

Western Suburbs Legal Service Inc. is a community legal centre based in the inner western suburbs of Melbourne. We provide advice and casework to anyone who lives or works within our region. We deal with a wide variety of law including issues arising from Civil Matters, Criminal Law, Administrative Law and Family Law.

Our work involves assisting and advocating for a substantial number of persons in our community (with a substantial portion of our clients being from non-English speaking backgrounds or suffering from mental illness and other disabilities). Frequently our clients seek advice after they have received infringement notices, principally as a result of traffic fines, local council infringements or alleged public transport offences. Very often people seek advice due to a desire to know what their options are when they receive a fine. Sometimes, they have many fines and are overwhelmed by the number and rapidly increasing debt as they pass through the many enforcement steps.

Hence, the concerns that we raise principally relate to how the system works (or does not work) for persons with a mental illness, intellectual or other disability or with language and cultural difficulties. These clients make up a good proportion of our client base, and in our experience those clients with real difficulties with the PERIN system will usually have one or more of these factors operating in their case and usually a low income as well. However the issues we raise also have general application to all who come into contact with the PERIN system.

As part of our submission, we have created a mock infringement notice, (Attachment 1) which can be used to illustrate some of our concerns and recommendations for change. However, our recommendations are nonetheless tied closely to cases the Western Suburbs Legal Service has been involved with which involve the PERIN Infringements Process. Four case studies are also provided from the many with which we have dealt over the past few years. (Attachment 2)

SUMMARY OF OUR CONCERNS WITH THE CURRENT SYSTEM

1. There are many agencies issuing infringement notices in too many different formats. The information contained on notices is not helpful to persons who need to know what to do next where payment of the fine is not an option.
2. There are too many enforcement bodies and infringement agencies who each have different steps for considering objections and the waiver of fines;
3. No standard rules apply to persons who suffer a disability and what are acceptable as demonstrating exceptional circumstances;
4. The system of PERIN infringement enforcement is unnecessarily complex;
5. Instalment orders are not available at the initial payment stage, causing discriminatory additional costs to persons on a low income;

6. There is no fair and just system for setting or calculating the level of fines across agencies so that the level of fine fairly reflects the seriousness of the alleged offence;
7. There is substantial disparity in the amount of fines set by the various bodies when taking into account the seriousness of the respective offences.

(i) The Current system

We note that a large number of different bodies and agencies participate in the PERIN system (over 130 we understand, who issue infringement notices within the system), and a further array of bodies comprise the enforcement process itself (Civic Compliance, The PERIN Court and The Sheriff's Office being the principal contenders). As such it can be a confronting and daunting task for the ordinary person to negotiate, and even more so where there are non standard issues involved. Many clients do not know who to contact if they have a specific question, and very often find themselves caught in a game of bureaucratic ping-pong between the agencies. This can be heightened where they lack the necessary skills to deal directly with an office and the office refuses point blank to speak to a friend or representative because of 'privacy issues'.

We have enclosed in Attachment 2, four case studies. One feature common to all four case studies is the initial inability of each client to resolve their PERIN issues at the very first and earliest opportunity.¹

The initial inaction on the part of many clients appears, in part, to be a result of their confusion upon being confronted with the initial infringement notice, and the inflexibility of the system and those who process cases. We submit that if the system were simplified then it would be easier for those such as John, Angela, Maria and Caitlyn to quickly resolve their PERIN issues.

Currently, for example, an infringement notice and each enforcement letter or warrant gives information about where to pay, and where to send your 'nomination' or objection. For clients with many fines from different issuing agencies, dealing with what to send where, what is acceptable to one and not another, what is an acceptable explanation justifying waiver to any one or each of them, and how to get to speak to a person who actually will discuss your case are all extremely complex issues and quite outside their grasp. It

¹ John simply passed the infringement notices to his nephew in the belief that he would "take care of it". He failed to understand that it was his responsibility to deal with them properly and avoid a climbing enforcement debt when his nephew failed to do so.

Angela, when experiencing periods of severe physical illness, depression and psychotic conditions was unable to manage her daily needs.

Maria's separation from an abusive husband, her depression and the subsequent rejection by her community contributed to her inability to deal with the fines.

