff had accumulated over a hundred toll invoices as he travelled along Citylink for work. Over the next few years Geoff tried to start making payments but, because he was unable to work as much as before, he always fell behind. As Geoff tried to get back on his feet, the warrants started arriving. What had been around \$2000 in toll costs was now over \$60,000 in fines. Geoff tried putting the fines on payment plans and payment orders but there were so many fines that he was paying \$700 per week just to stop warrants being issued.

Geoff’s work has since dried up and he missed more payments. Because he does not have any special circumstances he has no option but to continue on payment plans. His applications for revocation based on exceptional circumstances have all been refused.

To date, Geoff has paid over \$20,000 in fines. Paying the cost of the tolls 10 times over with no end in sight, his health is suffering and he does not know how much longer he will be able to continue making payments. If Geoff stops making payments, he is afraid that he will lose his house or be sent to prison for 8 months.

Impact on legal assistance services

Legal assistance services operate with very limited resources. A substantial and growing proportion of these resources are spent dealing with infringements – applying for withdrawal or cancellation of fines for vulnerable clients and representation in court for infringement matters.

From 2011-12 to 2014-15, the number of infringement advices provided by community legal centres rose by 65.83%.⁹ From 2011-12 to 2014-15, the number of active infringement cases undertaken by community legal centres rose by 48.62%.¹⁰ Last financial year, Victoria Legal Aid provided nearly 14,000 services in infringements, to more than 4,500 distinct clients. In that period, clients with infringement problems made up more than 5% of Victoria Legal Aid’s total client base.

The more time spent by community and legal aid lawyers dealing with infringement cases results in other vulnerable clients facing eviction, experiencing family violence or being pursued by debt collectors missing out on vital legal assistance.

⁹ National Community Legal Centre Information System data.

¹⁰ Ibid.

Case Study 5 – Samira: A young woman from Melbourne’s West who has struggled with homelessness

Samira was excited to get engaged at age 21, but her very traditional parents didn’t approve and told her to move out. She worked casually in data entry jobs and couldn’t get a private rental despite many applications, so was couch surfing with friends. She married and wanted to find a place to live with her husband, but he couldn’t find work and their housing applications continued to be refused. She fell pregnant, and had to leave her job late in the pregnancy. Their housing remained unstable for 4 years, couch surfing, and sleeping in the car. The need to find housing caused Samira to become distressed, distracted, frantic and anxious. Samira’s main focus was trying to care for her baby.

Over a 4 year period, Samira incurred 18 parking and toll fines, while sleeping in her car, attending appointments with housing agencies, looking for rental properties, residing temporarily with parents or friends who has restricted parking, visiting the Women’s Hospital or Medicare. The fines, with costs added on, totalled \$10,400. She entered into 5 different payment plans for the fines, but couldn’t maintain them. Once she finally got on her feet, and into stable housing, she contacted Victoria Legal Aid to try to sort out the fines, which were at warrant stage. She had enrolled in a Diploma of Health Science, and was working towards dentistry. She was on Austudy and her husband still couldn’t find work, so she couldn’t pay the fines off.

Victoria Legal Aid applied for revocation on the basis of special circumstances on her behalf to the Infringements Court given her homelessness during the period she incurred the fines. Her application was supported by letters from the housing and homelessness services she had been in contact with.

The Court requires a strong link between the special circumstances and the fines, known as ‘the nexus’. The Infringements Court revoked the enforcement orders on the parking fines, and Samira is waiting to hear whether those will be referred to the Special Circumstances List or whether the agencies will decide not to proceed. However, the Infringements Court was not satisfied about the nexus for the toll offences, and did not revoke them. She is required to pay 7 toll fines totalling just under \$3000. The Infringements Court advised it would refuse any further application to pay it off by instalments, because of her previous history of defaulting. Unless she can pay them off in full, she is at risk of almost 3 weeks in jail.

Impact on our justice system

Victoria’s Royal Commission into Family Violence similarly noted the burden of fines on Victorian Magistrates’ Courts. It suggested that consideration be given to changing the jurisdiction of infringement cases, to relieve some of the pressure on the courts.

