

# Summary Report on the Delivery of Fines Reform

Fines Reform Advisory Board



## Table of contents

Introduction .....	2
Advisory Board role .....	3
Fines system overview .....	4
Stakeholder consultation and fines system insights .....	6
Four key problem questions .....	7
Conclusion .....	12
Recommendations of the Fines Reform Advisory Board .....	13

## Introduction

This *Report on the Delivery of Fines Reform* provides independent advice to the Victorian Attorney-General, the Honourable Jill Hennessy MP, on the delivery of Fines Reform and the forward plan for fines services.

The report provides 24 recommendations towards a more accessible, effective, efficient and fair fines system for Victoria, as intended by Fines Reform.

Court fines and infringement fines play a vital role in discouraging behaviour that negatively affects public safety or wellbeing. The infringements system also relieves the burden, on both fine recipients and the courts, of resolving minor wrongdoing. But the strengths of this system also result in challenges. By their nature, the way fines are issued and enforced can raise issues of fairness, and the relationship between the infringements system and the administration of criminal justice must be both logical and well-defined.

To support the important outcomes fines provide, while avoiding their pitfalls, the regime which governs fines must be well designed and well managed – a significant challenge, given the sheer scale, complexity and financial implications of the fines system.

In the two years since Fines Reform was introduced, well-publicised functionality gaps in the IT system supporting Fines Victoria's operations have caused a range of issues for stakeholders and the community. The Advisory Board heard from stakeholders and customers about the impacts of those issues and about the work required to resolve them. The Advisory Board acknowledges these impacts, and supports the proposed remediation program and IT forward plan, with some further improvement opportunities identified.

Importantly, the IT system issues have obscured opportunities for improvement across the broader fines ecosystem. One significant issue is the distributed nature of responsibility for decision-making across the ecosystem, set against community and stakeholder expectations that Fines Victoria assume responsibility for the end-to-end system.

To address this, there are recommendations to support greater consistency of decision-making across enforcement agencies, to reduce the unnecessary flow of infringements into court, and to improve information sharing between agencies to support better customer outcomes.

Fines Reform has delivered improvements in key areas, including fine payment rates and support for vulnerable Victorians through social justice initiatives. There are opportunities to further improve social justice outcomes, including by:

- Making it easier for vulnerable people to prove special circumstances.
- Widening access to programs which allow fines to be worked off through particular activities.
- Increasing the accessibility of a scheme enabling prisoners to convert their outstanding fines into time served in custody and extending it to unsentenced prisoners on remand.

To help meet community and stakeholder expectations and support the ongoing and effective administration of fines in Victoria, there are opportunities to strengthen governance and transparency of the fines system. This includes updating guidelines to support good decision-making and fostering public confidence in the fines system through more transparent reporting and performance monitoring of agencies.

Through further work and collaboration between Fines Victoria, stakeholders and the community, this report's recommendations are intended to foster a fairer, more effective fines system.

## Advisory Board role

The Fines Reform Advisory Board was established in September 2019 to provide independent advice to the Victorian Government on the delivery of Fines Reform and the forward plan for fines services, supported by a robust IT solution. The *Fines Reform Act 2014* transitioned the Victorian fines system from a quasi-judicial model to an administrative model and vested significant power in the position of the Director, Fines Victoria to effectively and efficiently manage the collection and enforcement of infringement and court fines.

The Terms of Reference asked the Advisory Board to consider essential features of the fines system such as:

- The legislative and policy framework introduced by the Fines Reform model.
- The functions and expected outcomes of the Director, Fines Victoria and, secondarily, fines system stakeholders.
- The impact of Fines Reform on fine recipients, particularly vulnerable fine recipients.
- The operating model and enabling IT system of Fines Victoria, the Victorian Infringement Enforcement Warrant ('VIEW') IT system.

Put simply, the purpose of the Advisory Board has been to assess the ongoing and effective administration of fines in Victoria, with particular emphasis on the Director, Fines Victoria, given the centrality of the Director's position to Fines Reform, and the operations and IT system of Fines Victoria more broadly.

The four purposes of Fines Reform, against which the Advisory Board reviews its progress, are:

- The centralised collection and enforcement of infringement and court fines in an administrative, not a judicial, entity.
- Strengthened enforcement mechanisms to better deter fine avoiders.
- Support for vulnerable people to deal with their fines.
- Enhanced review and oversight processes to
  - ensure the fair and transparent operation of the infringements system
  - reduce the burden on the courts system.

A strikingly consistent theme of the Board's consultations with stakeholders in the fines system was continuing support for these aims, despite any problems being experienced or expectations yet to be fully met.

The Advisory Board was originally composed of Ken Lay AO APM (Chair), Julie Fahey and the Honourable David Harper AM QC. Following Mr Lay's appointment as the Chair of Bushfire Recovery Victoria, he resigned from his role as Chair of the Advisory Board on 10 January 2020. The Advisory Board continued its work with its remaining two members.