Caitlyn's physical and personal issues left her bereft of the tools to deal effectively with the enforcement steps necessary to protect herself from a burgeoning debt.

is hardly surprising that the 28 day period passes without action and the spiral of increasing debt incurred by the process itself commences and contributes to a sense of powerlessness on the part of the 'offender.'

Therefore, in order to streamline and simplify the current system, all the issuing agencies, the PERIN Court, Civic Compliance and the Sheriff's Office should form part of an umbrella organisation that manages the infringements sector. The entire sector would be 'branded' under the one organisation, and most importantly a single contact point would be established. This contact point would handle any general questions and consider submissions, direct the query or submission to the issuing body and ultimately determine whether or not a matter is to proceed further. This body could at any stage refer the client to a community legal service or VLA for legal advice.

Recommendation 1

A single organisation to be established which manages and oversees the entire infringements process. For example, the issuing agency does no more than issue the original notice and then all contact is with the enforcing agency, which will liaise with the issuing agency to discuss 'special circumstances', objections and explanations and waiver situations, and ultimately must have the power to withdraw or waive a fine, even if such waiver is against the wishes of the issuing agency.

Recommendation 2

*A hotline to be set-up as the initial contact point for the infringements sector, which would answer any general questions a client may have about the process itself, their options, how to make submissions, and direct them to the right bodies for any further questions or legal advice. The **background** of this initial contact point should be **beneficial and conciliatory** in nature, and its aim to resolve issues at that point.*

A suggested name for this umbrella organisation is the State Infringements Body (SIB). The SIB should also have the responsibility for setting the amount of each infringement penalty with an aim to make penalties across the sectors proportionately reflect the seriousness of the offence alleged. That is, fines could be levied in *units* for example – and the number of units applicable to an offence would reflect the perceived seriousness of the infringement itself.

The Fox study² highlights that perceived fairness is a critical factor when it comes to compliance with any legal system. It cannot be denied that consistency is an important element of fairness. Therefore, as far as possible the level of fine for each type of offence should be consistent, and the level of

² R Fox "Criminal Justice on the Spot, Infringement Penalties in Victoria " *Australian Institute of Criminology, Canberra* 1995.

finer in any case should not be disproportionate to the offence itself. One way of ensuring this is to delegate responsibility for the setting of fines to one body, and if the SIB or some other equivalent body were to be established then its' position spanning the infringements sector would make it the ideal choice. This would ensure that no longer were fines set in a social and policy vacuum (for a good example of such an occurrence see the *McQuillen Report*, discussed later in this submission).

Recommendation 3

The State Infringements Body should have the responsibility of setting each infringement fine to a proportionate level with reference to overall infringements levels, with the principal objective of comparative fairness.

In support of this recommendation, it is useful to note the recently evolved discrepancy between the manner in which those travelling without a valid ticket on public transport are treated when compared with those travelling without an e-tag on CityLink. During the course of 2004 a fine for travelling without an e-tag on CityLink was reduced to the amount that the journey would otherwise have cost plus a small administration fee (to come into effect in mid-2005). Meanwhile, during the same period of time the fine for travelling on public transport without a valid ticket was increased from \$100 to \$150 and for the second, third and subsequent offences in a three year window it increases to \$200 and \$250 respectively. Interestingly, this came into effect almost immediately it was announced.

On the one hand, those who travel on CityLink without an e-tag are 'people' who have 'made a mistake' and should 'be given the opportunity to pay via invoice',³ but those who travel on public transport without a valid ticket are 'fare evaders' or 'freeloaders' who 'bleed money from the public transport system.'⁴ Yet, in our submission there is no justification for the difference between the punishments for the two offences. Both involve the use of infrastructure without paying the requisite fee. You could even argue that this policy is discriminatory towards those who cannot afford to purchase a vehicle. Apparently it is more permissible to choose to travel without an e-tag while driving hundreds of kilograms of metal at a hundred kilometres per hour than to fail to validate your daily ticket on a crowded tram.

We believe the disparity in practice here of itself justifies a firm and swift change in policy and practice in public transport offences, and also across the entire 'PERIN – regulated' process to address this current situation and prevent such flagrant disparity arising in future.

³ Media Release for the Minister for Transport, "CityLink toll invoices a win for motorists", Wednesday November 17 2004.

⁴ Media Release for the Minister for Transport, "Public Transport – Rights and Responsibilities", Tuesday October 7 2003.

