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# The Infringements System

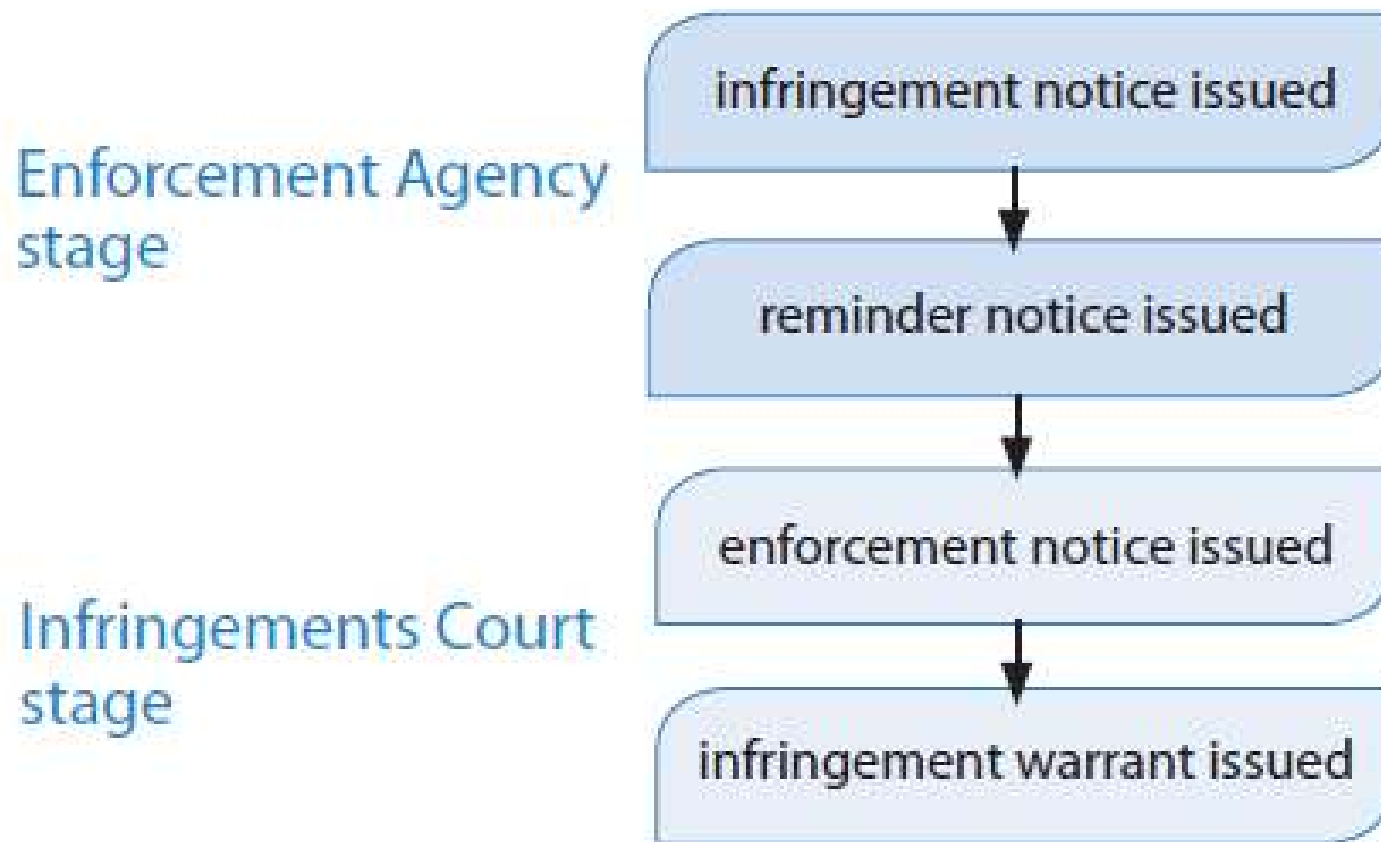
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# The Infringements System



# Assisting a Client with Unpaid Fines

1. Obtain details of all unpaid fines, including:
  - Infringement notices not registered with Infringements Court from client or issuing agency
  - Infringement notices registered with Infringements Court (ie, Infringement Enforcement Orders and Warrants) from Infringements Registrar
  - Outstanding court imposed fines from Infringements Registrar.
  - Possible outstanding warrants from the Sheriff.
2. Obtain details of client's financial, social, physical and mental state and circumstances to determine course of action.

# Issuing agency stage

1. Fines are issued by Agencies
  1. Payment of penalty within 28 days results in expiation
  2. Non-payment results in issue of a 'penalty reminder notice'.
2. Under the Act, authorised officers of Agencies can choose to issue an '**official warning**' instead of a fine.
  - Issued where considered appropriate in all the circumstances
  - Official warning will be in writing
  - Issued at the officer's discretion
  - Agencies will develop their own guidelines
  - An official warning can be withdrawn and does not preclude other action

## Issuing agency stage

3. Failure to pay fine within 28 days of penalty reminder notice results in registration of Infringement Notice with the Infringements Court. Infringements Court then issues an Infringement Enforcement Order.
4. Failure to deal with the Enforcement Order within 28 days results in issue and execution of an Infringement Enforcement Warrant for seizure of property or person, or other powers that Sheriff has under the Act.

