Submission to the Fines Reform Advisory Board consultation

January 2020

About WEstjustice

WEstjustice (the Western Community Legal Centre) was formed in July 2015 as a result of a merger between the Footscray Community Legal Centre, Western Suburbs Legal Service and the Wyndham Legal Service. WEstjustice is a community organisation that provides free legal assistance and financial counselling to people who live, work, study or access services in the western suburbs of Melbourne.

We have offices in Werribee and Footscray as well as a youth legal branch in Sunshine and provide outreach across the western suburbs. WEstjustice provides a range of legal services including: legal information; outreach and casework; duty lawyer services; court representation, community legal education; law reform; advocacy; and community development projects.

WEstjustice's work in the infringements space

WEstjustice has a large fines practice, incorporating a specialist clinic for people with complex fines problems and those with special circumstances and large fine debts, as well as fines casework for young people through our school lawyer program and our youth branch co-located within the Visy Cares Hub for young people. In addition our economic abuse (family violence) lawyer conducts a significant Family Violence Scheme practice for clients of a local women's refuge, and our mental health health-justice partnership lawyer undertakes a large volume of special circumstances, Family Violence Scheme, Work and Development Permit and other infringements applications as part of her work delivering legal services in our local psychiatric inpatient facility.

The content of this submission relies heavily on our work in the Clare Moore Building, Mercy Mental Health's acute inpatient psychiatric facility in Werribee, and Mercy's Community Care Unit, a long-term residential rehabilitation service for people with severe mental health issues, where WEstjustice has been delivering fines and debt casework and representation since 2016 until our funding recently ran out. Our partnership with Mercy Mental Health was established in 2016 and was a deliberate attempt to conduct a high volume of special circumstances revocation/enforcement review cases in a location where people with clear and severe special circumstances were receiving treatment and, in theory at least, had access to evidence of their special circumstances. WEstjustice's partnership with Mercy Mental Health was the first health-justice partnership in Australia embedded within a psychiatric inpatient facility.

Mental health and fines

People on low incomes who are experiencing poor mental health are particularly vulnerable to high levels of debt, including fines. As with other social and economic determinants of mental health, there is a bi-directional relationship between poor mental health and fines; poor mental health places people at greater risk of fines, while fines can exacerbate pre-existing mental health conditions and trigger new ones. For people experiencing poverty and/or mental illness, fines have the potential to be enormously stressful and crushing, tipping some people over the edge and destroying hope.

Legal services can struggle to reach clients with acute mental health conditions because of the severe and episodic nature of these conditions, as well as other barriers to legal assistance. Known barriers for clients include simply not knowing that a problem has a legal remedy, lack of awareness of community legal services, perceptions of time involved, anticipated stress, cost, and competing problems.[1] People with disability – including mental health conditions – have the highest prevalence of legal problems out of all disadvantaged groups in Australia.[2]

Because of the barriers people experiencing disadvantage face in accessing free legal services, help is usually sought from other services in that person's life. Research shows that people experiencing disadvantage, including people with significant mental health disabilities, will often seek help from healthcare providers if they seek help at all. This creates an opportunity for legal services to partner and co-locate with health services to provide access to marginalised people who need legal support. Health-justice partnerships are an increasingly popular response to this reality.

Health-justice partnerships have the potential to address some of the social determinants of health, for example in the case of our fines/debt health-justice partnership by alleviating financial stressors that can exacerbate or trigger mental health concerns. The social determinants of health are described as "the conditions in which people are born, grow, live, work and age; and inequities in power, money and resources that give rise to inequities in the conditions of daily life"[3]. Research on the social determinants of health indicates that addressing poverty and other social determinants such as postcode or regional/rural status are crucial to addressing health disparities between population groups in Australia and internationally.[4]

In addition to extracting a price for unwanted behaviour[5] to 'compensate' the state, fines are supposed to function at the level of specific and general deterrence. However, for those experiencing disadvantage, particularly those experiencing special circumstances, attempts to engender deterrence, whether general or specific, through fines are largely ineffective because this cohort has less control over their lives and offending behaviour[6].

Fines Reform

The introduction of the Fines Reform Act 2014 was welcomed with hope and optimism, particularly in the community sector where the social justice initiatives were highly anticipated. However, these reforms have not lived up to their promise and in fact have created significant failings within the fines system.