Recommendation 4

That the fine for travelling on public transport without a valid ticket, and other ticket related public transport offences be reduced to the cost of a valid ticket plus a small administration fee.

(ii) A Common Notice

The most pressing current objection to a common infringement notice issued by all enforcement agencies, is that each agency has their own particular needs and processes for managing fines. However, if a streamlined option as suggested were adopted, that objection would largely disappear. Hence, it should still be possible and practicable to have a common notice with minor adjustments where necessary. Given that John, Maria, Caitlyn and Angela were all initially confused about what action to take in relation to their fines, having a notice with a common design would help facilitate familiarity with the PERIN system. They would only need to read and understand (or have explained to them) their rights on one notice before they were in a position to read and understand their rights on all.

Recommendation 5

Every infringement notice to share a common design, and incorporate certain requisite information, including:

- a) A clear directive on who to contact and where to get advice about the notice;*
- b) A statement on how to pay – including instalment options which should be available at the very earliest point in the penal process*
- c) How to object if you believe you have a defence;*
- d) what happens if an objection is lodged and the matter proceeds to court;*
- e) How to inform the authority if you have special circumstances, and giving examples of what they may be;*
- f) what happens if you ignore the fine – the extra costs, which should be clearly stated in numeric terms;*
- g) What happens if the fine and enforcement costs are ignored – that is, what are the risks of a person choosing to ignore the matter.*

(iii) Instalment Orders

Even though legislation currently provides for issuing agencies to accept instalment orders, at this point in time this does not represent standard practice. Due to the lack of an instalment order option, a greater financial burden is placed on the most disadvantaged sectors of our society. For example, Angela was overwhelmed by repeated attempts to pay off the fines and her sense that the debt was continually increasing no matter how much she paid. Angela had a debt of \$7,500 in fines and an extra \$9,000 in enforcement costs on top of that. Yet if Angela had an instalment order option when she initially accrued the fines then an extra \$9,000 in debt could have

been avoided, as could all of the administrative costs and inconvenience to the State in pursuing each enforcement step.

Given the likely outcome that instalment options made available early in the process would greatly reduce the burden to the system overall by resolving a vast proportion of debts at the initial entry point, the question must be asked why instalment orders are not more prevalent. When challenged on the availability of instalment orders at least one council has provided the following reasons:

- (i) The cost of software modifications to support a part payment scheme.
- (ii) Managing an instalment system on Council's existing infringements database, and
- (iii) Costs to Council in circumstances where there is a default on some payments and the balance owing makes it not viable to register the unpaid amount with the PERIN Court.

It is true that in practice the council in question allows longer than the statutory 28 days to pay the fine, by extending the due date. This is no solution, however. If a pensioner cannot afford a large sum of money one month what makes it more likely that they will be able to afford the exact same amount the next month? To suggest that they should be able to save from their pensions is to ignore the reality of poverty with which these people live. It also fails to recognise the stress which these debts cause to the clients – a stress which is usually out of all proportion to the offence charged.

In relation to the extra costs involved in setting up and administering an instalment payment scheme and the ongoing costs of such a scheme, these need to be set against the enforcement costs continually accrued by agencies and the State government through the PERIN court against low-income earners and welfare recipients. Only a proportion of those costs can ever be recouped from the offender. In our submission, a system which fails to enable people an early method of paying off fines inflicts *on itself* every cent of costs incurred beyond that point.

Surely, it is submitted, an instalment program instituted and controlled by a single body (in our example, the SIB) at the very first contact with the system would prove far more cost effective than the current system – and be a fairer system overall.

Even if local councils and other bodies do not in the long run recoup the costs of implementing and managing an instalment payments system, it is still worth pursuing an instalment payments system for the net social benefit that would result. It is inequitable for a society to doubly punish its most disadvantaged members when they cannot afford an upfront payment. So, either the State government would need to assist local councils and other bodies to set up and manage an instalment payments system, or each body that accepts the payment of infringement notices divest the responsibility to a central agency.

Recommendations 6 and 7 are effectively alternatives due to the difference in our current system and our 'ideal' system.

Recommendation 6

The State government directs and assists local councils and other bodies to establish and manage an instalment plan system for the payment of infringements immediately.

