

Infringements Working Group

On track to fairer fares and fines

Public transport position paper



FCRC

Financial & Consumer Rights Council Inc.

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The Infringements Working Group

The Infringements Working Group (**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 36 member organisations are listed in **Annexure 1**.

The Productivity Commission's *Access to Justice Arrangements Report* noted that the community legal sector assists the most disadvantaged and vulnerable individuals, as well as those with special needs, in dealing with a significant variety of legal issues.¹ The Federation of Community Legal Centres' most recent annual report details that 83% of clients earned less than \$26,000 per annum and 20% of clients self-identified as having some form of disability.² Based on the experiences of IWG members, we know that infringements are one of the most common legal issues that our sector assists with.

Similarly, financial counsellors regularly assist the most marginalised members of our community. Financial counselling clients typically rely on Centrelink income support and regularly present with mental health or other issues that complicate their ability to understand and interact with the infringements system. These clients rely on financial counsellors to both interpret the system and advocate for them within it. Accordingly financial counsellors in Victoria have developed a strong working knowledge of the strengths and weaknesses of the infringements system as it currently stands.

The IWG has worked closely with successive governments, enabling infringements policy to be informed by the expertise and experience of practitioners who work daily with vulnerable and disadvantaged people on their infringements matters.

This Position Paper and its recommendations are informed by the direct experience of IWG members in assisting disadvantaged clients to navigate the infringements system. This work provides us with insights into our clients' interaction with Victoria's public transport system. As it stands, it falls short of delivering a fair and equitable ride for our clients and, in addition to imposing hardship on individuals, the current fare enforcement process presents a significant resource burden for the legal services, financial counsellors and other support services that assist clients to deal with infringements stemming from their use of public transport.

This Position Paper presents constructive recommendations that will deliver a fairer, more efficient public transport system for Victoria.

¹ Productivity Commission, *Access to Justice Arrangements* (3 December 2014) <http://www.pc.gov.au/inquiries/completed/access-justice/report> p 671.

² Federation of Community Legal Centres, *2014/15 Annual Report*, p 5.

Executive Summary

Through our work with low income, disadvantaged Victorians, IWG members see that public transport plays a critical role helping people access services, education, employment and community life. As it stands, however, Victoria’s public transport system, including the ticketing infringement framework, is unfair, has a discriminatory impact on a number of vulnerable and already disadvantaged groups, and compounds hardship and poverty – sometimes adding to a raft of legal and financial problems and exacerbating the situation of people already in challenging circumstances.

Our clients are:

- Heavily reliant on public transport because of the cost of private vehicles (except, we note, in outer suburban areas which continue to be poorly linked with public transport);
- Vulnerable to non-compliance with fare requirements, including as a result of poverty, mental illness, substance dependence and homelessness; and
- Poorly equipped to exit the enforcement system once they enter it, either through payment of infringements or navigating the complex legal process set up to have infringements withdrawn.

Informed by the direct experience of IWG members in assisting disadvantaged clients to navigate the infringements system, the IWG makes the following 7 recommendations in pursuit of a more just and equitable public transport fares and fines system.

7 RECOMMENDATIONS FOR A FAIRER, MORE EQUITABLE PUBLIC TRANSPORT FARES AND FINES SYSTEM	
1. Free travel on the Public Transport Victoria network for concession holders	<p>In addition to imposing financial and personal strain on individuals, and exacerbating social isolation, Victoria’s current ticketing and enforcement framework imposes a significant resource burden on the government agencies, courts and services (including legal services and financial counsellors) that are involved – in differing ways – in the compliance framework.</p> <p>Recognising the benefits of accessible public transport and the current costs of enforcement against people who are unable to pay, the IWG recommends the introduction of free travel on the Public Transport Victoria network for people with concession cards and asylum seeker concession cards.</p>
If Recommendation 1 is not adopted, the following 6 recommendations provide shorter term measures designed to reduce the negative impact of the public transport infringement system on vulnerable and disadvantaged Victorians.	
2. Support for frontline decision-makers	<p>The current public transport ticketing infringement framework does not provide effective outcomes for Victorians whose circumstances (1) increase the likelihood of them receiving an infringement; and (2) make it harder for them to deal with infringements once received.</p> <p>A preventative approach, which focusses on supporting frontline decision-makers to select options other than issuing an infringement and early identification of people who should be exited from the system, has significant potential to reduce the hardship and inefficiency created by the current enforcement-focussed approach.</p>

Authorised Officers should be supported in their roles, including through:

- **Improved training** – All new and existing Authorised Officers should be given comprehensive training about the complex circumstances that may affect the people they're dealing with, including homelessness, mental illness, substance dependence, poverty and family violence;
- **Alternatives to issuing infringement notices** – Issuing officers should exercise their discretion to warn rather than fine people with special or exceptional circumstances. Guidelines and training should be strengthened to support issuing officers to appropriately exercise the discretion by giving warnings or referrals rather than issuing infringement notices to people with special circumstances; and
- **Monitoring and evaluation** – There should be evaluation processes to monitor how often issuing officers are using their discretion to issue warnings rather than fines and in what circumstances.