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[1] Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S (2012), *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney.
[2] Ibid., p. xv.
[3] Marmot, M, *The Health Gap: The Challenge of an Unequal World: the argument* , *International Journal of Epidemiology*, Volume 46, Issue 4, August 2017, Pages 1312–1318, https://doi.org/10.1093/ije/dyx163
[4] Marmot, M, 'Social determinants of health inequalities', The Lancet 2005, 365: p1099–104, https://www.who.int/social_determinants/strategy/Marmot-Social%20determinants%20of%20health%20inqualities.pdf
[5] O'Malley, P, 'The Birth of Biopolitical Justice' in Ben Golder (ed.), *Re-reading Foucault: On Law, Power and Rights*, London, Routledge, 2013, p157.
[6] See also *Verdins; Buckley; Vo* (2007) 16 VR 269 for commentary on mental illness and the application of principles such as general and specific deterrence.

We are extremely concerned these problems have been left unaddressed for a significant period of time causing severe hardship to fines recipients who struggled to deal with their fines or whose fines applications were left in long queues for up to two years.

We welcome the oversight of the Fines Reform Advisory Board and the opportunity to have input into its considerations.

WEstjustice recommendations and submissions

1. **Reformulate the test for special circumstances so that it is accessible to more vulnerable people**

Nexus test

The special circumstances regime contains many barriers and complexities that exclude vulnerable people from effectively accessing it. The special circumstances system allows people with mental health and other conditions or circumstances to have their fines deregistered by Fines Victoria and withdrawn by enforcement agencies, but to achieve this it requires a 'nexus' – that is, a direct causal link between the conduct constituting the offence and the mental health condition or other circumstance. In our experience, the nexus requirement unfairly excludes people with very serious conditions and circumstances from accessing the system because they cannot establish through medical evidence that they were experiencing the mental health condition or other circumstance at the time the infringements were incurred. Sometimes this is because the person was not accessing treatment or assistance at the time or because their condition was undiagnosed.

Even where the person was accessing treatment during the relevant period of time, our experience with Mercy Mental Health and other medical centres is that health practitioners struggle to comment on the nexus question because they do not feel confident to comment retrospectively on the historical connection between a person's illness and their offending behaviour. To use an example, the link between a person's diagnosis of schizophrenia and their conduct, for example travelling without a valid ticket on public transport on a particular day, is not a matter of simple calculus – even if it is known that the person was symptomatic at the time which is often not known. It is rather a complex assessment of causation that can only be guessed at, and which is particularly difficult when a rigid connection between the person's condition and each individual fine is required by Fines Victoria. According to health practitioners, we have been told it is extremely difficult to track a person's illness trajectory and match this and the person's mental state to the timing of the fines.

Furthermore, by the time clients seek assistance the fines are often years old. Obtaining evidence of a client's mental health status at an earlier point in time is extremely difficult and often impossible for those individuals who are transient or not in regular contact with health services. Even where clients are being treated by a service like Mercy Mental Health, practitioners struggle to comment on the nexus retrospectively, that is in relation to conduct many years ago preceding the patient's treatment by the service.

In addition, hospitals and health practitioners are already extremely under-resourced and under severe time constraints, and requests for forensic evidence place further unnecessary pressure on their services and potentially cause further delays.

Prognosis test

We have evidenced a further category of cases involving people who are unable to satisfy the nexus test, however due to the current impact of their mental health condition and prognosis, have diminished capacity to pay the fine for the foreseeable future.

Therefore, where a person can establish that their condition is "likely to be significant and long-standing" or where they suffer from a "severe episodic illness", together with other factors such as where their illness and disadvantaged status makes management of their fines difficult an additional prognosis test ought to be established. As with the nexus test, this would need to be established by a support letter or report from a qualified professional. This means applicants will be able to choose which arm of the test they attempt to meet – either the nexus test or the prognosis test.

In our view, a forward-looking assessment that assesses a person's current level of impairment is more just for many people with significant special circumstances than one that examines the offending conduct overly rigidly, because the person's prognosis is really what determines whether they will be able to cope with their fines and it is what suggests a person is so unwell and vulnerable they should be diverted away from the fines system. However, the nexus test should remain as an option as people who can show that their special circumstances were operative at the time of the fines should also be redirected away from the mainstream system.