Recommendation 7

*Each body that accepts the payment of infringement notices divests the responsibility to a central agency, which has the capability to manage instalment plans **at and from** the earliest stage.*

The assumption underlying these recommendations is that the instalment plans will be related to each person's financial situation. In our submission it can not be said that current instalment orders (which are not available until well into the enforcement process) actually do take into account an individual's actual current financial situation.

When issuing instalment orders it is common practice for the PERIN registrars to set a 'reasonable' pay-off period, which, when the debt is large, inevitably mean that a person may be asked to pay off more than their income will allow. The underlying need for instalment plans is because the individual cannot afford to pay off the fine in a lump sum, so it is counterproductive to divide that lump sum into smaller parts which the individual *still* cannot afford – yet this is what currently occurs. Therefore, the primary requirement of an instalment plan should be whether or not the individual will be able to pay it off and not that it be repaid within an unrealistic time frame as currently occurs.

Recommendation 8

When setting an instalment plan the primary concern should be whether or not the person will be able to pay each instalment required after taking into account their current financial circumstances.

(iv) Day Fines

In our very own football code, Australian Rules, there has been for many years a system of punishment tailored to characteristics of individual offenders: the match fine system operates so as to penalise the offender of their match fees. A star player earning \$20,000 per game pays \$100,000 for a 5 match penalty, a rookie earning \$2,000 a game is fined \$10,000. The goal of this punishment is based on the concept of equalisation. Every player should have an equal disincentive to commit the offence – precisely the goal of our traffic and parking fines.

To increase compliance with payment of fines the issuing body could set the rate of the fines more equitably. In the context of Infringement notices, this would have the double effect of increasing the perceived fairness of a system, especially as regards low to medium level income earners who are the most debilitated; and increasing the revenue received by simply fining people at a rate which they can manage.

One way of reducing the demand for instalment plans is to have fines set at a more equitable rate. In some ways using money as the basic unit of assessment for fines has led to disadvantaged peoples accruing large debts and being punished disproportionately, because while \$100 has a universal value it does not have the same impact from person to person.

For a well-paid professional \$100 could be a mere inconvenience but for another it could represent half their weekly income. This highlights a fundamental flaw in using a monetary amount in the PERIN system as the basic unit of punishment; that is, it places a disproportionate burden on those with the least means. Using a dollar amount as the basic unit of assessment has, in our submission, also contributed to a ballooning in the enforcement costs of chasing many unrecoverable PERIN debts.

We propose a model which addresses the aforementioned concern of establishing a clear standard of seriousness attributable to offences, whilst simultaneously gaining the benefits of system based on an equal disincentive for all offenders.

PROPOSAL – A MODEL FOR FINE CALCULATION

The proposal consists of calculating fine amounts in two stages:

1. Firstly, the gravity of the offence is ascertained
2. The fine amount is then equalised by an income-based assessment

Clearly, consistently and openly setting the seriousness of offences

The grading of our fines needs to be in line with the general public's perception of the varying seriousness or gravity of offences. In order to achieve this, we refer to the proposition of a single body which co-ordinates the infringement system as previously mentioned. This body would be in a position to assess the seriousness of each offence and clearly publish the information. This would ensure that the seriousness of offences is streamlined as between all infringement bodies where there is currently considerable variation in fine levels for the same offence, for example as between councils. This would add much clarity to a currently convoluted and often incomprehensible system.

Most importantly, the reasons behind the grading need to be clearly explained, and applied consistently so that the public can have confidence in the system and be sure that they have not become targets of overzealous revenue-raising.

Income-based assessment

The aim is to set up a fine system which equally deters potential offenders from any financial background. In this proposal, the Amount of the fine (represented by the letter 'A'), would be determined by considering the Seriousness of the offence ('S'), and then applying an Equalisation scale based on the offender's income ('E')

This adjustment would work by way of a scale, the lowest income earners would receive the lowest fines, and very high income earners receive the highest fines.

A simple calculation, the Amount of the fine equals the Seriousness of the offence Equalised by the offender's income; or

$$A = SE$$

All that remains is for the fining body to set the standard amount for a level 1 (least serious) offence, with higher level offences set accordingly; and an appropriate separation of income brackets.

