

ATTACHMENT PG-1

This is the attachment marked **PG-1** referred to in the witness statement of Peter John Gartlan dated 8 July 2015.



29 May 2015

The Honourable Marcia Neave AO
 Commissioner
 Royal Commission into Family Violence
 PO Box 535
 Flinders Lane VIC 8009

By email: enquiries@rcfv.com.au

Dear Commissioner Neave

Infringements Working Group submission to the Royal Commission into Family Violence

The Infringements Working Group (**IWG**) welcomes the opportunity to contribute to the Royal Commission into Family Violence (**Royal Commission**).

The IWG is a joint working group of the Federation of Community Legal Centres (Victoria) and the Financial and Consumer Rights Council, supported by lawyers from Victoria Legal Aid. The IWG's 35 member organisations are listed in **Annexure 1**.

Our clients experience financial hardship and often one or more of mental illness, homelessness, substance dependence, and family violence. They are disproportionately affected by the Victorian infringements system.

This submission identifies the ways in which our clients' experiences of family violence bring them into contact with the infringements system under the *Infringements Act 2006 (Vic)* (**Infringements Act**) and make it difficult for them to resolve their fines or exit this system. We refer to the IWG Position Paper, *A simple, fair and effective infringements system for all Victorians*, which identifies that the infringements system currently fails to appreciate the dynamic of family violence and the way in which family violence contributes to victims offending or accepting responsibility for the offending of violent partners.

Informed by the data, evidence, and insights gained through our direct provision of legal and financial counselling services, the IWG makes two key recommendations to reduce the impact of the fines and infringements system on victims of family violence:

- 1) **Recognise family violence as a 'special circumstance'**. The Infringements Act should be amended to recognise that family violence contributes to victims of violence incurring infringements (for example, driving, tollway, public transport or parking fines incurred by victims fleeing violence, sleeping in cars, or moving between short-term accommodation).
- 2) **Amend processes for identifying the victim of violence did not commit the infringement offence**. It is common for perpetrators of violence to incur fines and

infringements in their partner's name. The current system requires the nomination or identification of the driver. This is often not possible for victims of violence, due to fear of the consequences of doing so. Timeframes and evidentiary requirements for identifying victims of violence did not commit the infringement offences should be amended.

Each of these recommendations is set out in more detail below.

1. Family violence and the infringements system

Through our work, IWG members see that family violence causes victims to be caught up in the infringements system in two main ways:

- **Perpetrator of violence accrues infringements in the victim's name:** it is common for violent partners to incur infringements in the victim's name (for example, traffic, toll road, or parking offences); and/or
- **Victim commits infringement offences because of family violence:** victims incur infringements as a result of family violence, including when they are fleeing their home, sleeping in their car, or moving between short-term accommodation.

Additionally, the perpetrator of family violence may control the victim's finances so she is unable to pay fines.

The current processes available to address infringements under the Infringements Act do not appropriately recognise or respond to family violence. Victims are left with the following options:

- Accepting responsibility for the offences and relying on factors falling within the existing definition of 'special circumstances' (i.e. mental illness, substance dependence, or homelessness);
- Submitting that infringements should be withdrawn or enforcement orders revoked on the basis of 'exceptional circumstances', which has no definition or clear guidance for decision-makers and, therefore, carries significant uncertainty for applicants and their advocates; or
- Nominating the driver or applying for revocation on the basis that the victim was not the driver, by providing the perpetrator's details and risking a retaliatory escalation in violence.

As the case studies in this submission highlight, the impacts of fines and infringements on victims of family violence include:

- Severe financial hardship and overwhelming debt;
- Exacerbated fear and anxiety; and
- Sanctions, including licence or registration suspension and the risk of imprisonment for unpaid fines, which further isolate women, limit their independence, and reduce their safety.