# Dealing with fines at issuing agency stage

1. Internal Review (sec 22): Request an **internal review** of the decision to issue an Infringement Notice on the ground that:
  - the decision was contrary to law or involved a mistake of identity
  - special circumstances apply to the person
  - conduct for which infringement notice was served should be excused on the ground of exceptional circumstances
- ‘Special Circumstances’ defined in section include:
  - mental or intellectual disability
  - serious addiction to drugs or alcohol
  - homelessness
  - **Special Circumstances must ‘control conduct’ that leads to the offence – this will be interpreted broadly**
- NOTE: if an application for Internal Review (Special Circumstances) rejected, the Agency is obliged to refer the matter straight to court.

## Dealing with fines at issuing agency stage

2. Seek cancellation of Infringement Notice (sec 37) where person was not aware that IN had been served
3. Ask agency for time to pay or payment by instalment
  - Automatically entitled to a payment plan if in receipt of Centrelink Pensioner Concession Card, Veteran Affairs Pensioner Card, Centrelink Health Care Card
  - Agencies have discretion to offer Payment Plan to anyone else upon application and should take into account 'unavoidable financial hardship'
  - 'payment plan' is considered either (1) extension of time to pay or (2) payment plan
4. Object to being dealt with under Infringement system and request that matter be referred to open court
5. Pay in full

# Infringements Court Stage

If no action is taken before the 'penalty reminder' period expires, Infringement Notices are registered with the Infringements Court and become Enforcement Orders

Options for dealing with Enforcement Orders:

- If client did not commit offence or has valid reason for committing offence, apply for revocation (sec 65)
- 2. If client has 'special circumstances' that contributed to commission of offence or inability to pay, apply for revocation (sec 65)
  - Letter from doctor, psychiatrist or psychologist (12 months)
  - Letter from homelessness agency (12 months)
  - Check with current status of these documentary requirements with Infringements Court
- 3. If neither 1 nor 2 apply, apply for variation of costs and and/or payment by instalment or extension of time to pay (sec 67)



# Infringements Court Stage

- Application for revocation where client has ‘special circumstances’
  - Can be made by person acting on person’s behalf and does not need to be accompanied by a statutory declaration
  - Application should include details of:
    - ❖ Client’s mental illness, addiction, homelessness (as much detail as possible);
    - ❖ Any support letters from case workers, doctors;
    - ❖ How condition resulted in being unable to understand the conduct that constituted offence, or being unable to control conduct
    - ❖ Client’s current situation (housing, health, treatment etc)
    - ❖ Client’s weekly income and expenses; and
    - ❖ How payment of outstanding amounts would exacerbate client’s condition.
- The Infringements Court and the Magistrates Court want to see that an individual is engaging with social services

## Applying for revocation on special circumstances

- Has the homelessness resulted in the person being unable to control conduct which constitutes an offence. If so, how?
- Has the mental illness or drug addiction resulted in the person being unable to:
  - understand that conduct constitutes an offence; or
  - control conduct that constitutes an offence?

# Infringements Court Stage

- Homelessness:
  - Current living arrangements (if any).
  - The type of homelessness, and reasons for being homeless.
  - Period of homelessness.
  - Was the person homeless at the time of committing the offences?
  - If so how the homelessness contributed to the offences?
  - Does the person suffer from any other illness (mental disorder, drug or alcohol addiction etc)?
  - Is the person taking medication?
  - Are they currently undergoing any treatment/rehabilitation?

# Infringements Court Stage

- Mental Illness, drug/alcohol addiction:
  - Diagnosis of the medical or mental health condition;
  - How the condition affects the persons' daily life;
  - Any current treatment and medication;
  - How long the person has suffered from the medical or mental health condition.

# Infringements Court Stage

- Transferring traffic infringements – nominating other drivers
  - When the client was not the driver of the vehicle.
  - Supreme Court authority – if driver does not transfer the fine within the specified time period they will be held liable.
  - Usually two periods of 28 days to act – ie by the time it gets to the Infringements Court it is too late
  - However, Infringements Registrar may consider special circumstances in these cases. May still decide to revoke the fine outside time limits.
  - Must satisfy Registrar that they were not driver. Evidence such as Statutory Declaration useful, or plane tickets, passport stamps proving that the individual was not in the country at the time.