Involuntary treatment consideration

In addition, it may be that some limited cohorts of special circumstances applicants are exempted from the test entirely because of the severity of their circumstances. One such class of applicants we recommend are persons subject to involuntary treatment under the Mental Health Act. This would be appropriate because of the acuity of their illness and symptoms, and the fact that their capacity to manage their fines is likely to be so impaired as to render the taking of appropriate steps to manage fines and prevent the incurrence of new fines close to impossible for them.

We recommend that legislative change should amend the current test to make it a two-armed test, illustrated in the table below and incorporate an involuntary treatment consideration.

Samara has been diagnosed with schizoaffective disorder and is experiencing chronic symptoms of her condition which her treating practitioners expect to be lifelong. She experiences substantial impairment in all aspects of her life. She has been accepted onto the National Disability Insurance Scheme and is on a Community Treatment Order, requiring compliance with involuntary treatment. She incurred fourteen fines for driving on the toll road without paying in 2014 before she was diagnosed when she was starting to become unwell. She is on a Disability Support Pension, can't afford to pay the fines and is experiencing deterioration in her condition because of the stress of the looming infringements. As it stands, Samara cannot do anything about her fines because she cannot demonstrate the nexus between her fines and her condition. Instead, she should be able to access the special circumstances regime on the basis that she has a serious mental health condition for which her prognosis is poor, or on the basis that she is subject to compulsory treatment.

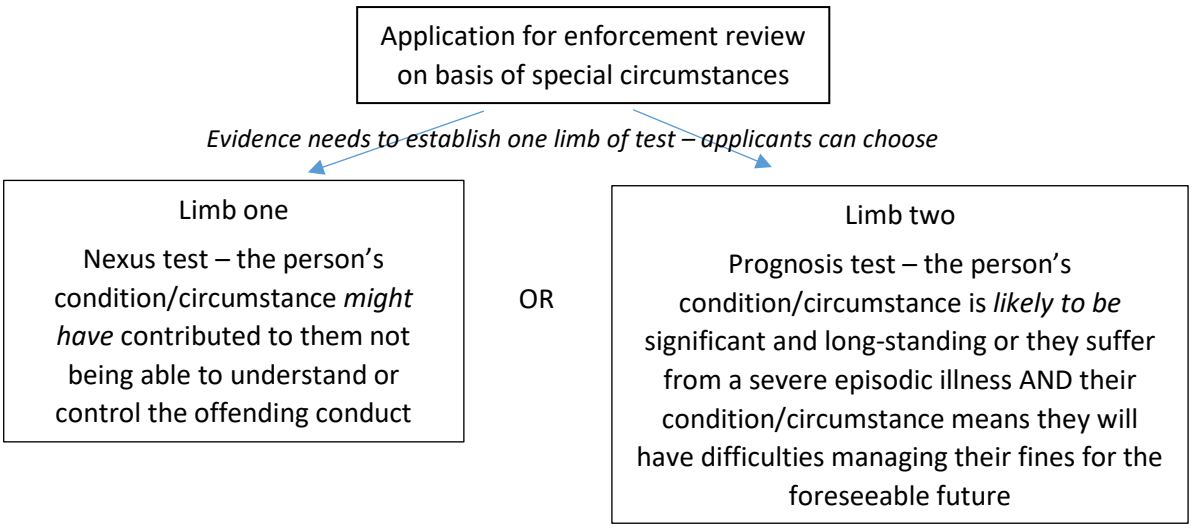
2. Adjust the standard of proof for special circumstances enforcement review cases

Until recently, Fines Victoria granted cancellation of enforcement in special circumstances enforcement review matters where the evidence stated that the person's condition or circumstance "might have" contributed to their conduct constituting the infringement offence. Then suddenly, without apparent reason or explanation, Fines Victoria began refusing such applications and insisting that the evidence had to establish that it was "likely" the person's condition/circumstance contributed to their fines.

This is a significant change and made it much harder for practitioners to provide evidence of the requisite standard because it is very difficult for a medical practitioner to state with such certainty the source or reason for a person's behaviour.