For example, for the least serious offence, the scale would operate as follows:

Income (\$ p.a.)	Seriousness (1 = \$50)	Equalisation (1 -6)	Amount (\$)
(eg.) < 20,000	\$50	1	\$50
20,001 – 40,000	\$50	2	\$100
40,001 – 60,000	\$50	3	\$150
60,001 – 80,000	\$50	4	\$200
80,001- 100,000	\$50	5	\$250
(eg.) > 100,000	\$50	6	\$300

This proposal succeeds on two levels: first, it allows for the provision of sensible minimum and maximum fine rates (bearing in mind that the above table is only one hypothetical scenario); secondly, it ensures that most members of the community pay, per offence, an equivalent percentage of their income.

The key result in this fine assessment proposal is that it creates, across all income levels, a more equivalent disincentive for offending. Furthermore, it should deter high income earners from blatantly disregarding the rules, and see low-income earners paying an amount without undue hardship. The average wage being currently \$50,000, the vast majority of offenders would fall within the \$40,000-60,000 p.a. range.

Possible problems with income-based fines

Of course, there have been many concerns put forward (mostly we suspect by those high-income earners who would be exposed to much greater fines) about the implementation of an income-based fines system.

One concern raised is how such a system would assess the income of offenders. The main concern derives from the fact that Australia has a Federal income tax system and a State-based fining operation. It is assumed that the Commonwealth and State bodies would be unable to co-operate, and that to set up mechanisms permitting the States access to Federal income tax resources would be costly and inefficient.

In response to this, we note that our proposal is that the default fine would be the highest level and the onus of proving that a lower level applied would be on the offender – not the government. Proof of income must be by certain accepted documentary proof – copy of last year's income tax assessment notice, Centrelink annual statement or pension card etc. To avoid and deter the risk of persons fabricating this evidence, an authorisation clause could be added which allowed the infringement body to conduct random checks with the ATO or Centrelink, coupled with a heavy fine if false information is provided. It is submitted that such a limited authorisation mechanism could be initiated at minimal cost and inconvenience to governmental bodies.

And while it is acknowledged that people rich in assets but relatively poor in cash-flow might be able to exploit the system, this complaint is seen as being outweighed by the benefits outlined. Indeed, many Countries have applied similar systems with great success.⁵

This type of solution to the problem was also raised by Dr. Clive Hamilton in his recent report *Making Fines Fairer*⁶; namely, the person seeking to establish their income and rely on it to decrease the penalty would bear the onus of proving it with documentary support.

Alternatively, fines could be calculated on the basis of a percentage of the daily or weekly wage of the infringer. Sometime an individual's weekly income will fluctuate significantly, and based on the principle of equalisation, whilst assessing the fine amount such factors should be considered.

A starting point would be the average weekly wage. Hence, one unit would be equal to a set percentage of the average weekly working wage and the punishment for each offence covered by the PERIN sector would be comprised of the appropriate number of units. If a particular person could show satisfactory evidence that they receive less than the average working wage, then the basic unit of assessment could be adjusted to their wage. Satisfactory evidence would include documentation like that for proof of income mentioned above.

⁵ See, for example, the schemes that have been operating in Germany, France, Denmark and Sweden.

⁶ Dr. Clive Hamilton "Making Fines Fairer" *The Australia Institute* December 2004.

Day fines are not a novel concept, and have been successfully applied in many European and North American jurisdictions.⁷ There have been objections to such a system on the grounds that they can lessen the punishments level for many offences, and hence might increase the rates of offending. It is submitted that such a complaint is addressed by the fact that our recommendations suggest income bracket thresholds which are flexible and can be fine-tuned to avoid this consequence. As the proposal above shows, there need not be much change in the fine amounts for a large majority of offenders – the primary aim is to alleviate the burden on the very-low income earners and to equalise the disincentive for the population as a whole.

Recommendation 9

Fines are to be set on the basis of their seriousness and the income earned by the offender.

The question arises whether or not there is a place for instalment orders in a day fine infringements system. However, in our submission each would complement the other. In Maria's situation, for example, not only is she a welfare recipient but she also has a number of children to support as well. So, although a day fine system would make the initial fine easier to pay off in one lump sum, an instalment plan could be used to further reduce the burden on Maria and her children. Hence an instalment plan would still be necessary in the case of welfare recipients or low income workers who may have, for example, unique expenses at the time of the fine.