## Fines system overview

Although features of the model commenced earlier, Fines Reform commenced in full on 31 December 2017. Two years since its commencement, there have been both successes and failures in realising Fines Reform, with IT system issues making it difficult to assess whether the anticipated benefits of the new model have fully materialised. Since the introduction of Fines Reform, rates of payment of fines have increased and now exceed pre-Fines Reform rates. New or expanded social justice initiatives have improved outcomes for many vulnerable fine recipients.

However, the lack of complete IT system functionality has caused a range of adverse impacts to stakeholders and the community. Many of these consequences have been widely reported, including process-related difficulties experienced by fine recipients when trying to manage their fines, delays in receiving correspondence relating to fines and decreases in revenue for non-State government agencies due to limitations in enforcement once a fine is registered with the Director, Fines Victoria. The Victorian Department of Justice and Community Safety (the Department) has undertaken significant work to address these impacts and continues to do so, but some issues remain in the process of being resolved.

As made equally clear to the Advisory Board however, the focus on the lack of IT system functionality has obscured a broader problem with the fines system. A significant issue affecting the fines system is the distributed nature of responsibility for decision-making across the ecosystem, set against community and stakeholder expectations that 'Fines Victoria' assume responsibility for the end-to-end system. The fines ecosystem is complex. Accountability for functions such as fine issuance, collection, review and enforcement is distributed across a range of enforcement authorities, including 129 State and non-State government enforcement agencies, the Director, Fines Victoria, the Sheriff of Victoria, and the courts. Enforcement agencies such as Victoria Police and local government agencies are responsible for issuing an infringement notice or official warning, or choosing instead to prosecute the offence in court, conducting internal reviews of infringement notices once issued, or withdrawing an infringement notice. The courts play a role in both the infringements system and the broader criminal justice system, imposing court fines as sentences in criminal proceedings and, in the case of the Magistrates' Court of Victoria, having the power to issue enforcement warrants for, and imprison, fine defaulters for the non-payment of infringement fines.

The role of the Director, Fines Victoria under the Fines Reform Act is largely limited to the management and enforcement of court fines referred by the courts and the enforcement of infringement fines registered with the Director once these fines have reached a certain stage of non-payment. The Director also has a role in relation to the operation of non-financial alternatives to the payment of fines for vulnerable fine recipients. However, enforcement agencies retain significant discretion after the Director has made decisions, in particular by being able to prosecute a fine recipient in the Magistrates' Court after enforcement is cancelled by the Director following an application for enforcement review by the fine recipient or in cases where the Director determines that enforcement of a registered infringement fine under the Fines Reform Act is not appropriate.

Other stakeholders also play significant roles. If their debt collection methods are unsuccessful, the Victorian toll-road operators, ConnectEast and Transurban, responsible for EastLink and CityLink respectively, refer a matter involving unpaid tolling debt to Victoria Police for the issuance of an infringement notice. While toll-road operators are not enforcement agencies that issue infringement notices, their conduct at the pre-issuance stage informs a large proportion of the infringement notices issued overall. Legal and support services groups play an important role in supporting vulnerable fine recipients to navigate the multiple potential pathways available to manage their fines.

It is unsurprising that this complex backdrop may give rise to a lack of clear understanding as to what 'Fines Victoria' does. There is a difference between the roles of the Director, Fines Victoria, a person with primarily enforcement-related statutory functions, and 'Fines Victoria' as a broader umbrella term for the provision of various administrative fines-related services across the lifecycle of a fine, from issuance to arrest. The administrative services provided by 'Fines Victoria' in this broader sense are provided by

Victorian Government contractors and the Department, as enabled by the VIEW system. These services support in part or in full the delivery of certain statutory functions of enforcement authorities, particularly some State government enforcement agencies, the Director, Fines Victoria and the Sheriff of Victoria. Fines Victoria, in this latter sense, presents as a public-facing 'one stop shop' for fine recipients to pay or manage unpaid fines. Services offered by Fines Victoria are delivered through a range of mechanisms and platforms including the Fines Victoria website, the Fines Victoria call centre and over the counter.

Many of the public complaints made about the fines system attribute responsibility for the failings of other entities within the fines ecosystem to Fines Victoria in this broad sense. Public messaging about the functions of Fines Victoria as a 'one stop shop' contributes to the community's perception that Fines Victoria is the cause of, and therefore responsible for, the resolution of all issues with fines. The issues in relation to the public perception of Fines Victoria are compounded by the problems with the VIEW IT system, which supports many Victorian Government fines services across the end-to-end system.

For the fines system to operate effectively, it is vital to have a clear understanding in the community and across the system of the roles of the different types of enforcement authorities within it, and coordinated action across the broader ecosystem to achieve the best outcomes for the community. The success of any IT solution to support fines services is dependent on an operating model that clearly defines the roles and accountabilities of different entities in the broader ecosystem.

The Advisory Board makes 24 recommendations to improve the Victorian fines system. These are designed in the context of a holistic view of the fines system and should accordingly be read as a whole rather than as a series of individual and not necessarily inter-connected recommendations.

The Advisory Board's approach is underpinned by the results which a fair and just fines system must promote.

