

**SUBMISSION OF THE FEDERATION OF COMMUNITY  
LEGAL CENTRES (VIC.) INC**

**RESPONSE TO THE CONSULTATION PAPER**

**PROPOSED INFRINGEMENT OFFENCES**

---



**May 2007**

**This submission was prepared in consultation with individual member centres on behalf of the Federation of Community Legal Centres (Vic).**

**Inquiries to Sarah Nicholson or Prue Elletson, Policy Officers, Federation of Community Legal Centres (Vic) on phone 9652 1500.**

**Contents**

The Federation of Community Legal Centres.....3  
Overview .....4  
Comments on the proposal .....5  
Comments on the Proposed Guidelines .....7

## **The Federation of Community Legal Centres**

The Federation of Community Legal Centres Vic. Inc ('the Federation') is the peak body for fifty-two Community Legal Centres across Victoria, including both generalist and specialist centres. Community Legal Centres provide free legal advice, information, assistance and representation to more than 100,000 Victorians each year. We exercise an integrated approach combining assistance of individual clients with preventative community legal education and work to identify and reform laws, legal and social systems.

Community Legal Centres have expertise in working with excluded and disadvantaged communities and people from culturally and linguistically diverse backgrounds. We operate within a community development framework. We provide a bridge between disadvantaged and marginalised communities and the justice system. We work with the communities of which we are a part. We listen, we learn, and we provide the infrastructure necessary for our communities' knowledge and experiences to be heard.

The Federation, as a peak body, facilitates collaboration across a diverse membership. Workers and volunteers throughout Victoria come together through working groups and other formal and informal networks to exchange ideas and strategise for change.

The day-to-day work of Community Legal Centres reflects a 30-year commitment to social justice, human rights, equity, democracy and community participation.

## Overview

The Federation does not support expansion of Victoria's infringement system to include more complex summary offences as outlined. We do not believe that the current or proposed infringement system is adequate to address the complex needs of our clients and it should not be expanded to further offences until it has been proven to do so.

Despite the recent changes introduced through the *Infringements Act 2006* and accompanying Guidelines and Policy Framework, the Federation still has significant concerns about the operation of the infringements system and its effect upon our clients. Some of these concerns relate to enforcement of the guidelines and the scope of discretion provided to issuing agencies to issue fines and pursue enforcement. For example, eligibility for instalment plans and the Guidelines requiring that special circumstances (mental or intellectual disability, disorder, disease or illness, serious addiction to drugs, alcohol, homelessness) be considered, are at the discretion of the issuing agency. We will continue to provide feedback on the operation of the current system through our participation on the Infringements Standing Advisory Committee and other formal and informal mechanisms as appropriate.

## Comments on the proposal

The vast majority of CLC clients are people experiencing mental health or significant health issues, homelessness, or some other form of disadvantage, or are refugees newly arrived into the community. Almost all are low-income earners or unemployed. Very few of these people have the capacity to pay fines and for most their financial situation is unlikely to improve in the foreseeable future. The current infringement system does not discriminate in penalty according to a defendant's financial status or personal circumstances. Whilst matters heard in open court attract a criminal record, this forum provides the opportunity for a penalty appropriate to the person's personal and financial circumstances, if any, to be imposed. Until the infringement system can provide for more flexible penalties, expansion will have a disproportionate impact on people with poor economic support.

The Consultation Paper notes the benefits of the infringement system as

- 1) citizens are able to promptly expiate an offence, avoid court
- 2) less serious and uncontested matters are diverted from the court system.

One of the arguments for citizens in favour of avoiding court is that people do not receive a criminal record. If the government is serious about addressing the stigma of a court record for minor offences, it should regulate the disclosure, expiration and use of criminal records and convictions. This would include the establishment of a spent convictions scheme that draws a distinction between convictions and non-convictions and provides adequate discrimination protections.

In our experience people who have the financial capacity to do so, will elect to pay a fine regardless of whether or not they agree that they have committed an offence, merely to save the time and stress of going to court. The majority of our clients do not have the financial and other resources to do this and would be disadvantaged by any further expansion of the infringement system. The proposal needs to take into account the needs of all citizens.

The Federation supports less serious and uncontested matters being diverted from the court system. We do not believe however that this should be done through the infringement system for the reasons outlined. We are supportive of diversion options being more readily available through the court system and police making greater use of the diversion, warning and formal cautioning schemes currently available. For example, in our experience the formal caution available to adults for minor shopthefts through the *Police Operating Manual* is not often utilised by police. Access to the Criminal Justice Diversion Scheme for minor offences also relies on police discretion, and is almost never utilised beyond a first offence.

Other arguments in favour of avoiding court include the potential cost savings for the justice system. We do not believe this should be the basis for making policy, nor should this be a justification for the diminution of access to justice. Moreover, we question whether there will be cost savings in the justice system, if it results in more impecunious citizens being issued with infringement notices.

It is both easier and cheaper for police to issue an infringement notice than to go through the procedure of issuing a summons, taking the matter to court and preparing a brief, attending court. The time and effort disincentive for police to proceed by way of a warning or formal caution for minor matters as opposed to going to court disappears with the option of issuing a simple infringement notice. The Federation anticipates that increasing the scope of the infringement system will widen the net of behaviour that police formally respond to, and the number of people who are brought into the justice system.