We recommend reverting back to the 'might have' test for the nexus test. If our submission about the prognosis-based test in addition to the current nexus is accepted, a 'likely to' test may be appropriate for that arm of the test. That is, the evidence would need to show that it is likely that a person's illness will continue and they will be unable to manage their infringements for the foreseeable future.

Table A: This table represents a summary of the proposed changes at 1 and 2



3. Urgently restore the Special Circumstances List to ensure the most vulnerable can access a specialised therapeutic jurisdiction when their fines are not withdrawn

Since 2019, WEstjustice has been calling for the urgent reinstatement of the Special Circumstances List to ensure that those with acute special circumstances can have their matters determined by a trained, compassionate decision-maker instead of in the Russian roulette of open court. For more than a decade, people whose fines are linked to their special circumstances have been able to have their matters heard in a specialist therapeutic jurisdiction where the focus is on rehabilitative outcomes and where progress in treatment is recognised and rewarded.

The most common sentences imposed in the Special Circumstances List were good behaviour bonds (adjourned undertakings) or dismissal of charges. Small proportionate aggregate fines were

sometimes imposed where the person had committed more serious (public safety) offences or where there were many offences.

When vulnerable people with mental health issues are funnelled into the traditional criminal justice system, the damage can be immense. Opt-in prosecutions were meant to divert more people away from the criminal justice system, but some enforcement agencies – most visibly Victoria Police – are prosecuting large numbers of fines that have been deregistered following special circumstances enforcement review. This acts as a deterrent to the making of special circumstances applications because of the fear and stress of court, so many vulnerable Victorians are instead electing to enter into payment plans (sometimes after making applications for waiver of prescribed costs). This is not how the system was designed to operate and is especially onerous for these people, noting the apparent link between financial hardship and severe mental illness.

With the removal of the Practice Direction establishing the Special Circumstances List, charges are scattered at potentially dozens of court locations because of the 'proper venue' rule which provides that a charge should be heard in the court closest to where the offending occurred. This means that, where previously a person would have one hearing in the Special Circumstances List where the totality of their offending could be punished by an aggregate sentence, now an individual may have to attend many court hearings where their circumstances will be repeated and where in all likelihood a separate fine will be imposed for each offence. Because Victoria Legal Aid's special circumstances duty lawyer service will no longer be able to operate, and because of the added pressure on community legal services, defendants will routinely be left unrepresented in these hearings. In addition to having serious consequences for the justness of these proceedings, this will be more time intensive and onerous for judicial decision-makers who will have to enquire about a person's circumstances and deal with highly disadvantaged unrepresented defendants.

This risks exacerbating vulnerable people's poor health because of the extreme stress and pressure that going to court entails for anyone who is unwell. Court is a stressful experience for anyone, but for those who are particularly vulnerable court – especially outside of specialist therapeutic jurisdictions – can be unfair, unnecessary and even cruel.

> Tom has chronic schizophrenia and has had a serious alcohol addiction for 14 years. He has suffered brain damage as a result of his alcohol abuse. He has also struggled with homelessness. Over a period of four years, Tom incurred seven fines for being drunk in a public place and two fines for being drunk and disorderly. Tom's fines were deregistered by Fines Victoria upon a special circumstances application, but Victoria Police elected to prosecute all the offences despite being aware of Tom's disability. Because the Special Circumstances List no longer sits, Tom's matters have been dispersed across six suburban Melbourne courts, because of the 'proper venue' rules according to which offences are listed in the court closest to the offending. Tom's lawyer is trying to have the matters consolidated but this is being stymied by challenging listing practices and police reluctance. Tom is likely to be sentenced to substantial fines at each hearing, and the totality of the offending won't be considered because of the separation of the hearings. It is clear to everyone involved that Tom's fines stem from his alcohol addiction and mental health issues, but the system has not succeeded in diverting him away from the mainstream criminal justice system.

The List can easily be reinstated via a Practice Direction issued by the Chief Magistrate pursuant to section 5A of the Magistrates' Court Act 1989 directing that charges laid after successful special circumstances enforcement review under s38(1)(a)(iii) of the Fines Reform Act be filed at the Melbourne Magistrates' Court to be heard in the Special Circumstances List. We expect that there will be a sufficient volume of matters to justify the list, even if it sits less frequently than once per week.