An ideal fines system discourages antisocial behaviour and promotes safety, fairness and community welfare. These are important benefits. On the other hand, fines have a greater or lesser financial impact on fine recipients depending on their financial means. At one end of the scale a fine might be crushing; at the other, the same fine may be no punishment at all. The minimisation of this effect will be an essential element in any well-designed fines system.

In the panoply of sentencing options, fines are low on the scale of seriousness. Nevertheless, the wrongful imposition of a fine will result in an injustice. Every such outcome is a systems failure. Those affected will resent that injustice, and the resentment will probably be deep and lasting. As the range of infringement offences is wide, and as fines are the most common sentence imposed by courts, this is not merely an academic concern.

The fair and equitable treatment of all fine recipients is to be realised in a system that is complex and can unless appropriately managed generate significant inconsistency in decision-making behaviour and outcomes. Within the limits of the law, each enforcement agency has different practices in relation to the issuing, internal review, enforcement and withdrawal of fines. More fundamentally, many agencies that issue fines have a revenue-related interest in their collection. They are not unbiased, disinterested and independent when decisions to enforce individual fines are made.

Unfairness may also result from unequal access to the legal assistance and support services intended to help fines recipients deal with their fines. The control and accountability mechanisms of the fines system are fragmented across the various entities within the system. There are necessarily different arrangements and mechanisms in place to regulate the behaviour of entities as varied as toll-road operators and local government entities.

In 2018-19, around 4.3 million infringement fines and 53,000 court fines were imposed. In the context of such a high-volume system, any central administrative fines services will be dependent on a delivery model consisting of carefully designed business operations and an IT system which deliberately leaves room for human intervention.

## Stakeholder consultation and fines system insights

The Attorney-General asked the Advisory Board to meet with community members and stakeholders who have had both positive and unacceptable experience with the fines system to provide assurance that the forward plan will address impacts on the community and stakeholders. During a four-month consultation period, the Advisory Board held individual and roundtable meetings. A total of 17 targeted consultations were conducted, either in groups or individually, with key fines system stakeholders including the Victorian Ombudsman, the Victorian Auditor-General, the Chief Commissioner of Victoria Police, the Commissioner of Corrections Victoria and the Chief Magistrate, and representatives of Victoria Legal Aid, community legal centres, and State and local government enforcement agencies. The Advisory Board received 19 written submissions from stakeholders. A further 155 submissions based on responses to survey questions were provided through a public consultation process via Engage Victoria, the Victorian Government's online public engagement platform. The Advisory Board also met with some fine recipients to hear of their personal experiences, deepening the Advisory Board's understanding of how Fines Reform has helped as well as the challenges being faced.

Assistance, including briefings and documents, was also provided by the Fines and Enforcement Services ('FES') business unit in the Department.<sup>1</sup>

The Advisory Board closely considered the background to the fines system and the operations of Fines Victoria. It considered the types and purpose of fines and the evolution of the fines system. It looked at the fundamentals of the Victorian fines system, including the broader legislative context of Fines Reform and an overview of the Fines Reform model. As the purposes of Fines Reform are not clearly defined, the Advisory Board surveyed the key changes made by the model to establish what it aimed to achieve. The Advisory Board draws on the typology of fine recipients developed by the Sentencing Advisory Council in a report prepared in 2014 on the imposition and enforcement of court fines and infringement penalties to show how the payment, management and enforcement of fines require different approaches based on the type of fine recipient involved. These five types are:

- fine recipients who will or might pay their fines and require incentives or behavioural nudges to do so
- those who won't pay their fines and require strong enforcement mechanisms
- those who shouldn't pay their fines but rather should be diverted from the criminal justice system as early as possible,
- and those who can't pay their fines and should have a wider range of options to expiate their fines.

This typology informs the behavioural approach taken by Fines Reform. Finally, the Advisory Board distinguishes Fines Victoria's operating model from the broader fines ecosystem and outlines the development of the VIEW system.

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<sup>11</sup> A single person plays the role of the Director, Fines Victoria under the *Fines Reform Act 2014* and the Executive Director, FES.

## Four key problem questions

To address its Terms of Reference, the Advisory Board considered four key questions related to the ongoing and effective administration of the fines system, the significant achievements of that administration, and the next steps to deliver on Fines Reform. These questions are:

1. Does the fines system meet the community and stakeholders' expectations of strong governance and oversight?
2. Is the legislative and policy framework operating as intended by Fines Reform and are further measures needed?
3. Is the Department's remediation program effective?
4. Is the Department's forward plan likely to deliver a fit-for-purpose and efficient operating model, supported by a fully functional IT system, for Fines Victoria?