3. An improved Access Travel Pass scheme to prevent people with special circumstances entering the infringements system

We need improved processes for identifying people with special needs or circumstances that do not rely on a person self-identifying at the point of contact. A current example is the Access Travel Pass scheme, which is available to people with a permanent physical or mental disability that prevents them using myki ticketing systems. Access Travel Passes are, however, under-utilised and are not as effective as they could be at preventing highly vulnerable people from entering the infringements system.

Improved processes should include:

- Widening the Access Travel Pass scheme to include people whose homelessness, mental illness and/or substance dependence contributes to them being unable to consistently use the myki system. Where a person's circumstances are not permanent, for example homelessness, renewal could be required every two years;
- Support for a concerted awareness campaign regarding the expanded Access Travel Pass to promote this scheme within mental health, homelessness, financial counselling, legal, health and community services;
- The implementation of a formal referral scheme, where Authorised Officers at first instance, and the Department of Economic Development, Jobs, Transport and Resources (**DEDJTR**) on review, can provide potentially eligible public transport users with details about the sign up process for the Access Travel Pass scheme; and
- With their consent, Victorians who have an Access Travel Pass should be in a searchable database accessed by Authorised Officers at the point of contact to avoid unnecessary problems arising from the person's failure to carry their card.

4. Better oversight and reporting to support early exit from the infringements system

Guidelines and a mechanism for oversight should be put in place to ensure that the decision to issue an infringement notice is not a rubber stamp and is instead an effective juncture for identifying when people should be exited from the system. Once an infringement notice is issued, the internal review process should be improved so that it provides a meaningful opportunity for people to exit the system early.

Measures should include:

- A requirement for the Department to confirm whether a person has an Access Travel Pass; check whether a person has received a number of Reports of Non-Compliance (**RONCs**) or infringements recently or in the past; consider whether the address the person has listed is 'no fixed address' or a crisis accommodation provider; and check whether the person is receiving support from disability or mental health support services;

	<ul style="list-style-type: none"> – A mechanism of oversight and reporting, which reviews the number and proportion of RONCs and infringements that are subsequently withdrawn or dismissed, including on the basis of special circumstances; – Increasing the scope of the <i>Official Warning in lieu of Infringement Notice</i> policy at RONC review stage; – Introducing a more transparent and rigorous internal review policy. The policy could be based on the City of Melbourne’s <i>Model Operating Policy for Enforcement Agencies</i>; and – Open channels of communication with legal services, financial counsellors and other community services providing advocacy for clients issued with infringements for public transport offences, to provide direct insight into systemic issues that should be addressed.
<p>5. More proportionate infringement penalties for eligible concession card holders</p>	<p>The average weekly earnings in Australia as at May 2015 is \$1484.50, whereas the weekly income of a person on Newstart Allowance is \$261.70 i.e. 17.63% of the average weekly earnings. In practice this means that infringements hit low income people harder: a \$223 infringement for not having a ticket on the tram or train is 85% of the weekly income for a person relying on the Newstart Allowance.</p> <p>Given the wide disparity of incomes amongst public transport users, concession card holders should be subject to reduced infringement penalties. The IWG recommends:</p> <ul style="list-style-type: none"> – Setting infringement penalties for eligible concession card holders at 20% of the standard rate. By way of example, a fine for not having a ticket on public transport would be \$44.60 i.e. 20% of the current infringement amount of \$223; and – Waiving additional enforcement fees (penalty reminder notice fee, enforcement order fee, infringement warrant fee) for concession card holders. <p>This system would give eligible card holders a realistic chance to be able to pay off their infringements, whilst retaining a deterrent effect for all public transport users.</p>
<p>6. Reducing the harsh penalties for concession card holders</p>	<p>The following measures should be introduced to reduce the harsh impact of the current system for enforcing concession eligibility:</p> <ul style="list-style-type: none"> – Allowing evidence of concession entitlement to be provided within 28 days to avoid an infringement notice being issued or to have an infringement notice withdrawn. Proof of concession entitlement should be construed broadly and be able to be provided by post, email or fax; – Consistent with other Australian jurisdictions, allowing school uniform and school-issued ID as proof of concession entitlement for school students; – Providing the option for registered myki card holders to upload proof of their concession entitlement to the myki website; and – Substantially reducing the infringement penalty for failing to produce evidence of entitlement to a concession fare to appropriately reflect the severity of the offence.
<p>7. Repeal of on-the-spot penalty fares</p>	<p>On-the-spot penalty fares should be repealed due to their discriminatory impact, lack of appeal rights and the failure of Authorised Officers to clearly articulate the impact of paying a Penalty Fare. If this recommendation is not accepted, Authorised Officers should be required to provide a fact sheet explaining alternative options before requiring payment of a Penalty Fare or issuing a Report of Non-Compliance.</p>