If the Magistrates' Court refuses to reinstate the List, in our submission Parliament should legislate for the List in the same way as it has for the Koori Court, the Drug Court and the Family Violence Division.

4. **Decouple demerit points from findings of guilt, so that demerit points can appropriately be imposed even where the charge is withdrawn**

Currently, demerit points for driving offences only accrue where the fine is expiated or where the underlying charge is proven in court following deregistration as a result of enforcement review. We recognise that demerit points are a necessary and appropriate response to problematic driving. We suspect that the predominant motivation for many police prosecutions of driving offences following cancellation pursuant to section 37(1)(b) of the Fines Reform Act 2014 is that withdrawal of the charge would mean that no demerit points would be applied.

We recommend legislative change to enable demerit points to be applied even where Victoria Police takes no further action under section 38(1)(a)(i) of the Fines Reform Act following cancellation of enforcement by Fines Victoria. This would mean more vulnerable people would be diverted away from the court system while still ensuring that improper driving behaviour is appropriately punished and public safety is protected through the accrual of demerit points and cancellation of licences.

5. **Introduce a limitation period within which enforcement review decisions must be made**

Since the establishment of Fines Victoria (replacing the Infringements Court), fines applications have been subject to extremely long delays. We understand that Fines Victoria has hired many new staff to try to ameliorate these delays but enforcement review, Family Violence Scheme and waiver of prescribed cost applications can still take up to eighteen months or two years.

During these long delays, it is extremely challenging to keep in touch with disadvantaged clients who may be transient, experiencing episodes of mental illness, or other difficulties. As a result, during these long delays, our lawyers often lost contact with clients, meaning we could no longer seek instructions on their applications or represent them at all. Delays also result in confusion and prolonged stress for vulnerable clients.

In some cases, Fines Victoria would request additional evidence in support of an application up to eighteen months after the application was made. After so much time had passed, it was usually impossible to contact the client to get an update on their circumstances and which services they were engaged with, and equally impossible to ask the service provider who had provided the original evidence to update their support materials because they were no longer working with the client.

A legislated timeframe for responding to fines applications should be introduced to ensure that such lengthy delays are not allowed to continue. We recommend a timeframe of six months as being reasonable.

6. **Strengthen the Work and Development Permit scheme so it more effectively services vulnerable Victorians**

The Work and Development Permit ("WDP") scheme was one of the most anticipated aspects of Fines Reform because of the results seen in New South Wales and the potential for the scheme to assist many thousands of disadvantaged Victorians with their fines each year. Unfortunately, to date sponsor take-up and administrative processes have meant the scheme is not functioning as it was designed to do.

To be accessible to more marginalised fines recipients, we recommend that:

- WDP participants only have to work off the original fine amount, with prescribed costs waived at the conclusion of the working off of each fine;
- The range of eligible activities is expanded so that it more accurately captures the range of therapeutic pro-social activities that a person engaged with community services might undertake, including case management and engagement with a social worker;
- The hourly work-off rate for financial counselling and other counselling is changed to a monthly work-off rate;
- The Director's power under s 10F of FRA is utilised more widely to mean that where participants make a genuine and substantial effort and work off a set amount of their infringements, the Director waives the outstanding amount owing. This would mean WDPs would be viable in cases where currently the fines debt is too large. This would also mean that engagement with a service once the therapeutic benefit has been realised is not necessary, thereby reducing the burden on services.

7. **Operationalise the toll fines recall protocol by removing barriers to the scheme**

Toll fines cause substantial hardship to many people, particularly low-income Victorians residing in the outer suburbs of Melbourne. Recent legislative change has somewhat reduced the disproportionate impact of toll fines on this vulnerable group but toll fines remain problematic because of the challenges for toll road operators (TROs) in identifying hardship before toll debts become fines. This protocol between Victoria Police, the Department of Justice and Regulation and TROs would enable the withdrawal of toll fines where hardship is identified and matters could be referred back to the TRO for a toll debt hardship response. All parties have provided in principle support for the protocol and a working group was established in 2018 to progress implementation, but since then obstacles to implementation have emerged.