The Advisory Board's recommendations across these four areas aim to promote the following guiding principles for a successful fines system, as envisaged by Fines Reform:

- Fines should only be imposed for a breach of the law and where fines would be a fair and just mechanism for addressing the fine recipient's wrongdoing.
- Infringement fines should be dealt with administratively to the greatest extent possible, so that it only falls to the courts to hear and determine those cases which are appropriate for entry into the judicial sphere.
- Those who make decisions relating to fines should exercise discretion appropriately. System processes must be designed to enable human intervention so that automation does not lead to inflexibility and administrative errors do not impose a crushing burden on vulnerable fine recipients.
- There should be consistency of behaviour across decision-makers in the fines system. Individual fine recipients with the same circumstances must be treated alike. More importantly, there must be consistency in treating different cases differently within a framework of overarching consistency. Essential to this outcome is the consistency of behaviour by entities both when issuing, reviewing and withdrawing fines and also when subsequent enforcement review and enforcement decisions are made by the Director, Fines Victoria.
- Fines should be strongly enforced to ensure fine avoiders are made to expiate their fines.
- Vulnerable individuals who incur fines should be identified as early as possible so that they are not subject to sanctions unfairly. They should have the opportunity to expiate their fines through non-financial means where appropriate.
- The fines system should have a harmonised legislative, operational and IT framework, with legislation informing operational design and the operating model in turn enabling the IT system design. Key fines system stakeholders need to be involved in co-designing, to the extent appropriate, the operating model and IT functionality required to deliver the requirements of Fines Reform.
- There should be transparent monitoring and reporting of fines system processes and outcomes, including the establishment of key performance metrics that assure stakeholders, government and the community that decision-making in relation to fine enforcement is fair and equitable.
- Robust governance and oversight mechanisms should be in place to ensure the effective operation of the system.

The 24 recommendations of the Advisory Board can be found at the end of this document.

### Question 1: Does the fines system meet the community and stakeholders' expectations of strong governance and oversight?

There is a fundamental community and stakeholder expectation that the fines system should have strong governance and oversight. While there are several constituents of these attributes, the Advisory Board focused on three key features. First, so as to develop a clear and shared understanding of the aims of

Fines Reform, the Fines Reform Act should be amended to clearly identify its four purposes (**recommendation 1**). Given the multiplicity of the Director's significant statutory functions and the potential to clarify community understanding of the Director's role, as opposed to the role of other entities in the fines ecosystem or 'Fines Victoria' in a broader sense, the Advisory Board recommends consideration be given to assessing whether the organisational structure best supports the Director, Fines Victoria (**recommendation 2**).

The Advisory Board also recommends measures to improve the various control and accountability mechanisms for enforcement authorities. These measures include expanded implementation of the oversight function given to the Director, Fines Victoria in relation to internal reviews conducted by enforcement agencies, updating guidelines to help guide administrative decision-making in close consultation with enforcement agencies, and more transparent reporting and performance monitoring of both enforcement agencies and the Director, Fines Victoria (**recommendations 3-6**).

## **Question 2: Is the legislative and policy framework operating as intended by Fines Reform and are further measures needed?**

It is challenging to fully assess the effectiveness of Fines Reform due to the ongoing impact of IT functionality issues. It is, however, clear that the reforms have improved payment rates over time and that complaints against Fines Victoria are low compared to the volume of activity in the fines system overall. A critical aspect of Fines Reform involves improving support for vulnerable fine recipients and many of the Advisory Board's recommendations relate to the next steps for these social justice initiatives.

The Advisory Board considered the legislative and policy framework of Fines Reform from the perspective of the five types of fine recipients identified by the Sentencing Advisory Council. The introduction of Fines Reform has seen good progress in creating additional incentives for those who will or might pay to do so, with the most smoothly functioning component of Fines Reform currently being the payment of fines. Rates of payment have improved over time since the introduction of Fines Reform. In 2019, 31 per cent of fines were paid within 30 days, compared to 12 per cent pre-Fines Reform, with 47 per cent of fines paid in 180 days.

While media coverage may have fostered perceptions that Fines Victoria is underperforming, as a proportion of the high volume of cases handled by Fines Victoria, the customer complaint figures maintained internally, as well as those compiled externally by the Ombudsman, are very low. For example, of the 110,245 calls handled on monthly average by the Fines Victoria call centre, 0.17 per cent are the subject of complaints. Of the 434,821 infringement notices issued on average monthly, 0.04 per cent are the subject of complaints.

Currently, it is not possible to fully assess the effectiveness of the measures introduced by Fines Reform to better deter those who won't pay their fines. This is because there is no VIEW system functionality, or manual workarounds, to support sanctions administered by the Director, Fines Victoria or the management and execution of warrants by the Sheriff of Victoria. No new warrants have been issued under the Fines Reform Act. While the lack of enforcement activity has caused various stakeholder impacts, there is progress in focusing on activity not reliant on the VIEW system. An example is an increase in Sheriff activity using legacy warrants issued prior to Fines Reform.

Social justice initiatives delivered under Fines Reform are providing more support for vulnerable fine recipients, which was clear from submissions from legal and support agencies and further illustrated by vulnerable fine recipients who despite the necessarily personal nature of their circumstances courageously shared their stories with the Advisory Board. After two years of these social justice initiatives in operation, the Advisory Board was able to assess how these programs are working and the opportunities to further improve the way the fines system treats vulnerable fine recipients.