The importance of a fair and equitable public transport system

Public transport has the capacity to reduce disadvantage, enhance social inclusion and facilitate access to social services.³ There is a clear relationship between accessible public transport, social engagement and the alleviation of poverty.⁴ However, prohibitive fares and punitive penalties can inhibit equitable access to public transport, compound disadvantage and cause serious financial hardship.⁵

Those with low incomes are typically more reliant on public transport than the general population,⁶ and have to travel further between homes, workplaces and services.⁷ They also spend a higher proportion of their disposable income on travel,⁸ and are impacted the most by the fares and infringements system.

The public transport fare enforcement system has a particularly pronounced effect on the most vulnerable members of the Victorian community who are reliant on public transport to get to services, work and education, and whose use of public transport may be complicated by hardships such as poverty, homelessness, mental illness, substance dependence or family violence. Sometimes these circumstances make our clients more visible to Authorised Officers. As the case studies throughout this Position Paper show, these factors mean that vulnerable and disadvantaged people can accrue thousands of dollars in fines and infringements while using Victoria's public transport system.

We have not set out the mechanics of the infringements system in detail in this Position Paper, but refer to the diagram at **Annexure 2** for an outline of key processes, timeframes, and options. The *Infringements Act 2006* (Vic) prescribes that different options and risks exist depending on which stage an infringement is at. As the diagram at Annexure 2 highlights, once someone enters the infringements system, it is a complex and protracted process to exit it.

Julia's case study, below, explains the impact the public transport system can have on low income people trying to get from A to B and dealing with infringements.

³ See, eg, Kate Rosier and Myfanwy McDonald, *The relationship between transport and disadvantage in Australia*, Australian Institute of Family Studies (August 2011) <https://aifs.gov.au/cfca/publications/relationship-between-transport-and-disadvantage-austr>.

⁴ Helena Titheridge et al, *Transport and Poverty: A review of the evidence* (1 July 2014), page 24, 6. This study analysed a number of UK transport ticketing schemes, some which had been designed to reduce poverty and disadvantage. The author concluded that transport ticketing had the capacity to "contribute to the alleviation of poverty by facilitating access to employment and training."

⁵ Ibid.

⁶ Richard Bourn, *Transport and Poverty: A Literature Review* (May 2012) <http://www.bettertransport.org.uk/sites/default/files/research-files/transport-and-poverty-literature-review.pdf>.

⁷ David Booth, Lucia Hanmer and Elizabeth Lovell, *Poverty and Transport: A report prepared for the World Bank in collaboration with DFID*, June 2000, 4.4.3, p 56.

⁸ Ibid p 57.

Julia: woman experiencing homelessness and the stress of public transport fines

Julia* found herself homeless after having to leave private rental. During her time staying in emergency accommodation and couch surfing she accrued about \$2000 in fines for travelling on public transport without a ticket.

"I was quite ill at the time, had a bad flu, and just got on a tram for a couple of stops. I didn't have any change on me, so I thought I'd just get on for a couple of stops. The inspectors came on and they gave me a fine straight away. That was quite annoying.

The effect of having the fines is very stressful because when you are unemployed or on a pension, it is pretty difficult to survive as it is. The fines are quite expensive, and if you're on a pension or any kind of Centrelink payment, it's a lot of money, it's quite a large percentage of your fortnightly budget. You don't have a spare \$200 just to give to a fine and if you're homeless as well it's more stressful because it is already incredibly stressful not having a place of your own.

The system would be better if they were a lot more flexible with how you were able to pay the fines off, and if they were more understanding of people's circumstances. To have the fines resolved is a huge relief because knowing that you have the fines – they're always there at the back of your mind - you're worried about them because you don't know what will happen. Not that I have any assets that anyone can take from me, but it's still a bit of a worry having the fines accumulated."

*Name has been changed

Key principles to underpin a fair and equitable public transport system

In July 2013, the IWG published a position paper: *A simple, fair and effective infringements system for all Victorians*, which outlined principles that should underpin a reformed infringements system in Victoria. Each of the principles contained a number of practical recommendations for reform, many of which were adopted in whole or in part in the *Fines Reform Act 2014* (Vic). These principles remain highly relevant to contemplations of a fairer, simpler, more effective public transport system now and into the future. The relevant principles have been extracted below.