Infringements arising from use of privately owned toll roads cause half of the impact on the Infringements Court and criminal justice system.¹¹ The government is implementing considerable reforms to Victoria’s fines system but there are no changes planned to the toll fines system. This is despite the Sentencing Advisory Council recommending in 2014 the need to establish a working group to “to assist it in considering solutions to the increasing burden on the criminal justice system of existing toll road infringement offences and the potential associated costs of enforcement as a result of the future development of toll roads” (recommendation 47).¹²

¹¹ In 2014-15, 1.7 million enforcement orders were made for all fines, tolling matters make up 49 per cent of all enforcement orders; see the 2014-15 Annual Report on the Infringements System http://assets.justice.vic.gov.au/justice/resources/e9d3c72c-3ab2-427c-a036-7e7405c26796/2014_15_report_infringements_sys.pdf

¹² Sentencing Advisory Council, “Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria”, 30 May 2014, page 303page available at: <https://www.sentencingcouncil.vic.gov.au/publications/imposition-and-enforcement-court-fines-and-infringement-penalties-victoria>.

Case Study 6 – Pete: the plumber

Pete is a proud father of four, who is happily married and works as a plumber. A couple of years ago, things went badly wrong for him. He and his wife struggled to cope when their fourth child came along. Their marriage suffered and Pete moved out of the family home. As the family's sole breadwinner, Pete continued to pay the mortgage and support his wife and children, but he also had to pay rent for a place of his own.

Pete was struggling to cope emotionally and financially. He was working long hours and had a long commute from the southern Mornington Peninsula to Ringwood each day – more than two and a half hours – unless he used Eastlink which cut the travel time down by half an hour. Pete used Eastlink over the next nine months without an e-Tag – around 200 trips. When the mail started piling up, he just couldn't deal with it and eventually stopped opening the envelopes.

A couple of years on, things are better for Pete who has reconciled with his wife and moved back in with his family – but now he is facing over \$60,000 for those toll fines and he can't pay it. Pete says he was an "idiot" and he wants to pay what's reasonable. The amount he should have paid in toll fees is around \$1,100. He could handle that – plus a modest processing fee. But he can't pay the \$60,000 he now owes.

Pete's local community legal centre is helping Pete to sort things out – but he is having trouble sleeping at night, knowing he will have to attend Court, the Sheriff could cancel his licence or seize his car, and if that happens, Pete will lose his job. It is even possible that Pete could lose his home.

Another person in Pete's shoes – but who doesn't own assets – could be facing arrest and even imprisonment. It would take 395 days or 13 months imprisonment to 'pay off' \$60,000 fines – at a cost to the State of almost \$120,000. Therefore, the State would not recover the \$60,000 and instead would pay \$120,000 = a total loss of \$180,000. (Fines paid off 1 penalty unit a day \$151.67; Prison costs \$297.34 per day).¹³

5. SOME FURTHER ISSUES

The current toll fines system raises a number of important issues, for which we don't have all the information:

- How much public funding is being spent on enforcing tolling infringement debts, including the costs of increased demand in courts, sheriff's officers, prisons and legal assistance services? What is the financial impact and burden of toll fines on courts, prison, other justice system infrastructure and community support services? How much capacity could be freed up in the legal assistance sectors and courts system to deal with family violence matters if changes were made?
- Why are communities in Melbourne's outer suburbs recording the highest outstanding infringement warrant debts for toll fines and what is the impact of toll fee and fine enforcement system on these communities?
- How much revenue do toll fines generate for the Victorian Government, and how much of the existing amount is realistically able to be recovered?
- Why is civil debt being criminalised in this way?

¹³ Corrections statistics.

6. WHAT CAN BE DONE? OPTIONS FOR CHANGE

Using design thinking methodology, the fundamental challenge could be described in the following way:

What if we/How might we: redesign the toll infringements system

For: all road users

So that:

- High levels of compliance are maintained
- There is early intervention so that people in genuine hardship don't get caught in a spiral of fines/debt and ultimately a conviction or jail
- Pressure is taken off our courts and justice system so that resources can be more effectively deployed to areas such as family violence
- It is consistent with government values and the desire of toll operators to ensure that 'time is better spent' and that transport truly 'strengthens communities'.

Consideration should be given to the following:

- Changing the toll fee enforcement system to a civil/debt recovery system.
- Using technology to pursue unpaid tolls monthly or quarterly rather than by individual transaction. A monthly or quarterly enforcement fee could be added instead for every use of the toll road.
- Easing the disproportionate impact of toll roads on outer-suburban communities.
- An amnesty or waiver of administration and enforcement costs on outstanding toll fines.

Adopting the changes would mean that many who receive Centrelink incomes and who don't own assets would be spared from entering unsustainable instalment orders; outstanding infringement debt would not reach disproportionate and very high amounts; a fairer system for charging fees for toll road use; administration fees would be substantially reduced; Victoria's Magistrates Courts and prisons would not be filled to capacity with infringements cases; the Infringements Court and Magistrates' Courts would see enormous capacity increase; and people using toll roads would not be criminalised.