██████: fear prevents victim of violence 'nominating' another driver

██████ had 28 outstanding fines amounting to approximately \$7,000. At the time the fines were accrued, ██████ was a victim of family violence. She told her community lawyer her violent ex-partner was responsible for accruing most of the fines. However, due to the level of violence, ██████ was too scared to nominate her ex-partner. As a result of the violence, ██████ also suffered from chronic mental health issues.

Her lawyer applied for revocation on the ground of special circumstances, submitting ██████'s mental health contributed to the accrual of the fines. As a result, 22 out of 28 fines were revoked and the

enforcement agencies elected to take no further action. The remainder were set down for court hearing, at which all of the remaining fines were dismissed.

Although the outcome was ultimately positive, understandably [REDACTED] found the process stressful and demanding. She was required to re-disclose traumatic information, and endure the stress of court. The entire process took 12 months. Moreover, had [REDACTED] not suffered from a mental illness, she would not have been able to make a special circumstances application.

[REDACTED]: victim of violence faces prison for unpaid fines

[REDACTED] sought assistance from a community legal centre after she was arrested for unpaid infringements of approximately \$6,000. The infringements were for driving and tollway offences. [REDACTED] committed some of the offences during a violent relationship. Her violent partner committed others, but she wasn't sure which ones.

[REDACTED] lived in an outer-suburban area. Her partner would sometimes take their car for weeks so she couldn't get to work. As a result, she had to resign from her job in the city.

[REDACTED] was the sole carer for her two young children who had been exposed to significant trauma. She was also pregnant with twins. She had been homeless and, at the time of approaching the CLC, was living in transitional housing.

[REDACTED] also struggled with depression, and had been addicted to methamphetamines for three years. When she sought help with her infringements, she was no longer using drugs and was trying to re-establish her life with her children.

By the time [REDACTED] accessed assistance from her CLC, her infringements had progressed to warrant stage and she had been arrested. She was brought before the court and faced imprisonment under section 160 of the Infringements Act.

The CLC represented [REDACTED] in the Magistrates' Court. The matter was adjourned because the magistrate wanted more evidence of her circumstances.

After three court appearances and the provision of an affidavit by [REDACTED] and five supporting reports from [REDACTED]'s GP, psychiatrist, and support workers, [REDACTED]'s fines were discharged under section 160(2) of the Infringements Act.

This was a complex, stressful, drawn out process for [REDACTED], which also required significant resources from the courts, the CLC, and supporting agencies.

2. The fines and infringements system

We have not set out the mechanics of the infringements system in detail in this submission, but refer the Royal Commission to the diagram at **Annexure 2** for an outline of key processes, timeframes, and options.

The Infringements Act prescribes that different options and risks exist depending on which stage an infringement is at.

These options, and the ways in which they currently impose further hardship on victims of family violence, are discussed in more detail throughout this submission.

3. Family violence as a 'special circumstance'

3.1. Current definition of 'special circumstances'

'Special circumstances' is defined in the Infringements Act as:

- a mental or intellectual disability, disorder, disease or illness or a serious addiction to drugs, alcohol or a volatile substance that results in the person being unable to:
 - understand that conduct constitutes an offence; or
 - control conduct that constitutes an offence; or
- homelessness that results in the person being unable to control conduct which constitutes an offence.¹

Individuals who are able to establish the causal link between their mental illness, substance dependence and/or homelessness and the offending conduct are able to:

- Apply to the issuing agency for the infringements to be withdrawn on the basis of their special circumstances;²
- Apply to the Infringements Registrar for the enforcement order to be revoked on the basis of their special circumstances.³

Although family violence can lead to circumstances that fall within the definition of 'special circumstances', i.e. mental illness, substance use or homelessness, the Infringements Act does not recognise family violence as an independent ground for withdrawal or revocation. This gap makes it difficult for women who have experienced family violence to have related infringement matters dealt with appropriately.

A person who has received infringements as a result of family violence has the option of making an application for internal review or revocation on the basis of 'exceptional circumstances', which is undefined in the Infringements Act. It is the experience of IWG members that this lack of definition or guidance creates uncertainty and unpredictability about how exceptional circumstances applications are assessed.