1. Simple and accessible

- *One central agency*: There should be one central agency that deals with all infringements, including determining applications for review of both infringements and enforcement orders. The IWG notes that Fines Victoria, a central agency, has been created through the *Fines Reform Act 2014* (Vic). However, this central agency only deals with fines from the enforcement stage and does not determine applications for review of infringements.
- *Training for all staff*: All staff should be trained in assisting people with special circumstances.
- *Registrars with special circumstances expertise*: Regional and suburban courts should have access to judicial registrars with special circumstances expertise who are able to run a Special Circumstances List.

2. Equitable, proportionate and just

- *Proportionate fines:* Fines should be proportionate to an individual's ability to pay. Concession card holders who are not otherwise eligible for free public transport should be issued with a reduced or concession fine amount.
- *Take into account all factors behind receipt or non-payment of fines:* The system should consider all factors that lead to individuals receiving infringements or failing to deal with them in time, including poverty / long-term financial hardship, gambling addiction, domestic violence and age and maturity.
- *Infringement withdrawn where special circumstances are found on review:* Where a person applies for review on the basis of special circumstances, the central agency should withdraw infringements where special circumstances are found to exist. Decision-makers should be supported with training and guidelines and there should be oversight to support consistency and fairness in decision-making. .
- *Fair outcomes for people in the Special Circumstances List:* People who appear in the Special Circumstances List should not be required to plead guilty or be burdened with a criminal record.
- *Fair outcomes for children:* Outcomes should be no worse for children under 18 years old than they are for adults.
- *No imprisonment:* Non-payment of fines should never result in imprisonment.

3. Early identification and exit

- *Early exit for people with special circumstances:* People with special or exceptional circumstances should have an early exit from the system, except where they present a danger to the community in which case their matter should be dealt with in a therapeutic manner.
- *Issuing officers to warn not fine:* Issuing officers should exercise their discretion to warn rather than fine people with special or exceptional circumstances. Guidelines and training should be strengthened to support issuing officers to appropriately exercise the discretion by giving warnings or referrals rather than issuing infringement notices to people with special circumstances. There should be evaluation processes to monitor how often issuing officers are using their discretion to issue warnings rather than fines and in what circumstances.

4. Problem solving

- *Early assistance for people with special circumstances:* People with special circumstances should be assisted at an early stage by infringements system personnel with expertise in poverty and disadvantage.
- *Deal with fines by non-monetary means:* Where appropriate, disadvantaged community members should have the opportunity to deal with their fines as soon as they receive them by non-monetary means, including by participating in rehabilitative and therapeutic programs, education activities or community work. These programs should be supported by government and accessible to all Victorians. The IWG welcomes the introduction of the Work and Development Permit scheme under the *Fines Reform Act 2014* (Vic) and we continue to work closely with the Victorian Government to make sure the scheme will be as effective as possible for our clients.

5. Consistent and transparent

- *Centralised guidelines & criteria for establishing special circumstances:* The central agency should develop and make publicly available guidelines and criteria for determining special circumstances, as well as a non exhaustive list of acceptable evidence for proving those circumstances. Guidelines and criteria should be consistent across all levels of enforcement. The IWG welcomes the internal review oversight role through Fines Victoria contained in the *Fines Reform Act 2014* (Vic), including development of guidelines, monitoring of internal review processes, and the ability to make recommendations to enforcement agencies regarding

their internal review process. We hope this will ensure a consistent and equitable approach across all enforcement agencies in relation to internal reviews based on special and exceptional circumstances.

6. Informal

- *Court should be a last resort:* Most people, especially those with special needs, should be able to deal with their infringements through easy-to-access paper applications rather than needing to personally appear in a court.

These six general principles should underpin Victoria’s public transport ticketing and enforcement system to strike the appropriate balance between fairness and equity on one hand and the need for compliance and enforcement on the other.

The benefits of free travel for some Victorians

As this Position Paper makes clear, clients of IWG members are heavily reliant on public transport for health, wellbeing and community engagement, including getting to employment and education. They are, however, simultaneously less able to afford public transport and more heavily impacted by the current ticketing and enforcement framework.

In addition to imposing financial and personal strain on individuals, and exacerbating social isolation, the current ticketing and enforcement framework imposes a significant resource burden on the government agencies, courts and services (including legal services and financial counsellors) that are also involved – in differing ways – in the compliance framework.

Recognising the benefits of accessible public transport and the current costs of enforcement against people who are unable to pay, the IWG recommends that the Government consider introducing free travel on the Public Transport Victoria network for low income Victorians.

The table below identifies that most Australian jurisdictions, including Victoria, have to some extent recognised the benefits of free public transport for eligible concession card holders.

Jurisdiction	Type of free travel
AUSTRALIA	
Melbourne	<ul style="list-style-type: none"> • Free weekend travel for seniors in two consecutive zones. • Free travel vouchers redeemable for a day pass or V/Line ticket distributed each year to seniors, disability support pensioners and carers.⁹
Perth	<ul style="list-style-type: none"> • Free off-peak travel for certain concession card holders on bus, train, ferry and regional services that use the SmartRider ticketing system.¹⁰

⁹ Public Transport Victoria, *Seniors*, <http://ptv.vic.gov.au/tickets/concessions/seniors/>.