The McQuillen Report – issues of arbitrariness in 'fine setting'

The *Review of Arrangements for Authorised Officers Employed by Public Transport Operators ('McQuillen Report')*⁸ had its genesis from the Victorian Parliamentary Law Reform Committee report on its inquiry into the *Powers of Entry, Search, Seizure and Questioning by Authorised Persons*. As a result of that committee inquiry, the Victorian government promised to examine:

- current operating procedures in a range of situations
- selection criteria for inspectors
- public complaints regarding the conduct of inspectors
- the systems employed to oversee and supervise the process

⁷ Philip Lynch "Making PERIN Fairer for People Experiencing Financial or Social Disadvantage: Submission to the Victorian Parliament Law Reform Committee Inquiry into Warrant Powers and Procedures" August 2004 p 27.

⁸ Rob McQuillen "Review of Arrangements for Authorised Officers Employed by Public Transport Operators" 2003
www.doi.vic.gov.au/DOI/Internet/transport.nsf/AllDocs/C5D187185AA147774A256DB40023C780?OpenDocument as at October 17th 2004.

- the training of inspectors and identify areas in which re-training would be beneficial to ensure inspectors are able to effectively deal with all passengers.⁹

One of the reports which was commissioned and arose from that examination was the McQuillen Report.

The Western Suburbs Legal Service has concerns with the *McQuillen Report* where it raises and recommends public transport fine increases. Those recommendations are arguably outside its' own terms of reference and are made out of no legitimate discussions as to why the change is needed. We raise it here because the *McQuillen Report* highlights a pressing problem in the infringement notices system, namely the ad hoc nature of fine increases without reference to the overall infringement system. We would argue that it also demonstrates a disturbing willingness on the part of Government to act (and with alarming alacrity) on questionable grounds where increasing revenue from fines is concerned.

As noted above, the recommendations concerning the public transport fine increases appear to be outside the terms of reference of the report. The *McQuillen Report* is officially titled 'Review of Arrangements: Authorised Officers Employed by Public Transport Operators'. According to its terms of reference the report is supposed to provide advice and recommendations on:

- Current arrangements for the engagement, training and authorisation of authorized officers including adequacy of:
 - selection criteria
 - training provided by Operators (train, tram and bus) and the Department of Infrastructure before and after authorisation
 - supervision, particularly in the field.
- Current procedures for the conduct of enforcement activities by authorised officers including:
 - on board trains
 - on board trams
 - on board buses
 - at stations
 - off system
 - seeking Victoria Police assistance

And yet, despite no brief to discuss the amount of fines, at page 24, the report, without proper and substantiated discussion for such need, recommends the increase in public transport fines to their current level. **Troublingly, this report has been quoted as the report justifying those increases when they came into force.**¹⁰

In our submission, The *McQuillen Report* does not have sufficient analysis of the issue of increasing fines, and the issue itself is abruptly raised in the

⁹ Ibid, pp. 1-2.

¹⁰ Media Release for the Minister for Transport, "Public Transport – Rights and Responsibilities", Tuesday October 7 2003.

report, without intelligent analysis of the need or consequences of such an increase. "The issue of penalties and fines for offences also needs to be addressed in this context." The context referred to being the over-reliance on Authorised Officers for revenue protection.

If fines are made heavier, and the authorities for whom the Authorised Officers act are consequently paid *more* for each offence, our submission would be that this will only *increase* the reliance on Authorised Officers for revenue protection, despite the *opposite* being the report's stated aim.

Two arguments are raised for the increasing of fines, whilst none of the arguments against are considered. The first argument is confined to one sentence:

- *Maximum penalties and fines have not increased since 1994 when most Transport Infringement Notices were increased from \$50 to \$100.*¹¹

The missing premise in this argument is that if a particular fine has not increased in 10 years then it is time for that fine to go up again. We submit this is not at all an appropriate or necessary deduction. No satisfactory reference is made to any possible impacts the increases in fines may have.

The second argument relies on a generalised statement as to the character of 'fare evaders'.

- Given the relative cost of a ticket, the chances of being caught without one and the level of penalty if an offence is detected, fare evaders are financially in front by deciding not to purchase or validate a ticket.

First, no numerical backing is provided for this rough calculation. Second, 'fare evaders' are characterized as cynical operators who make a reasoned financial decision in order that they can save a few dollars. Third, the argument could also be used to justify a *decrease* in the overall cost of public transport tickets.