As the case study below shows, it is common for applications for withdrawal or revocation on the basis of exceptional circumstances, citing family violence, to be rejected.

■■■■: victim of violence pays fines incurred by violent partner because no other option

■■■■ is a 27 year old asylum seeker from ■■■■. She is currently on a bridging visa with no work rights.

She commenced an intimate relationship with ■■■■ in early 2013. ■■■■ subjected ■■■■ to extreme family violence: physical, emotional, and verbal. She left him in 2014, after he had threatened her with a knife. Victoria Police obtained a 12 month family violence intervention order against ■■■■.

During eight months of ■■■■ and ■■■■'s relationship, ■■■■ received five infringement notices: two transport infringements and three road traffic infringements. ■■■■ was the offending party.

¹ *Infringements Act 2006 (Vic)* s 3.

² *Infringements Act 2006 (Vic)* s 22.

³ *Infringements Act 2006 (Vic)* ss 65 and 66.

■■■■■ approached a CLC, which helped her to complete a revocation application. Because the definition of special circumstances in the Infringements Act does not include family violence, the community lawyer had to rely on exceptional circumstances, with reference to family violence.

The revocation application was unsuccessful. ■■■■■ did not want the matter to proceed to court, because of the affect a criminal record – even a minor one – may have on her visa status. Instead, she agreed to enter a payment plan, after having to pay 20% of the total amount owed upfront.

Because the current definition of ‘special circumstances’ does not include family violence, victims may have to rely on ‘exceptional circumstances’, which introduces significant unpredictability and inconsistency into how applications are assessed. This puts further strain on victims and, as in Banu’s case, can leave them paying infringements for offences they did not commit.

3.2. Expanding the definition of ‘special circumstances’

The IWG recommends the definition of ‘special circumstances’ be amended to recognise the way family violence can contribute to conduct leading to infringements, including driving, tollway, public transport, or parking fines incurred when victims flee violence, sleep in cars, or move between short-term accommodation.

This expanded definition would allow victims to apply for infringements to be withdrawn or enforcement orders revoked by citing a relevant nexus between their experience of family violence and the alleged offending.

The IWG reiterates this reform should be accompanied by a more general amendment to the definition of ‘special circumstances’. As noted above, the current definition of ‘special circumstances’ in the Infringements Act requires that a person’s mental illness or substance dependence ‘results in’ them being unable to understand or control the offending conduct; or that their homelessness ‘results in’ them being unable to control the offending conduct. The IWG supports the requirement of a nexus between a person’s circumstances and the offending, but the level of causation required by the current definition wrongly excludes people whose homelessness, mental illness, and/or substance dependence clearly contributed to their offending.

The current definition also encourages a rigid approach to evidence, which ignores the extreme difficulty vulnerable people frequently face in obtaining supporting material (with medical practitioners often requesting \$300–\$600 for a supporting letter).

In addition to incorporating family violence in the definition of special circumstances, the IWG recommends that the definition of special circumstances should be amended to replace the words ‘results in’ with ‘contributed to’. This definition would better recognise that people experiencing homelessness, substance dependence, mental illness, and/or family violence are often dealing with several complex and overlapping hardships, all of which may contribute to their offending.⁴

3.3. Relying on ‘exceptional circumstances’

An alternative to including family violence in the definition of ‘special circumstances’ is revising the use of ‘exceptional circumstances’ as grounds for withdrawing or revoking infringements.

As noted above, the current assessment of applications for withdrawal or revocation on the basis of exceptional circumstances is inherently unpredictable and inconsistent, which regularly results in these applications being rejected. In a proposal to address these problems, the Sentencing Advisory Council (SAC) recommended:

⁴ See also Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria Report* (May 2014) (SAC Report), Recommendation 44: ‘Broaden test for special circumstances’, which states: “The test for special circumstances in section 3 of the Infringements Act 2006 (Vic) should be amended to replace the words ‘results in’ with the words ‘contributed to’”.