A range of improvements should be made to the way the fines system treats vulnerable fine recipients. In addition to observations about the approach which enforcement agencies should take to exculpatory evidence, the Advisory Board recommends that the eligibility test for persons who shouldn't pay their fine ('the special circumstances or nexus test') should be reformulated in two ways to make it fairer: the threshold to meet the existing test should be reduced and a second, narrow limb, requiring no causal link between the infringement offences and a person's condition or circumstances, should be available to those with a substantially diminished capacity to pay or otherwise manage a fine for the foreseeable future (**recommendation 7**). To ensure that both road safety and fairness to a fine recipient are appropriately balanced and to reduce the need for matters to be heard by a court, demerit points should continue to be recorded following the cancellation of enforcement of a driving-related infringements on the ground that the fine recipient has special circumstances (**recommendation 8**).

Improvements to the accessibility of the social justice initiatives introduced or expanded by Fines Reform will help more vulnerable fine recipients. The Advisory Board makes three recommendations to improve the accessibility of the Work and Development Permit program enabling those who shouldn't or can't pay their fines to access a therapeutic, non-financial alternative to payment (**recommendations 9-11**). Schemes that enable people on remand or serving a sentence in prison to convert unpaid fines into time spent in custody should be expanded, without burdening the courts (**recommendations 12-13**).

The Advisory Board does not make recommendations relating to a scheme enabling fine recipients experiencing family violence to withdraw their infringement fines in certain circumstances ('Family Violence Scheme') due to an ongoing statutory review of that scheme being conducted by the Department. However, in the light of feedback from legal stakeholders about difficulties being experienced with the operation of the scheme, the Advisory Board observes that, in the course of its Family Violence Scheme review, the Department should clarify the intended policy aims of the scheme and consider whether the current legislative test to be eligible for the scheme reflects those aims. The complexity of multiple intersecting pathways for vulnerable fine recipients highlights the need to further consider opportunities for better integration of these initiatives, informed by the forthcoming report of the Royal Commission into Victoria's Mental Health System (**recommendation 14**). Finally, the value of fines should better reflect the capacity of fine recipients to pay their fines. Further consideration should be given to the introduction of a concessional penalty rate of infringement for those in financial hardship (**recommendation 15**).

The Advisory Board also considered the legislative and policy framework of Fines Reform as it relates to effective and efficient decision-making by enforcement authorities, particularly the Director, Fines Victoria. The volume of the infringements system, with a significant proportion of notices issued to fine recipients who are relatively anonymous to issuing agencies, makes it difficult to differentiate fine recipients who can pay from those who shouldn't or can't pay. To achieve this, the Fines Reform Act gives the Director, Fines Victoria significant powers to determine the best way of enforcing fines against cohorts who can and should pay and circumstances where administrative enforcement is not appropriate, justified or fair. The Director should have the power to fully manage all fines registered for enforcement. The involvement of the courts should be reserved for fine recipients requiring judicial intervention to hold them to account or when other options are not appropriate. The Advisory Board recommends referral to the Magistrates' Court using an existing mechanism to better manage fine recipients with significant outstanding fines determined to be unrecoverable using administrative powers (**recommendation 16**).

A decision by the Director, Fines Victoria to cancel enforcement following an application for enforcement review made by a fine recipient should be final and binding on the enforcement agency that issued the infringement fine (**recommendation 17**). Enforcement agencies should be able to provide more information to the Director when a fine is registered so decisions of the Director are informed by credible, relevant and significant evidence known to the agency. The Advisory Board recommends that the information-sharing arrangements between the Director and enforcement agencies should be strengthened to achieve this aim (**recommendation 19**).

It is important to ensure that options to divert those who shouldn't or can't pay their fines remain alive during the fines lifecycle. Additional time should be provided to fine recipients to obtain evidence for enforcement review applications on the ground of special or exceptional circumstances (**recommendation 18**).

Tolling-related fines debt accounts for an increasingly significant part of fines debt as fines progress from the stage of issuance to arrest, making up 29 per cent of all infringement fines issued escalating to 41 per cent of fine debt at the stage of a warrant being issued for a fine defaulter's arrest. The withdrawal of a tolling-related infringement is currently at the discretion of Victoria Police on the advice of toll-operators even in cases where the toll-operator does not wish to pursue the matter because the fine recipient has established the existence of hardship. Toll-operators should be given the power to withdraw a matter referred to Victoria Police for a tolling infringement (**recommendation 20**).

Fine recipients should also have more time to get advice or take other action following the service of a notice by the Sheriff which presently warns a fine recipient to take action within seven days or be served with an enforcement warrant for their arrest (**recommendation 21**).

### **Question 3: Is the Department's remediation program effective?**

In reviewing the Department's remediation efforts to address the limitations of the VIEW system, the Advisory Board found the remediation program is effectively structured to deliver remediation activity. However, there is an opportunity to enhance stakeholder participation and ensure fairness for fine recipients who have fines held up in the backlog.

Since Fines Reform commenced, there have been a number of achievements reflecting progress. Two examples include commencement of the delivery of court fine-related functionality, with stages 1 and 2 of a three stage process now delivered. As at February 2020, nearly 4,200 Court Fine Collection Statements for outstanding court fines, valued at more than \$3.8 million, that have been referred to the Director, Fines Victoria have been issued. Close to \$300,000 in payments has been received. There has also been a reduction in the number of matters in the backlog of applications made to the Director, Fines Victoria by fine recipients, primarily in relation to enforcement review, from approximately 71,000 applications in May 2019 to 54,100 applications in February 2020. Given that 46,000 new applications were received within the same period, this is a significant achievement.