On the basis of those two arguments, McQuillen concludes that in order 'to disincentivise fare evaders consideration should be given to:

- increasing Transport Infringement Notice fines
- introducing higher (graduated) fines for second and subsequent offences'

However, no consideration is given to the identity of the 'fare evaders', no statistics of fare evasion are discussed, no examination made of who and why evasion occurs, and whether other modes of enforcement could be implemented. And yet our government used this report as the considered reason for increasing fines across the board. For instance, a fine for fare

¹¹ The McQuillen Report, page 23

evasion as a first offence now represents 72% of the gross weekly income of a person on Centrelink benefits.¹² So, on the basis of a short comment buried in the middle of this report and outside of its terms of reference, public transport fines have been increased across the board in the order of 50% (and even more for second or subsequent offences).

In our view, the *McQuillen Report* is symptomatic of the problems of the Victorian regulatory system. In this instance, fines were only examined in the very narrow context of fare evasion, without any reference to the wider impact of the fines. Speaking generally, of course each government department has a specific area to deal with, and often fines are used as the first port of call to achieve enforcement in that regard, however, who is responsible for the overall equity and impact of each of the offences that the government departments regulate? In our submission, Victoria needs a fines regime that is consistent for each body and across all bodies, and yet flexible enough to cover the situations of the most disadvantaged members of society.

CONCLUSION

The Western Suburbs Legal Service Inc. supports change within the legal system in the area known generally as PERIN Fine Management. This submission makes recommendations aimed at providing a fairer and more transparent system. It does not purport to provide the fine detail in how our recommendations can be legislated or implemented. Our intention is to contribute to a general discussion aimed at highlighting our perceptions of the shortcomings of the current system and floating some ideas for an alternative system. We would appreciate the opportunity to be involved in that process, or to provide further clarification of any matter raised in this submission.

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¹² www.centrelink.gov.au/internet/internet.nsf/payments/pay_how_yal.htm as at 26th July 2004. The percentage was calculated at the maximum rate of Youth Allowance per fortnight to a person over 18, living away from home and receiving the maximum rent assistance.

Case Study 1: John

John is 57- year old single man, who was born in Sicily and migrated to Australia at the age of 7. In 1975 John was diagnosed with a chronic Schizophrenic illness. Since that time John has lived with his brother and occasionally his niece and nephew. John, now on an invalid pension, spends most of his time at his family home and is substantially reliant upon his family to undertake many administrative matters for him, including paying his bills.

From 2001 to 2002 John received a total of 12 infringement notices, three for speeding, one for driving an unregistered vehicle and eight for parking on a nature strip. John's nephew was using his car at the time of the offences and incurred the fines without telling John.

When John received the infringement notices in the mail, he gave them to his nephew. His nephew always told John that he would "take care of it" and that he had made arrangements to pay the fines. John, believing his nephew had taken care of the matter, and unaware of the consequences if he hadn't, did not seek assistance from anyone else until 2003, by which time the fines had all proceeded through to the enforcement stage of the Perin system.

A family friend made representations on John's behalf, including asking for the debt to be paid by instalments, but had been unsuccessful. He was told that he had to wait until the enforcement stage and apply for an instalment plan then (when the enforcement costs had been added and the debt risen considerably.)

Pressure was exerted on John's nephew to pay the fines but he had a number of his own debts, and so did not have the funds to cover the fines. In fact by the beginning of 2003 John had accrued a debt of \$2529, including enforcement costs. John came to the service with the family friend (and on her instigation) because they had no idea what to do.

John's file was open at the Western Suburbs Legal Service from March 2003 to February 2004, and 12 and a half contact hours (a conservative estimate) were spent on John's case. Initial applications to the agencies involved lead to some of the fines being withdrawn but a number proceeded to the enforcement stage. This was despite the same grounds being provided to all agencies explaining John's mental health situation. The file was open at the Western Suburbs Legal Service for nearly a year and the first offence occurred in July 2001, so it took two and a half years from the first offence to the closure of the case, causing added mental stress for a man with a chronic mental illness and who has trouble paying his own regular bills.