# Process Following Revocation Application

- Revocation granted: Enforcement Order removed and underlying fine sent back to issuing agencies to either (a) withdraw or (b) confirm. If agencies do not withdraw matters, they are referred to court for hearing:
  - sec 65 Special Circumstance Application – Special Circumstances List, Melbourne Magistrates' Court – Thursdays at 10am and 2pm
- Revocation denied: Enforcement Order remains in place and client expected to pay outstanding amount. Can “appeal” Registrar's decision not to revoke (sec 68). The ‘appeal’ is heard in the Magistrates' Court (sec 68).  
**NOTE:** beware time limits for appeal.

# Time limits for ‘appeals’ of revocation denials

- Clock starts when the person is notified of the decision not to revoke the infringement.
- Client has right to refer matter to open court within 28 days of notification.
- Registrar has discretion to permit referral to open court within three months of notification.
- Cannot appeal after three months. (We are seeking a statutory exception to this rule for people claiming special circumstances).
- Last resort is to have client arrested by sheriff and brought before the Court (section 160).

# Hearing an Infringements Case in Court

- In your advocacy you should aim to:
  - Negotiate with prosecutor before the hearing to have the infringements withdrawn
  - Seek to identify mitigating or special factors and address underlying causes of 'offences'
  - Demonstrate (if possible) that client is not a 'serial' infringer
  - Demonstrate proactive engagement with support services
  - Demonstrate support from caseworker or family
- Court has a broad discretion and range of options under *Sentencing Act 1991* (Vic)
  - Unconditional dismissal (s 76) – best case scenario
  - Adjournment without conviction (often with conditions such as good behaviour) (s 75)
  - Adjournment with conviction (s 72) (often with conditions)



# Execution of Infringement Warrants

- Infringement Enforcement Warrant are issued 28 days after non-payment of Infringement Enforcement Order
  - Sheriff must give 7 days notice and then has a range of enforcement mechanisms available:
    - search property and seize personal property
    - detain, immobilize or sell a motor vehicle (irrespective of whether warrant relates to motor vehicle offence)
    - suspend driver's licence or vehicle registration
    - attach earnings or debt orders
    - place a charge over real property and sell in some circumstances
  - If client is impecunious, client can be taken into custody

# Execution of Infringement Warrants

- If client taken into custody by the Sheriff, can be assessed for eligibility for Community Work Permit. Only eligible for CWP if:
  - Fines less than \$10,000
  - Can work more than 20 hours in 7 day period
  - Worked off at 0.2 of a fine unit
- If person is not issued with CWP, they must be taken before court where court may order (sec 160):
  - Discharge or adjournment if person has mental disorder, intellectual impairment, brain injury or dementia
  - Discharge, adjourn or reduce amount where imprisonment would be excessive, disproportionate and unduly harsh
  - Imprisonment in all other cases – one day per \$100

# Recap of Special Circumstances

- Now 4 points at which people with 'Special Circs' can be diverted out of infringement system:
  1. At discretion of agency at point of issue of fine;
  2. At Agency Review Stage;
  3. By Infringements Registrar at Enforcement Order Stage; and
  4. Special Circumstances may also be considered by Magistrate following execution of a Warrant (s 160).

# Dealing with Open Court Fines

- Not possible to apply for revocation of fines imposed as a sentencing disposition under the *Sentencing Act 1991* (Vic) in open court
- Options for dealing with court imposed fines:
  - If fines were imposed ex parte and client has valid reason for non-appearance, apply for rehearing (*Magistrates' Court Act 1989* (Vic) s 93)
  - Apply in person to Registrar of Magistrates' Court for conversion to unpaid community work (CBO) (Work allocated and supervised by Office of Corrections at \$20 per hour)
  - Apply in person to Registrar of Magistrates' Court for payment by instalment or extension of time to pay

## Case study 1

John comes in with 6 infringement notices for speeding and drug driving. Three notices are at the enforcement stage. The remaining 3 are approaching the due date. What further instructions do you require and what is your advice?

## Case study 2

Magdalena comes in with an infringement notice for travelling on the train without a concession card. Magdalena was entitled to such a card but thought that her Medicare card was a concession card. Magdalena has poor English skills. What further instructions do you require and what is your advice?

## Case study 3

Brian is homeless (sleeping rough) and has multiple infringement notices for travelling on public transport without a ticket. What further instructions do you require and what is your advice?

## Case study 4

Bob has a mental illness and has recently sought the assistance of a psychologist. Bob has been taking illicit drugs to help him cope. Bob also has a caseworker who assists him in his day to day life. Bob has several infringement notices for speeding and drug driving.

Without seeking any advice Bob decided to contest the infringement notices and several charges and summonses have been issued. What further instructions do you require and what is your advice?



# Resources

- Resources
  - Infringements Chapter in HPLC Homelessness Law and Advocacy Resource Manual at [www.pilch.org.au/hlarm](http://www.pilch.org.au/hlarm)
  - Login Section of PILCH website has precedents
  - Fitzroy Law Handbook
  - Victoria Legal Aid publications and personnel
  - Magistrates' Court website and personnel