While the Advisory Board considers the Fines Remediation Program is effectively structured to address the key work streams necessary for remediation activity, there is an opportunity to improve the current channels for ongoing stakeholder and community communication in the Department to inform remediation and the ongoing operations of Fines Victoria (**recommendation 22**).

An essential component of remediation is the effective management of fines in the backlog, some of which have been delayed by over 18 months. These backlogs relate to fines for which IT system functionality is unavailable, for example fines that cannot progress to the warrant stage due to a lack of warrant-issuing capability. They also include fines requiring significant manual workarounds to process, for example fines in the backlog of applications. The Advisory Board recognises the difficult trade-offs and resource constraints faced by the Department in developing a strategy to manage backlogs, including the unfulfilled expectation that the problem would quickly be resolved once the development of the VIEW system was completed. The Department's broad approach towards remediation has been to prioritise addressing IT system defects affecting the most high-volume transactions, focusing on fine recipients who will or might pay their fines. While this approach is justified on the basis of efficiency, a key risk of this approach is that those who shouldn't or can't pay their fines, typically vulnerable individuals with complex cases and who deal relatively poorly with delay, are disproportionately represented in the later stages of the fines lifecycle and, consequently, in the backlog.

An effective backlog management strategy across all current areas prioritised for IT system remediation and the backlog of applications from fine recipients requires effective triaging, to the extent possible within the limited data analytics capability available under the IT system, and the development of a

flexible suite of options to manage fines affected significantly by the delay, once system functionality is operationalised. The Advisory Board recommends additional triaging measures to address fines in the overall fines debt pool and in the application backlog (**recommendation 23**).

#### **Question 4: Is the Department's forward plan likely to deliver a fit-for-purpose and efficient operating model, supported by a fully functional IT system, for Fines Victoria?**

The Advisory Board endorses the Department's forward plan, subject to ongoing stakeholder and community engagement and the use of co-design principles to ensure that the technology solution supporting the delivery of fines services is fit for purpose (**recommendation 24**).

The Advisory Board also recommends a single governance structure be responsible for overseeing the streams related to the technical and system architecture components of the Fines Remediation Program.

## Conclusion

The Advisory Board appreciates the opportunity to conduct this important review of the delivery of Fines Reform in consultation with stakeholders and customers.

The Advisory Board thanks the Department and all the stakeholders who gave up their time to meet with us or contribute written submissions and share their insights and experience. Our recommendations would not have been possible without their contribution.

We are particularly grateful to those vulnerable individuals who courageously shared their stories to help us understand the impacts of the fines system and how it can be improved for all Victorians.

We must also recognise the work of those who have on a daily basis assisted the Advisory Board in its preparation for, and the writing of, this report. Secretariat staff members Jaklin Trajkovski, Neha Kasbekar, Tim Haynes and Tim Creevey have acted with exemplary dedication, professionalism and skill. The Advisory Board could not have been better served, and we owe each of them our deepest gratitude.

We are confident the recommendations contained in this report can underpin a strong blueprint for the next phase of fines reform and we look forward to watching further progress.

**Julie Fahey    The Hon David Harper AM QC**

# Recommendations of the Fines Reform Advisory Board

## Governance and oversight

### 1. A shared understanding of the aims of Fines Reform

The Advisory Board recommends that section 1 of the Fines Reform Act should be amended to provide a clear statement of the purposes of Fines Reform.

### 2. An organisational structure that best supports the Director, Fines Victoria to perform his or her functions

The Advisory Board recommends that consideration should be given to assessing whether the current organisational structure within FES best supports the delivery of the statutory functions of the Director, Fines Victoria and community understanding of the Director's role.

### 3. Guidelines that promote consistency and fairness in administrative decision-making

#### a. For enforcement agencies

The Advisory Board recommends that the Attorney-General's Guidelines to the *Infringements Act 2006* and the Internal Review Guidelines should be reviewed and updated, in consultation with enforcement agencies. The guidelines should explain the application of general principles of administrative law where relevant.

The Internal Review Guidelines should be aligned with the internal policies used by the Director, Fines Victoria for enforcement review.

#### b. For the Director, Fines Victoria

The internal policies for the enforcement review scheme should clearly state that if the Director, Fines Victoria intends to refuse an enforcement review application and relies on adverse information provided by an enforcement agency that is credible, relevant and significant and not previously provided to the applicant, the adverse information must be disclosed to the applicant and the applicant must be given an opportunity to respond to it.

(Recommendation 3.2 should be read with recommendation 19 on information sharing.)

### 4. More robust oversight of the infringements system

The Advisory Board recommends that the internal review oversight function of the Director, Fines Victoria should be further resourced and fully implemented as a priority.

### 5. Improved community confidence through reporting obligations

The Advisory Board recommends that the Infringements Act should be amended to require the publication of the Attorney-General's Annual Reports on the Infringements System.