¹⁰ Government of Western Australia, *Types of SmartRider*, TransPerth, <http://www.transperth.wa.gov.au/SmartRider/Types-of-SmartRider>.

Jurisdiction	Type of free travel
Adelaide	<ul style="list-style-type: none"> Free off-peak travel for seniors card holders.¹¹
Tasmania	<ul style="list-style-type: none"> Free travel during certain hours for students who meet particular criteria.¹²
Gold Coast	<ul style="list-style-type: none"> Free off-peak travel on buses for seniors.¹³
INTERNATIONAL	
London	<ul style="list-style-type: none"> Free public transport for those aged over 60 years of age (apart from before 9:30am on weekdays).¹⁴

International examples of free public transport for vulnerable people

Chicago

The Illinois Regional Transport Authority, which operates Chicago’s public transport system, operates a Free Ride Program Ride for seniors and persons with particular types of disabilities. Applicants who meet the eligibility criteria, including an income limit, are provided with a ticket allowing free public transport at all times. The ticket lasts for a period of 2 years.

Alberta, Canada

The city of Grande Prairie runs the *Low Income Access Program*, which provides low-income residents (current income threshold is \$30,287 CAD per year) with free access to public transport. The goal of the program is to “encourage all citizens to have access to City run recreational facilities and transit.”

Sources: Chicago Transit Authority, *Reduced Fare & Free Ride Programs* http://www.transitchicago.com/travel_information/fares/reduced.aspx; City of Grande Prairie, *Low Income Access Program*, <http://www.cityofgp.com/index.aspx?page=2293>

The IWG’s view is that expanding these schemes to incorporate concession card and asylum seeker concession card holders would simplify the fare regime and deliver the following benefits:

- Significantly reduce administrative, enforcement and compliance costs associated with concession fares;
- Reduce the costs, time and stress to our clients who are forced to engage in the lengthy process of seeking withdrawal or revocation of fines on the basis of their special circumstances;
- Reduce the costs and resource burden to government agencies and the courts involved in enforcing or otherwise dealing with ticketing offences for low income, vulnerable members of the community;
- Reduce the significant time and cost burden on community legal services, financial counsellors and support services who assist clients to address fines and infringements stemming from public transport ticketing offences;

¹¹ Government of South Australia, *Fares*, Adelaide Metro (18 December 2015) <https://www.adelaidemetro.com.au/Tickets/Fares>.

¹² Tasmanian Government, *New/Renew student bus pass for free travel application form* http://www.transport.tas.gov.au/__data/assets/pdf_file/0015/111606/PTS600_-_New_Renewal_Student_Greencard_Application.PDF.

¹³ City of Goldcoast, *Free Seniors Bus Travel Initiative*, <http://www.goldcoast.qld.gov.au/thegoldcoast/free-bus-travel-for-gold-coast-seniors-17698.html>.

¹⁴ Transport for London, *60+ London Oyster Photocard*, <https://tfl.gov.uk/fares-and-payments/adult-discounts-and-concessions/60-london-oyste>.

- Simplify point-of-sale ticketing procedures;
- Reduce barriers to the use of public transport, which would in turn promote social inclusion, wellbeing and community engagement; and
- Provide targeted assistance to the most vulnerable public transport users with the least means to pay a fare.

Recommendation 1 – Free travel on the Public Transport Victoria network for concession holders

In addition to imposing financial and personal strain on individuals, and exacerbating social isolation, Victoria’s current ticketing and enforcement framework imposes a significant resource burden on the government agencies, courts and services (including legal services and financial counsellors) that are involved – in differing ways – in the compliance framework.

Recognising the benefits of accessible public transport and the current costs of enforcement against people who are unable to pay, the IWG recommends the introduction of free travel on the Public Transport Victoria network for people with concession cards and asylum seeker concession cards.

If this recommendation is not adopted in the short-term, the remaining recommendations throughout the Position Paper aim to improve the fairness and equity of the current public transport ticketing infringement framework on vulnerable Victorians.

Preventing vulnerable Victorians entering the infringements system

The current public transport ticketing infringement framework does not provide effective outcomes for Victorians whose circumstances (1) increase the likelihood of them receiving an infringement; and (2) make it harder for them to deal with infringements once received.

We need to work on changes to systems, processes, laws and policies that ensure that, where possible, people with special circumstances or exceptional circumstances do not enter the infringements system in the first place.¹⁵

As discussed throughout this Position Paper, once a person enters the infringements system, it is difficult to exit and the subsequent process generates significant stress and hardship for individuals, and burdens the court system, government agencies and legal and community services.