The Federation is also concerned that the ease of issuing infringement notices may lead to 'add on' offences. In the experience of our member centres, where an offence is infringeable, it may be added to other offences. For example, a person issued with an infringement notice for failing to travel on public transport with a valid ticket may also be issued with an infringement notice for offensive behaviour.

Given that our current infringement system is structured around strict liability offences (often traffic offences, such as if you park illegally, you will be fined) there is an obligation, in most cases to be caught "red-handed". Using an infringement system for offences such as 'indecent/obscene language/ offensive behaviour' can be based on a largely a subjective view and enables opportunity for discrimination. While discriminatory behaviour can be addressed in a court setting, it is unable to be addressed when an infringement notice is issued. There are significant barriers to contesting an infringement notice at court.

The Federation is concerned that the consultation paper does not include a mechanism to protect young people. Reforms in NSW and the UK maintained that infringement notices were not to be issued if a suspect was younger than 18. The Victorian proposal does not contain this protection and appears to include young people under 18 years who, if issued with an infringement notice, would lose the diversion and support options utilised by police and our juvenile justice system.

If the infringement system is expanded, increased legal aid funding should be made available to contest these matters. Legal aid is currently not available to contest infringement notices unless "the client has a mental disorder, intellectual impairment, brain injury or dementia and ... is liable to pay multiple infringements exceeding \$1000 and there is a strong likelihood that legal assistance will result in the infringement penalties imposed being substantially discharged or

converted to a community based order rather than a term of imprisonment.<sup>1</sup> This is a serious caseload issue for CLCs as we already cannot meet the existing need for advice and representation in this area. In the reporting year 2005-06, the amount of information provision from centres for infringements jumped three-fold.

The Federation supports greater information about legal rights being provided to people issued with infringement notices. Infringement notices should direct people to obtain legal advice and provide contact numbers.

### **Comments on the Proposed Guidelines**

The proposed safeguards against netwidening included in the *Draft Guidelines for the issue of infringement notices*<sup>2</sup> are inadequate. The Federation believes that if the expansion of infringeable offences is to proceed, the guidelines should be legislated. The Federation has grave concerns that placing safeguards in guidelines leaves them open to the misuse of discretion.

The draft guidelines state that a member must not issue an infringement notice for offences where a member would not have taken action by summons. It should be a legislated requirement that an infringement not be issued in trivial cases, and legislative guidance should be given on the meaning of trivial.

The guidelines also state that “there must be sufficient evidence to clearly establish the offence”. Under the proposed system, there is no independent review of the evidence unless an alleged offender proposes to contest the matter in court. There are barriers to a person successfully contesting an infringement including limited low cost legal representation, which is less of a barrier than for criminal offences requiring a summons/ charge.

Other guidelines that should be legislated include:

- an infringement notice must never be offered to induce a person to make an admission of guilt.
- ‘a notice must not be issued in circumstances where the offensive behaviour or language is directed at the member or another member’.

#### *Liquor Act offences*

The Federation notes that there is some inconsistency between the draft guidelines and the offences listed. The guidelines state that an infringement notice must not be issued to a person whilst they are drunk or in a state of intoxication. However, a proposed offence to be included in the trial is failure for a person who is drunk to leave licensed premises when requested.

---

<sup>1</sup> Victoria Legal Aid, *Victoria Legal Aid Handbook*, Appendix 2B: State Civil Law Matters, page 26, [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

<sup>2</sup> ‘Draft General infringement notice guidelines’, Consultation Paper p 25.

### *Careless driving*

The offence of careless driving, as a transport offence, is one most closely analogous to those currently in the infringement system. Nevertheless, the assessment of careless driving still involves a subjective element and is at the discretion of the issuing officer. The Federation is also concerned that careless driving could merely become an 'add-on' offence to other traffic infringement notices, and hence we anticipate netwidening.

### *Shopsteal offence*

The guidelines for the new offence of shopsteal require that an infringement notice not be issued to a person who qualifies for an informal warning or formal caution under the Victoria Police Manual. However, centres have found that the procedure for informal warnings and formal cautions is rarely used by police, especially where suspects are adults.

### *Indecent/obscene language*

Allowing infringement notices for 'indecent/obscene language/ offensive behaviour' increases the subjectivity of these offences.

The Federation notes that some of the offences to be added to the infringement system are already infringeable offences under the *Transport (Ticketing and Conduct) Regulations 2005* (r 28) where they occur on public transport or at train stations (see also *Transport (Infringements) Regulations 1999* Sch 3). We reiterate our concern that infringements should not be issued for offences constructed around subjective judgments by the issuing officer.

### *Review mechanisms*

The Attorney General's guidelines provide for internal review by agencies of a decision to issue an infringement notice. This is an ineffective mechanism to protect against an abuse of power in issuing a notice. It relies on the discretion of the issuing agency to conduct the investigation. Further, it is inappropriate for a person suffering hardship to make an application for consideration of 'special circumstances' only after an infringement notice has been issued.

Stronger legislative provision needs to exist to review the use of infringement powers by issuing officers.