Recommendation 42: Model Review Policy for internal review and enforcement review

*The Fines Director should issue a Model Review Policy containing principles and criteria for determining applications for internal review and enforcement review (including principles that apply to applications on the ground of special circumstances and on the ground of exceptional circumstances in circumstances of family violence).*⁵

The IWG's position is that express inclusion of family violence in the definition of special circumstances is a more appropriate reform, which provides clear legislative recognition of the way in which family violence contributes to victims committing offences that result in infringements.

Furthermore, when combined with the IWG's recommended amendment to the special circumstances definition to recognise circumstances contributing to the offending, rather than those that 'result in' offending, the concerns of SAC – in particular that 'including family violence as a defined special circumstance may lead to more onerous requirements as to proof'⁶ – would be addressed.

At present, reliance on the imprecise catch-all of 'exceptional circumstances', with little guidance for decision-makers assessing these applications, is delivering poor results for victims of family violence. It is appropriate for the Infringements Act to expressly recognise that family violence is not an 'exceptional circumstance'. Family violence has an existing legislative definition,⁷ and the fact that Victoria Police attended more than 65,000 family violence incidents in 2013–14 provides some sense of the scale of the problem.⁸ Unfortunately, rather than being an exceptional circumstance requiring case-by-case consideration, it is a pervasive social problem that, amongst its many other impacts, is causing victims to be caught up in a fines and infringements system that imposes financial hardship, emotional strain and a risk of sanctions.

In light of this, the IWG reiterates its recommendation that family violence be expressly included in the amended definition of 'special circumstances' in the Infringements Act. If, however, this amendment does not occur, the IWG supports the enactment of a Model Review Policy clearly identifying an experience of family violence as a basis on which infringements can be withdrawn or enforcement orders revoked. We also strongly recommend that training, oversight, reporting, and evaluation accompanies this policy.

4. Identifying that the victim was not the driver

4.1. The current process

As identified above, in addition to incurring infringements because of their experience of family violence, victims also find themselves burdened with infringements incurred by violent partners.

The current system allows for people to address matters where they were not the driver of the vehicle in the following ways:

- Nomination of the driver when a matter is still at infringement or penalty reminder stage; and
- Revocation on the basis the person was not the driver when the matter has progressed to enforcement order or warrant stage.⁹

Victims of family violence are often fearful of nominating their violent partner due to the risks to their safety in doing so. As part of the current nomination process, clients are required to complete a

⁵ Ibid xxviii.

⁶ Ibid 285.

⁷ *Family Violence Protection Act 2008 (Vic)*.

⁸ Victoria Police, *Annual Report 2013–14* (2014).

⁹ *Infringements Act 2006 (Vic)* subs 66(4)(b).

statement describing either the personal details of the nominated driver or, if the driver is unknown, the details of efforts undertaken to try to identify who was driving at the time of the offence.¹⁰

If the nomination is accepted, a person's fine will be withdrawn and a new fine will be issued to the nominated person. The nominated person, therefore, becomes aware of the nomination. They also have the option of rejecting the nomination.¹¹

The Fines Victoria website contains the reminder:

A nomination will not be accepted if:

- *it contains insufficient information to identify the person responsible*
- *the person nominated later rejects responsibility for the offence*
- *it does not provide an adequate and reasonable explanation as to why you cannot, with reasonable diligence, identify the person responsible.*¹²

This process leaves little room for the common situation where:

- The victim was not driving the vehicle; and
- She knows who was driving the vehicle, but is unable to identify this person for fear of retribution.

As the following case study demonstrates, the requirement to identify the driver of the vehicle causes victims of violence to instead accept responsibility for offences, and then try to navigate their way through a protracted, unwieldy special circumstances process, which necessarily leaves them with a finding of guilt on their criminal record.¹³

■■■■■: relying on special circumstances because too afraid to identify the driver

■■■■■ was an above average student, raised in a stable home with her mother and father. While at school, ■■■■■ suffered severe bullying from her classmates and was unable to go on with her studies.