Eventually in July 2003 the remaining fines were revoked by the PERIN Court, however, only Hobsons Bay City Council and Stonnington City Council subsequently waived the outstanding infringement notices. The Traffic Camera Office did not withdraw its four notices. Those matters were finally resolved in the Special Circumstances List at the Melbourne Magistrates' Court in January 2004, with charges against John being dismissed as a result of his special circumstances, on the condition that his psychiatric treatment continue. John's file is 147 pages long.

This case highlights the following points:

- a) Persons with a mental illness or other disability often lack the means to understand or deal with the many types of offences which are dealt with by way of the Perin system;
- b) Failure to 'deal with' infringement notices can have enormous consequences for such clients who are often on a low income due to the escalation in the debt;
- c) A mounting financial debt has the capacity to exacerbate an existing mental health or emotional condition or overwhelm persons on a low income with no possible means of meeting that debt – such results being in addition to the normal punishment process and out of all proportion to the offence being punished.
- d) Agencies have inconsistent approaches to considering waiver or withdrawal of fines;
- e) Agencies do not have adequate processes in place to enable early consideration of a client's circumstances and instalment payments to prevent the escalation of the debt;
- f) Persons who receive infringement notices are not properly or clearly informed of the consequences of the fine, failing to pay it, the steps in enforcement and the grounds on which the notice can be challenged or considered for revocation.

Case Study 2: Angela

Angela is a young woman who has had recurrent episodes of both a severe physical health condition and diagnosed depressive conditions. During periods when she is unwell, she is completely unable to manage her personal day to day needs, leading to extensive civil 'disobedience' offences and minor traffic offences.

When she first came to us, she had various fines totalling around \$7,500 from a 3 year period, **which had incurred additional enforcement costs of around \$9,000**. She was overwhelmed by repeated attempts to pay off the fines and her sense that the debt was continually increasing no matter how much she paid.

With our help, she negotiated an instalment plan but due to relapses in her physical health has had great difficulty maintaining her employment or the instalment requirements. When her instalment plan had The Sheriff had contacted her on a number

This case demonstrates clearly that persons with disabilities are vulnerable to abuse by the PERIN system. The system claims to be an efficient and equitable system of enforcement but this client is required to repay more than double her original debt.

Case study 3: Caitlyn

Caitlyn had a history of drug abuse during her youth and when she came to WSL she had longstanding enforcement orders totalling around \$4,000. These had arisen from

parking and other minor traffic offences. C had tried on many occasions to resolve the debt but had been unable to do so. She had multiple issues in her personal life including ongoing drug rehabilitation and reliance on a disability support pension. She also had bitter family issues which complicated her ability to cope with day to day problems. Sadly, she had also been diagnosed with a terminal illness.

Despite advocacy on Caitlyn's behalf, the issuing agencies and the Perin Registrar refused to withdraw the penalties or enforcement orders. The service was forced to apply to a court for their revocation and then to have the matter heard in the Special Circumstances list once the orders had been revoked. Caitlyn's fines were ultimately waived as a result of the court accepting her special circumstances. Once again, considerable resources were utilised both in the enforcement agencies, the court and through this office to achieve a result which should have been possible a long time earlier.

Case Study 4: Maria

In late 2003, with the assistance of the police and the Department of Human Services Maria left her abusive husband and took their children with her, amid allegations that he had sexually assaulted their 14 year-old daughter. Furthermore, Maria's husband had physically assaulted her for years.

Due to the fact that she left her husband, Maria was rejected by her community. As result of all this Maria was isolated and suffering from guilt, stress and depression. She was also in a precarious financial position. Maria lived off the parenting payment that she received from each child, which was enough to just cover the rent, household expenditure and school fees, although she had \$10, 000 owing in unpaid school fees at the time. Maria did not receive child support from her husband.

It was in these circumstances that Maria received four parking fines and a speeding fine in a two-month window in early 2004. However, Victoria Police rescinded the infringement notice issued for speeding on the ground that someone else was driving the vehicle at the time.

According to her treating psychologist, Maria's condition and situation contributed to her commission of the offences and the inability to deal with the fines when they were sent. Nonetheless, the Registrar of the PERIN Court initially refused to grant a revocation of the parking fines. An extension of time for payment was granted, but no instalment order program could be agreed upon.

It was not until late October 2004 before the fines were revoked after a hearing at the Special Circumstances List at the Magistrates' Court. Fatima's case had taken over ten months between the commission of the initial offence and the appearance before the Special Circumstances List.