### 6. More effective and transparent performance monitoring

The Advisory Board recommends that performance metrics for both enforcement agencies and the Director, Fines Victoria should be refined to enable benchmarking against past performance and, in the case of enforcement agencies, performance against other agencies in the same cohort.

Appropriate performance measures for enforcement agencies and the Director, Fines Victoria should be included in the Attorney-General's Annual Reports on the Infringements System.

## **Fairness and equity**

### **7. Improved access and outcomes for vulnerable people through a reformulated nexus test**

The Advisory Board recommends that a vulnerable person should be eligible as a person with "special circumstances" under the Infringements Act where one of the following tests apply:

- A nexus between the conduct constituting the infringement offence and special circumstances can be established (nexus test). The current threshold of the nexus test should be lowered from a condition or circumstance resulting in an inability to understand that the behaviour constitutes an offence, or to control offending behaviour, to a condition or circumstance contributing to a significantly reduced capacity to understand that the behaviour constitutes an offence or to control the offending conduct.
- A person's current level of impairment due to at least one of the circumstances or conditions specified in the definition of "special circumstances" substantially diminishes the person's capacity to pay or manage a fine for the foreseeable future (long term outcomes test). An example of a condition of sufficient severity is a person subject to long-term involuntary treatment under the *Mental Health Act 2014*.

### **8. A better balance between fairness to fine recipients and road safety**

The Advisory Board recommends that demerit points should continue to be recorded for road safety-related fines that are withdrawn by Victoria Police following cancellation of enforcement by the Director, Fines Victoria on the ground of special circumstances.

## **Work and Development Permit ('WDP') Program**

### **9. A more accessible WDP scheme**

The Advisory Board recommends that:

- Only fines, not fees and costs associated with fines, should be the subject of a WDP. Fees and costs attaching to a fine should be waived as the fine is 'worked off'.
- The range of approved activities for a WDP should be expanded to include case management and engagement with social workers and case managers. Mentoring programs should also be available to people of all ages based on need and therapeutic outcomes rather than restricting availability to persons under 25 years of age.
- Any eligible activities undertaken with an accredited WDP sponsor prior to the approval of a WDP should be counted towards reducing the fines being 'worked-off'.
- There should be equivalency between the work-off rates for financial counselling and drug and alcohol counselling.
- A list of accredited sponsors should be published to facilitate take-up of the scheme by vulnerable people and agencies supporting them. An opt-out option should be available to sponsors who have sound reasons for being excluded from a publicly available sponsor list.

- Consideration should be given to additional ways in which the WDP scheme can be made more culturally inclusive for Aboriginal and Torres Strait Islander fine recipients, subject to consultation with Aboriginal and Torres Strait Islander stakeholders.
- Consideration should be given to expanding the WDP scheme to court fines, subject to consultation with the courts.

## **10. Guidelines on waivers of infringement fines under WDPs**

The Advisory Board recommends that guidelines should be developed to support the exercise of the power under section 10F of the Fines Reform Act to waive infringement fines subject to a WDP.

## **11. Increased sponsor participation in the WDP scheme through funding**

The Advisory Board recommends that accredited sponsors should be funded to undertake the administrative activities required as a condition of accreditation for the WDP scheme.

## **Time Served scheme**

### **12. A more accessible Time Served scheme**

The Advisory Board recommends that:

- Court fine recipients should be treated the same as infringement fine recipients by enabling court fine recipients to:
  - make an application in respect of their court fine when the fine is registered with the Director, Fines Victoria
  - have their application dealt with after they have left custody provided the application was made while in custody
  - take 'time served' into account from when the person first entered custody.
- The Time Served scheme should be expanded to ensure all persons on remand have access to the Time Served scheme. To give full effect to this recommendation, applications should enable 'time served' to be taken into account from when a person is first remanded in custody and allow applications to be lodged and heard by the court after the person has been released from custody.
- Further consideration should be given to the exclusion of fees and costs attaching to infringement and court fines from Time Served orders. Fees and costs should be waived to ensure that any order made is final.

### **13. An administrative process to make Time Served orders**

The Advisory Board recommends that, subject to consultation with the courts, consideration should be given to an administrative process to manage the Time Served scheme for applications where the value of a person's fines does not exceed the time that person has been in custody.

Applications for 'excess fines' should continue to be given proper judicial consideration by a court to ensure that the full suite of court orders can be considered and judicial discretion is not limited.

## **Integrated options for vulnerable fine recipients**

### **14. Better integration of the multiple pathways for vulnerable fine recipients**

The Advisory Board recommends that further consideration, informed by the final report of the Mental Health Royal Commission, should be given to the opportunity to integrate the pathways for fine recipients with “special circumstances” and those eligible for the WDP program, the Time Served scheme or the Family Violence Scheme to deal with their fines.

## **Financial hardship**

### **15. Fairer payment options for those in financial hardship**

The Advisory Board recommends that further consideration should be given to the introduction of a concessional penalty rate for infringement fine recipients in financial hardship.