A preventative approach, which focusses on supporting frontline decision-makers to select options other than issuing an infringement and early identification of people who should be exited from the system, has significant potential to reduce the hardship and inefficiency created by the current enforcement-focussed approach.

¹⁵ See *Infringements Act 2006* (Vic) s 3 for the definition of ‘special circumstances’. We note, however, that the IWG supports amending the definition of ‘special circumstances’ in the Infringements Act by replacing the words ‘results in’ with the words ‘contributed to’ (consistent with recommendation 44 of the May 2014 report of the Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria Report*).

Supporting decision-making by frontline officers

The Attorney-General's Guidelines to the *Infringements Act 2006* (Vic) (**Infringements Act**) state:

[T]he Infringements Act does not require that enforcement agencies consider 'special circumstances' at the issuing stage. However, if issuing officers are to exercise such discretions, then each enforcement agency must have a code of conduct to guide officers with the responsibility for issuing infringement notices in the discharge of their responsibilities.

The code should take into account the nature of the business of the issuing agency and the role and functions of its issuing officers. The code should focus on principles of the infringements system with respect to fairness and the recognition of individual obvious special circumstances.

We understand that some enforcement agencies have codes and run training on issuing cautions and warnings. Unfortunately, this discretion is often not consistently exercised in practice.

It is clear that Authorised Officers who issue penalty fares and infringement notices are required to make difficult on-the-spot decisions in the face of competing obligations and a diverse group of commuters.

IWG members' clients report a range of experiences with Authorised Officers on public transport, both positive and negative. This quote from a client who was experiencing homelessness and mental illness highlights way in which vulnerable Victorians can feel targeted by Authorised Officers when using public transport:

"I've been homeless since my mid-teens, living mainly in the inner city. I've been squatting for ages so I kind of don't feel like part of society anymore.

...

Public transport obviously is a big a thing for everyone living in the inner city especially for poorer and homeless people. Even just to get on the train and sleep for an hour or two, ride out to Hurstbridge and back. For me, through drug use and mental illness I got worse and worse and soon I had a few fines. They were pretty much all public transport fines. It ended up being about \$13,000 dollars' worth. The stress and anxiety of the debt was something I kind of felt already, the fines just added to that.

...

It's a bit upsetting when you are on a tram or train and you find that whenever there is a ticket officer they immediately bee-line their way to you. It does something to your self-esteem. The first few times it happens you think nothing of it, but then by the end you are looking for these people. I'm like a dog who has been hit. Once you've had the crap beaten out of you a few times it just becomes 'yes sir', it's kind of sad in a way.

A couple of times people giving the infringements have been nice, but a couple of times it has been demeaning. Once I had an appointment at Centrelink, I got off the train and was approached by four plain clothed officers. They asked me for a ticket, when I didn't have one they took me aside and photographed me for 'local records'. It was a bit weird standing on the platform getting your photo taken.

...

It is beneficial for the community to change the system because with the fines, it's like throwing paper at a fire. I don't know whether it has to do with training but also setting guidelines. If it does become that you can't get on public transport without a ticket, that's going to keep people from getting public transport to their

doctors and to their appointments. It puts additional strain on the health system, the legal system and the welfare system.

Getting the fines sorted was like a weight lifted, like going to the dentist and having the pressure released. It's a good feeling. It encourages me to get my stuff a bit more organised and together, start working again.”¹⁶

Recognising the challenges faced by Authorised Officers on public transport, the IWG recommends that officers are supported to balance competing priorities, consider people's individual circumstances, deal appropriately with vulnerable people and weigh up alternatives to issuing fines and infringements.

It is important for Authorised Officers to be able to properly exercise their discretion, identify the risk of over-enforcement and be able to appropriately interact with vulnerable people.

Recommendation 2 – supporting frontline decision-makers

Authorised Officers should be supported in their roles, including through:

- **Training** – All new and existing Authorised Officers should be given comprehensive training about the complex circumstances that may affect the people they're dealing with, including homelessness, mental illness, substance dependence, poverty and family violence. This training should involve people with a direct experience of these circumstances, who can play an effective role in improving understanding and addressing any pre-existing stereotypes or assumptions that Authorised Officers may have.
- **Alternatives** – If Authorised Officers are not presented with alternatives to fining people, they will inevitably resort to infringements or penalty fares as a way of managing public transport use. Issuing officers should exercise their discretion to warn rather than fine people with special or exceptional circumstances. Guidelines and training should be strengthened to support issuing officers to appropriately exercise the discretion by giving warnings or referrals rather than issuing infringement notices to people with special circumstances.
- **Monitoring and evaluation** – There should be evaluation processes to monitor how often issuing officers are using their discretion to issue warnings rather than fines and in what circumstances.