This protocol is critical to a fair toll enforcement system. Despite improved timeframes introduced by recent reform, hardship is usually not identified by the TRO and instead a person's circumstances only come to light once a Sheriff has intervened and the person has sought assistance from a community legal centre or other service. The implementation of this protocol would mean that people whose hardship is identified late will face equitable outcomes with those whose hardship is identified before toll debts become fines. The protocol also represents a fair and simple way to deal with historical toll offending, to ensure that people who committed toll offences in the past are not punished more harshly than recent toll road users who will have the benefit of the reforms that government has introduced. To encourage deterrence and behaviour change, it is likely that an official warning will be issued where toll fines are withdrawn under the protocol.

Despite providing in principle support, Victoria Police is keen to avoid unintentional political repercussions in creating the protocol. They seem to be concerned that a toll enforcement regime

was devised in 1995 when the Melbourne Citylink Act was introduced and that they remain under a directive to enforce the offence of driving unregistered in a toll zone. Victoria Police have not been part of the discussions between government, the legal assistance sector and the TROs that have seen substantial changes to the toll enforcement landscape, for example, by reducing the frequency of offences to one per week from one per day of unauthorised travel. For its part, Transurban has been strident in declaring that it would like Victoria Police to be able to withdraw toll fines for people experiencing certain types of hardship. The Department of Treasury and Finance has been supportive of the need for the protocol, but to date has not been able to persuade Victoria Police to adopt it.

Government has acknowledged the impact that toll fines have on courts, the legal assistance sector and individuals, and that there is therefore no obligation to enforce all toll fines if parties reach an agreement that would enable withdrawal in certain circumstances. In our submission, there is a need to urgently operationalise the protocol so that cases of hardship can be appropriately responded to by TROs, outside the punitive and difficult to exit fines system.

The Fines Reform Act and the Infringements Act enable withdrawal of fines up to the point that a seven-day notice expires or certain other events occur. This means that once infringement warrants are executed and court hearings are scheduled, the protocol cannot have any effect.

Legal assistance services often first meet people with substantial toll fines who are experiencing hardship at Penalty Enforcement Warrant hearings under section 165 of the Fines Reform Act, following execution of the warrants and arrest. Without legislative amendment, these clients will not be eligible for withdrawals under the protocol. This will produce significant unfairness because clients with matters pre- and post-expiry of the seven-day notice will face starkly different outcomes. To holistically deal with historical toll offending and to mitigate the need for an amnesty, the protocol needs to be able to deal with toll fines throughout the entire infringement lifecycle, including after expiry of the seven-day notice or other events under section 20 of the Fines Reform Act.

To ameliorate this inequity, we recommend legislative amendment to make toll fines exempt from the limitations set out in section 20(2) of the Fines Reform Act. This would enable the Director of Fines Victoria to deregister toll fines at any point in the infringement lifecycle, meaning the TRO could deliver a tailored hardship response to all toll road users, irrespective of where in the system their matters are. In addition to significantly improving outcomes for clients, this measure would crucially relieve pressure on our courts and the legal assistance sector by reducing the number of fines requiring court determination.

8. Introduce concession-based fines: a more proportionate system for penalising minor conduct

The current rate of Newstart is $559.00 per fortnight ($279.50 per week) for a person who is single with no dependent children. The poverty line, that is, the rate of income under which a person is regarded as living in poverty is $433.00 per week.[7] Therefore people reliant on Newstart and similar payments such as the Sickness Allowance live $153.50 beneath the poverty line. People on the Disability Support Pension are only marginally better off, and still live significantly below the poverty line.

[7] http://povertyandinequality.acoss.org.au/poverty/

A speeding fine for exceeding the speed limit by less than 10km per hour costs $207, and a fine for failing to produce a valid ticket on public transport is $248. For people subsisting on Newstart, a single fine therefore consumes almost an entire weekly income for these two fines. Not only would paying these fines mean the individual would have to forgo virtually every other expense including rent, food, medicine and transport – thereby plunging them into debt, but it is patently unfair that a fine have such a disproportionate impact on a Newstart recipient compared to someone earning a wage. A fine for a person who is working, even on a modest income, is manageable whilst producing a deterrent effect. For a Centrelink recipient – just one fine can be completely unmanageable. Moreover, this can mean that any deterrent effect is lost, as a person may feel that they are never going to be able to pay in any event.