In 2011, ■■■■■ met her partner, ■■■■■. This abusive relationship, which ended in early 2014, was characterised by ■■■■■ regularly and seriously physically assaulting ■■■■■. ■■■■■ also subjected ■■■■■ to psychological abuse. He was extremely controlling. For example, he isolated ■■■■■ from her family and friends, and coerced her into a dependence on illicit drugs. He also forced her to secure a loan to buy and register a car in her name. ■■■■■ was the regular driver of this car. He incurred many traffic fines, totalling more than \$20,000. All were registered in ■■■■■'s name.

Eventually, ■■■■■ became aware of the fines, but avoided doing anything about them because she was too fearful of ■■■■■ to discuss them. This avoidance was compounded by ■■■■■'s mental illness, which included clinical anxiety and depression. By this time, she was also addicted to drugs.

Warrants associated with the non-payment of these fines were issued for ■■■■■'s arrest. By this point, ■■■■■ owed \$20,000 in fines and had lost her licence. She had also obtained a family violence intervention order to protect her from ■■■■■'s violence.

■■■■■ approached a CLC in mid-2014, aged in her early 20s. She instructed her community lawyer to apply for revocation of the enforcement orders on the basis of special circumstances, namely, her drug addiction and mental illness at the time the fines were incurred. ■■■■■ was clear she would

¹⁰ Road Safety Act 1986 (Vic) part 6AA.

¹¹ Road Safety Act 1986 (Vic) ss 84BB and 84BF.

¹² Fines Victoria, *Nominate Another Driver* (available at: <http://online.fines.vic.gov.au>).

¹³ As the Special Circumstances List currently operates, people with special circumstances are required to plead guilty and are then sentenced by the judicial registrar in accordance with the *Sentencing Act 1991* (Vic). The requirement to plead guilty to access the Special Circumstances List means that the most vulnerable people in the infringements system receive a criminal record for their infringement offence, regardless of whether the court records a conviction.

assume full responsibility for all the fines, even though this was likely to be a lengthy process and mean she could not seek to overturn the imposition of demerit points which caused her to lose her driver's licence. This position was the outcome of her refusal to nominate [REDACTED]. [REDACTED] said she could not nominate [REDACTED] because she feared that, should the authorities pursue him as a result, he would place her life in jeopardy.

[REDACTED]'s special circumstances application is yet to be determined. It is not uncommon for this process to take up to a year to conclude, and to entail several court appearances.

Had the infringements system permitted [REDACTED] to nominate [REDACTED] without him being notified of this, this may have been avoided. Further, had [REDACTED] been able to cite family violence in conjunction with or as an alternative to mental illness and drug use as the relevant special circumstance, her revocation application would have been stronger and the likelihood of the matters being revoked and dismissed in recognition of her circumstances would have been higher.

As the next case study demonstrates, it is also difficult for victims to satisfy the Infringements Registrar that they were not responsible for the vehicle at the time of the offence.

[REDACTED]: criminal sanctions as a result of violent partner's conduct

[REDACTED] was regularly subjected to family violence by her husband, [REDACTED]. After her baby was born, [REDACTED] started seeing a social worker who referred her to a CLC. By this time, [REDACTED] was facing 63 fines, including parking, speeding, and tollway fines, and the criminal charges of driving with a suspended licence and failing to notify VicRoads of a change of address. In 38 of these 63 cases, her husband, [REDACTED], was the driver. After she had moved away from the family home, [REDACTED] continued to threaten [REDACTED].

Because she had fled her home, [REDACTED] did not receive the VicRoads infringement or licence suspension notices. She continued to drive without knowing her licence was suspended. [REDACTED] continued to drive [REDACTED]'s car and incur infringements.