These measures have the potential to build the capacity of Authorised Officers to exercise guided discretion in a way that prevents vulnerable people entering the infringements system when their needs could be more appropriately dealt with by health, housing and support services.

Access travel passes and identifying special circumstances

Presently, Authorised Officers are not required to obtain details about or consider whether a person being issued with an infringement notice has special circumstances that caused the offending conduct (i.e. mental illness, substance dependence or homelessness led to them travelling without a valid ticket or evidence of their concession).

¹⁶ See Justice Connect Homeless Law, *In the Public Eye: Personal Stories of Homelessness and Fines* <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/infringements-and-public-space-offences/public-eye-personal-stories-homelessness-and-fines> (Hamish).

The DEDJTR is therefore first likely to learn of relevant special circumstances as part of an internal review process or, when the infringement is returned to the agency after a successful application for revocation to the Infringements Court.¹⁷

As this case study shows, once a person has entered the infringement system for public transport offences, a stressful, costly and time consuming process has been set in motion.

¹⁷ See *Infringements Act 2006* (Vic) ss 22–25 and 65–69 regarding applications for internal review on the basis of special circumstances and applications for revocation (respectively).

Stephanie: Woman experiencing homelessness takes 34 months to resolve public transport fine

Homelessness and public transport

Stephanie is a middle-aged woman with a history of homelessness, who suffers from an acquired brain injury and depression, and whose only income is Newstart Allowance.

Stephanie approached a CLC after she had been issued with five infringements from July 2012 to July 2013 for travelling without a valid ticket on public transport.

Stephanie was homeless after having to leave her rental property when her relationship ended. She was paying her ex-partner to be able to sleep on a couch in his office, but could not stay at the office during business hours.

The infringements were issued when Stephanie was travelling from the office to either a suburban soup van for dinner (there were no kitchen or bathroom facilities in the office), or to one of her many volunteering commitments.

Application for revocation and supporting evidence

Between September 2013 and February 2014, Stephanie's lawyers obtained a variety of support letters from treating doctors, support workers and the operator of the soup van. The letters commented on her homelessness and mental health issues.

In February 2014, an application for revocation was submitted on the basis of Stephanie's homelessness, mental illness and financial hardship. The application was supported by five letters of support and documentation from Centrelink.

In June 2014, the Infringements Court responded to the application, requesting more detailed evidence that more clearly identified the link between Stephanie's homelessness/mental illness and the infringements.

In October 2014, the Infringements Court revoked the enforcement orders on the basis of special circumstances. The matter was referred to the Magistrates' Court for hearing. In May 2015, the infringements were unconditionally dismissed by the Magistrates' Court.

34 months passed between the time Stephanie was issued her first fine in July 2012 and the dismissal of this fine by the Court.

Additional fine

Whilst this process was underway, Stephanie was issued with an additional infringement for travelling without a valid ticket in January 2014. In May 2015, a new application for revocation was submitted. In June 2015, the fine was revoked and ultimately referred to the Magistrates' Court.

In January 2016, the final infringement was unconditionally dismissed by the Magistrates' Court, more than 2 years after it was issued.

This case study highlights the significant benefits that could be generated from earlier intervention to prevent highly vulnerable people entering the infringements system.

Support to exercise discretion and deal appropriately with vulnerable people as set out in Recommendation 2 may have prevented Stephanie entering the infringements system.

We note, however, that not everyone will disclose their circumstances or vulnerability when approached by Authorised Officers as doing so can be publicly humiliating. We also need to be careful to avoid encouraging Authorised Officers to rely on stereotypes (for example, regarding a person's appearance) in making their decisions.

In light of this, there need to be better processes for identifying people with special needs or circumstances that do not rely on a person self-identifying.

A good working example already in place, which stops some highly vulnerable Victorians from entering the infringements system, is the 'Access Travel Pass', which 'is for people with a significant permanent physical or mental disability who travel independently on Victoria's public transport network and can demonstrate that due to their disability they cannot use the myki ticketing systems'.¹⁸ To be eligible for the Access Travel Pass a person must:

- have a permanent physical disability, cognitive condition or mental illness and be unable to touch on or touch off a myki at the myki readers independently and / or consistently in all cases;
- be a permanent resident of Victoria; and
- be able to travel independently on Victoria's public transport network (without any assistance from a carer or companion).¹⁹

The Access Travel Pass entitles the pass holder to free travel on:

- Melbourne metropolitan trains, trams and buses;
- V/Line services;
- Regional town buses; and
- Regional services that have a contract or service agreement with Public Transport Victoria.²⁰

Public Transport Victoria's guide to the Access Travel Pass explains that:

The Access Travel Pass is a registered myki that has the applicant's photograph and name printed on the card.

The pass holder is required to carry the Access Travel Pass with them at all times when travelling on public transport services.

It authorises free travel on public transport services within Victoria at all times, regardless of whether it has been touched on or off.