Other jurisdictions have introduced measures to make fines fairer for Centrelink recipients or people on low incomes. For example, New South Wales recently introduced legislation that enables a fine to be reduced by 50% if the person is in receipt of a welfare payment and the Commissioner deems it appropriate. A number of Scandinavian countries including Finland have a day fines system where the quantum of a fine is assessed based on the recipient's income.

We recommend that a scheme is introduced whereby a fine recipient can apply for a reduction of their fine if their sole source of income is from Centrelink or if they can demonstrate severe financial hardship. We recommend that in such circumstances the fine is reduced to 20% of the normal fine amount. 20% of the speeding fine would be $57.80 – still a substantial penalty for a Newstart recipient but one that could conceivably be paid.

9. Abolish fines as sanctions for children and replace these with innovative, non-fiscal responses to minor offending

The concept of special circumstances has been operating as a way of affording vulnerable adults an alternative compassionate way to deal with their fines since 2006. While adults are able to use the concept of special circumstances, and various processes in the Fines Reform Act such as Work and Development Permits, to reduce, clear or work off fines, such options are not available in the same way to young people. Simply being a young person who is financially dependent on others is, in and of itself, a circumstance which should underpin more compassionate policy approaches to young people and infringements.

The Children's Court was established in 1906.[8] This was a time when most young people were working for a living. Fines as sanctions made sense at that time, especially as a way of avoiding criminal convictions. Fines for children no longer make any sense. It is also interesting to note that who pays the fine is of no consequence to the success of the infringements system; it is simply enough that the fine is paid to bring each matter to conclusion.

The difference between infringements and fines imposed by the Children's Court is also instructive. Infringements issued by enforcement agencies are not required to take the child's wellbeing or circumstances into account, whereas sentencing in the Children's Court explicitly requires the Court to consider rehabilitation and the child's personal circumstances including their financial position if a fine is being considered. This effectively means police and transport officers issuing infringements to children have an unfettered power compared to that of a Children's Court Magistrate which is limited by sentencing principles. In court, the most common criminal sanction imposed is a good

[8] Pursuant to the *Children's Court Act 1906* (Vic).

behaviour bond.[9] Very few young people under 16 years are sentenced to fines.[10] As for executive sanctions, infringements are the only option and they are regularly used against young people, particularly for public transport offences. Many of these offences are directly related to transport poverty and disadvantage, as explored in WEstjustice's *Fare Go* report.[11] This system therefore assigns public transport revenue protection a higher priority than the welfare of the child, which is clearly wrong.

In our submission, there is an opportunity to introduce a regime that educates and rehabilitates young people who commit what are currently infringement offences. Infringements for young people and the CAYPIN system should be abolished and non-fiscal educational responses should be introduced instead.

10. The fines system should be redesigned using a human-centred design thinking approach

This examination of the fines system presents a unique opportunity to rethink the operation of the system and the way it impacts vulnerable people. Government should engage consultants to assist in a design thinking process to redesign the system, in consultation with the legal assistance, financial counselling and community welfare sectors.

11. Other submissions

WEstjustice is a co-convenor of the Infringements Working Group. We endorse the Infringements Working Group's submission and support its recommendations for fines system reform.

[9] Sentencing Advisory Council, *Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria Report*, May 2014, https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Imposition_and_Enforcement_of_Court_Fines_and_Infringement_Penalties_in_Victoria.pdf, fig 49, p308.
[10] *Ibid.,* par 10.2.11.
[11] Robertson, Su. *Fare Go: Myki, Transport Poverty and Access to Education in Melbourne's West*, 2016, https://www.westjustice.org.au/cms_uploads/docs/westjustice-fare-go-report.pdf.

Appendix

WEstjustice – Werribee Mercy Hospital Mental Health Unit health justice partnership

Fines files since September 2017 – demonstrating the complexity of circumstances for these highly disadvantaged clients