## **Effective and efficient decision-making**

### **16. Referral of fine recipients with high, unrecoverable fine debt to the Magistrates’ Court for an enforcement hearing**

The Advisory Board recommends that the Director, Fines Victoria should have a power to refer a fine recipient to the Magistrates’ Court for an enforcement hearing for offending resulting in the accumulation of significant fine debt that is unlikely to be recovered using enforcement and payment options available under the Fines Reform Act. Existing mechanisms such as a hearing under section 165 of the Fines Reform Act should be used to give effect to the recommendation.

### **17. Final and binding enforcement review decisions**

The Advisory Board recommends that the Fines Reform Act should be amended to make an enforcement cancellation decision by the Director, Fines Victoria final and binding on an enforcement agency. Any registered infringement fine subject to the decision should be withdrawn.

The proposed recommendation does not affect or limit an enforcement agency’s ability to commence judicial review proceedings in the Supreme Court pursuant to Order 56 Supreme Court (General Civil Procedure) Rules 2015.

(This recommendation should be read with recommendation 19.)

### **18. Additional time to obtain evidence for enforcement review applications on the grounds of special or exceptional circumstances**

The Advisory Board recommends that applicants for enforcement review should be provided with additional time to obtain evidence in support of:

- An application on the ground of special circumstances. The request for additional time should be made by a fine recipient at the time the enforcement review application is made, or at a later time at the discretion of the Director, Fines Victoria. Additional time should be limited to three months to ensure that applications can be determined by the Director, Fines Victoria within a reasonable time unless the applicant can establish that more time is necessary.
- An application on the ground of exceptional circumstances, at the discretion of the Director, Fines Victoria.

## **19. Effective information-sharing between the Director, Fines Victoria and enforcement agencies to improve administrative decision-making**

The Advisory Board recommends that the Fines Reform Act should be amended to permit enforcement agencies to share information relevant to the exercise of a discretionary power of the Director, Fines Victoria when a fine is registered. In accordance with the principles of administrative law, the Director, Fines Victoria has discretion to determine the relevance, accuracy and reliability of the information provided.

To give effect to this recommendation, the requirements under section 16 of the Fines Reform Act should:

- Clarify that an enforcement agency is permitted to provide additional information to the Director, Fines Victoria at the time of registering a fine for enforcement. Additional information may relate to the circumstances of the offending, the circumstances of the fine recipient and any contact between the enforcement agency and the fine recipient prior to registration, including internal review decisions.
- Require an enforcement agency to identify registered fines that have been the subject of an internal review application and the outcome of the application including reasons for the decision.

## **20. Powers for toll operators to withdraw tolling infringements**

The Advisory Board recommends that the *Melbourne City Link Act 1995* and the *EastLink Project Act 2004* and other relevant or new Acts, should be amended to provide toll operators with own motion powers to withdraw tolling-related infringement fines. Matters withdrawn as tolling fines cannot be reinstated.

## **21. Additional time for fine recipients to access options to deal with unpaid fines**

The Advisory Board recommends that options to manage fines should be available until an enforcement warrant is executed or, at a minimum, 28 days after service of a seven-day notice.

# **The Department's Fines Remediation Program**

## **22. A transparent community and stakeholder communication model**

The Advisory Board recommends that Fines Victoria should develop a specific engagement model and communication strategy for the community and enhance its stakeholder engagement model.

The key features of this work should include:

- Improved communication tools and channels to keep stakeholders and the community informed on the implementation of Fines Reform and the performance of the overall system, including frequent and more measurable performance metrics.
- Enhanced governance arrangements giving stakeholders a deeper level of shared responsibility for the performance of the fines ecosystem and the operational challenges of Fines Victoria.
- The establishment of a dedicated stakeholder relationship management function within Fines Victoria to provide regular and consistent engagement with all stakeholder cohorts.

### **23. Additional measures to support backlog management**

The Advisory Board recommends that, to refine its management of fines in the backlog, Fines Victoria should:

- In relation to the overall fines debt pool, assess different strategies for management and resolution of both legacy fines and fines in the backlog since the commencement of the Fines Reform Act. These strategies include the potential grant of all enforcement review applications made on the ground of special circumstances and the non-issuance of arrest warrants for fine default in cases affected by extensive delay, where appropriate.
- Complete further analysis of the applications within the backlog, against agreed criteria, to prioritise according to age (length of delay in processing), quantum (number and type of infringements) and size of the debt (excessive total), and to consider appropriate triaging processes that should be applied.
- For outlier cases identified through this analysis, seek additional information to understand changed or worsened circumstances which may result in a decision to apply appropriate discretion as to whether the fine should be paid.

## **The forward plan**

### **24. A robust and co-designed operating model for the fines ecosystem**

The Advisory Board recommends that a robust operating model for the fines ecosystem should be aligned with the technology solution supporting Fines Victoria. The essential features of this work should include the:

- Addition of a small number of representatives from each of the relevant cohorts of the courts, enforcement agencies, toll operators and government agencies, to ensure they are actively engaged in the development and design of processes and systems to an agreed set of principles.
- Refinement of the governance model to ensure there is a single governance structure for IT architecture and technology selection across Fines Victoria's technology activities.