Although it was too late to nominate [REDACTED], her community lawyer assisted [REDACTED] to apply for revocation of the enforcement orders on the basis she wasn't the driver. The first application for revocation was refused. The registrar was not satisfied there were sufficient grounds to revoke, even though [REDACTED] could now safely nominate [REDACTED], explained in detail why she didn't do so earlier, and had a letter of support from a social worker. The registrar did, however, waive the additional fees and charges of the enforcement orders and warrants. [REDACTED]'s community lawyer persisted, resubmitting the application for revocation, this time with a missing person report that [REDACTED] had filed with police. This report demonstrated that, for at least one or two of the 38 fines, she wasn't the driver. The substance of the application otherwise remained the same. This second application was successful, and 38 fines were revoked on the basis that [REDACTED] wasn't the driver. Unfortunately, two other councils affirmed their policy not to withdraw if a person didn't nominate within time.

[REDACTED] has to attend two different courts to have the remaining eight charges heard. Operator onus in the *Road Safety Act 1986 (Vic)* means, as the registered owner, [REDACTED] is assumed to have committed the driving offences unless she nominated someone else within the required time. Because she didn't, unless the councils agree to withdraw [REDACTED] must plead guilty to the charges. These matters, which are criminal charges, are yet to be heard in court.

The current processes for identifying that a person was not the driver of the vehicle at the time of the offence – either through nomination or revocation – should be amended to appropriately respond to family violence.

4.2. Amended process for identifying the victim was not the driver

The IWG recommends the *Road Safety Act 1986* (Vic) and accompanying regulations, forms, and guidelines for nomination and revocation are amended to recognise enforcement orders can be revoked and infringements cancelled where a person:

- declares that they were not the driver of the vehicle at the time of the offending; and
- shows (for example, through a statutory declaration, copy of an Intervention Order, or support letter from a family violence worker) that they are a victim of family violence and, accordingly, are unable to identify the person in control of the vehicle at the time.

The current system causes victims to take responsibility for infringements incurred by violent partners because the system does not allow them to safely identify that they were not driving the vehicle. This situation is exacerbating the personal and financial hardship caused by family violence.

Although the proposed amendments to the nomination process would mean the perpetrator could not be pursued for the offending, it would remove the risk of retaliation the current nomination procedure entails, avoid the risk of nominations being rejected by violent partners, and prevent victims of family violence taking responsibility for offences they did not commit.

We would welcome the opportunity to discuss this submission in more detail with the Royal Commission. Please contact Lucy Adams on [REDACTED] or at [REDACTED] if you have any queries about the content of this submission.

Yours sincerely



Lucy Adams
Co-Convenor
Infringements Working Group



Joanne Parkin
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Annexure 1 – List of IWG member organisations

Bendigo Community Health Services
Brimbank Melton Community Legal Centre
Carlton Fitzroy Financial Counselling Service
Casey Cardinia Legal Service
Diversitat
Eastern Community Legal Centre
Federation of Community Legal Centres
Financial & Consumer Rights Council
Fitzroy Legal Service
Flemington and Kensington Community Legal Centre
Gippsland Community Legal Service
Good Shepherd Youth & Family Service
Hume Riverina Community Legal Service
Inner Melbourne Community Legal
Justice Connect Homeless Law
Lentara UnitingCare
Mental Health Legal Centre
Monash University
Moonee Valley Legal Service
Nankivell Taylor Lawyers
Odyssey House
Peninsula Community Legal Centre
Port Phillip Community Group
ReGen UnitingCare
Springvale Monash Legal Service
St Kilda Legal Service
Upper Murray Family Care
Victoria Legal Aid
Victorian Aboriginal Legal Service
Western Suburbs Legal Service
West Heidelberg Community Legal Service at Banyule Community Health
Whittlesea Community Legal Service
Women's Legal Service Victoria
Wyndham Community Legal Service
Youthlaw

Annexure 2 – Infringements timeframes, processes and options