Client	Date seen	Diagnosis	Other special circumstances	Income
Client 1	6/9/2017	Drug induced psychosis	Alcohol and/or drug addiction	Newstart
Client 2	13/9/2017	Depression, anxiety	n/a	Newstart
Client 3	4/10/2017	Schizophrenia	Alcohol and/or drug addiction	Newstart
Client 4	11/10/2017	Schizophrenia	Alcohol and/or drug addiction	Employment
Client 5	18/10/2017	Depression, anxiety	n/a	Newstart
Client 6	18/10/2017	Psychosis	Alcohol and/or drug addiction	Disability Support Pension
Client 7	25/10/2017	Schizophrenia	n/a	Newstart
Client 8	8/11/2017	Depression, gambling addiction	Alcohol and/or drug addiction	Employment
Client 9	15/11/2017	Adjustment disorder	Alcohol and/or drug addiction	Employment
Client 10	13/12/2017	Schizophrenia	Alcohol and/or drug addiction	Newstart
Client 11	13/12/2017	Schizophrenia	n/a	None
Client 12	13/12/2017	Schizoaffective disorder	Alcohol and/or drug addiction	Carer's payment
Client 13	10/1/2018	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 14	10/1/2018	Post-Traumatic Stress Disorder, depression, anxiety	Homelessness, alcohol and/or drug addiction	Disability Support Pension
Client 15	24/1/2018	Schizophrenia	n/a	Disability Support Pension
Client 16	31/1/2018	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 17	21/2/2018	Depression, anxiety	n/a	None
Client 18	7/3/2018	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 19	16/3/2018	Psychosis	Homelessness, alcohol and/or drug addiction	Newstart
Client 20	21/3/2018	Schizophrenia	Homelessness, alcohol and/or drug addiction	Newstart
Client 21	28/3/2018	Bipolar disorder	Homelessness, family violence	Disability Support Pension
Client 22	28/3/2018	Psychosis	n/a	Newstart
Client 23	16/5/2018	Major depressive disorder	Alcohol and/or drug addiction	None

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Client 24	30/5/2018	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 25	13/6/2018	Major depressive disorder	Family violence	Parenting payment
Client 26	20/6/2018	Schizophrenia	n/a	Disability Support Pension
Client 27	20/6/2018	Bipolar disorder	n/a	Newstart
Client 28	27/6/2018	Schizophrenia	Alcohol and/or drug addiction	Disability Support Pension
Client 29	4/7/2018	Post-Traumatic Stress Disorder, bipolar disorder	n/a	Newstart
Client 30	4/7/2018	Depression, anxiety	Family violence	Newstart
Client 31	22/8/2018	Schizophrenia	Alcohol and/or drug addiction	Newstart
Client 32	27/8/2018	Bipolar disorder	Alcohol and/or drug addiction	Carer's payment
Client 33	5/9/2018	Schizophrenia	n/a	Newstart
Client 34	5/9/2018	Major depressive disorder	n/a	Employment
Client 35	21/11/2018	Bipolar disorder, borderline personality disorder	Homelessness	Newstart
Client 36	5/12/2018	Schizophrenia	n/a	Employment
Client 37	10/1/2019	Depression, anxiety	Homelessness	Employment
Client 38	16/1/2019	Schizoaffective disorder	Homelessness, alcohol and/or drug addiction	None
Client 39	6/2/2019	Depression, Post-Traumatic Stress Disorder, borderline personality disorder	Family violence	Disability Support Pension
Client 40	13/2/2019	Drug induced psychosis	Alcohol and/or drug addiction	Newstart
Client 41	27/2/2019	Depression	Alcohol and/or drug addiction	Employment
Client 42	27/2/2019	Psychosis	Homelessness	Newstart
Client 43	16/4/2019	Depression, psychosis	n/a	Employment
Client 44	30/4/2019	Depression	n/a	Parenting payment
Client 45	7/5/2019	Schizophrenia	Alcohol and/or drug addiction	Newstart
Client 46	14/5/2019	Schizophrenia	Alcohol and/or drug addiction	Newstart
Client 47	14/5/2019	Schizophrenia	n/a	Newstart
Client 48	28/5/2019	Depression	Alcohol and/or drug addiction	Newstart
Client 49	5/6/2019	Schizophrenia, Borderline Personality Disorder	Intellectual Disability	Disability Support Pension

Client 50	28/6/2019	Depression	End-stage liver failure	No income
Client 51	28/6/2019	Depression, Anxiety	n/a	No income
Client 52	2/7/2019	Post-Traumatic Stress Disorder, Borderline Personality Disorder, Depression, Anxiety	Family Violence	Income Protection
Client 53	30/10/2019	Depression, Post-Traumatic Stress Disorder	Death of a child	Newstart