Where possible, the pass holder is encouraged to touch on or touch off their Access Travel Pass, so that their journeys can be included in the number of passenger trips and used to improve services.

Alternatively, the Access Travel Pass may be used as a "flash pass" to provide entry and exit at gated stations and to show to an Authorised Officer (ticket inspector) if requested.

A lanyard is provided with each Access Travel Pass to assist with card retention and ease of access when travelling.²¹

¹⁸ See Public Transport Victoria, *Access Travel Pass* <http://ptv.vic.gov.au/tickets/free-travel-passes/access-travel-pass/>.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Public Transport Victoria, *Access Travel Pass Information and Application Form* (March 2015) <http://ptv.vic.gov.au/assets/final-Access-Travel-Pass-App-27-Mar-2015.pdf>.

In the experience of IWG members, Access Travel Passes are under-utilised and are not as effective as they could be at preventing highly vulnerable people from entering the infringements system. This may be attributable to a lack of awareness about the Access Travel Pass amongst agencies working directly with people who would be eligible.

We also note that the criteria for the Access Travel Pass is too narrow and should be expanded to expressly include people experiencing:

- A mental or intellectual disability, disorder, disease or illness;
- An addiction to drugs, alcohol or a volatile substance; or
- Homelessness,

that contributes to the person being unable to consistently use the myki system.

The IWG also recommends allowing for people falling outside of these criteria to be able to apply for an Access Travel Pass, and for these applications to be considered on a case-by-case basis.

Where these circumstances are not permanent, for example homelessness, the person could be required to renew their Access Travel Pass every two years.

In terms of the evidence required to successfully apply for an Access Travel Pass, the IWG recommends that a broader range of professionals are able to endorse an application, including:

- Homelessness services, including a specialist health or housing service provider or case worker;
- Accredited drug treatment agencies or accredited drug counsellors;
- Social workers, case workers or case managers;
- General practitioners; and
- Psychiatrists, psychologists or psychiatric nurses.

The IWG recommends that there should not be an exhaustive list of practitioners who can endorse a person's application for the Access Travel Pass. There should be scope to accept evidence from other qualified professionals where it adequately identifies that the client's disability, mental illness, homelessness and/or addiction means they are unable to consistently use the myki system.

Recommendation 3 – Expanding Access Travel Passes to prevent people with special circumstances entering the infringements system

The Access Travel Pass scheme should be widened to include people whose homelessness, mental illness and/or substance dependence contributes to them being unable to consistently use the myki system. Where their circumstances are not permanent, for example homelessness, renewal could be required every two years.

A concerted awareness campaign regarding the expanded Access Travel Pass should be supported to promote this scheme within mental health, homelessness, financial counselling, legal, health and community services.

A formal referral scheme should also be implemented, where Authorised Officers at first instance, and the DEDJTR on review, can provide potentially eligible public transport users with details about the sign up process for the Access Travel Pass scheme.

With their consent, Victorians who have an Access Travel Pass should be in a searchable database accessed by Authorised Officers at the point of contact to avoid unnecessary problems arising from the person's failure to carry their card.

Early exit through better oversight

As mentioned above, presently, Authorised Officers are not required to obtain details about or consider whether a person being issued with an infringement notice has special circumstances that caused the offending conduct (i.e. mental illness, substance dependence or homelessness led to them travelling without a valid ticket or evidence of their concession). The DEDJTR is therefore first likely to learn of relevant special circumstances as part of an internal review process or, when the infringement is returned to the agency after a successful application for revocation to the Infringements Court.²²

As Public Transport Victoria notes:

*Authorised Officers will write a report of the alleged offence committed; they do not issue infringement notices or fines to passengers. Instead, they provide a report of the situation to the Department of Economic Development, Jobs, Transport and Resources. The department then determines whether the matter should be progressed and an infringement notice (fine) is issued and sent to you in the mail. If you have been spoken to in relation to multiple offences you may be charged on summons.*²³

The IWG's understanding is that, presently, the process of issuing an infringement notice after receiving a Report of Non-Compliance (**RONC**) is largely automated, with little room for discretion.

²² See above n 15.

²³ Public Transport Victoria, *Authorised Officers and Enforcement*, <http://ptv.vic.gov.au/getting-around/authorised-officers/>.

In addition to a more meaningful Access Travel Pass system and better informed and supported decision-making by Authorised Officers, the point at which a RONC is received and assessed by the DEDJTR is another important juncture at which people who should not be caught up in the infringements system can be exited.

Improved guidelines and oversight

The IWG recommends that guidelines and a mechanism for oversight are put in place to ensure effective decision-making within the DEDJTR at this point. Measures could include:

- Confirming whether a person has an Access Travel Pass;
- Checking whether a person has received a number of RONCs or infringements recently or in the past;
- Considering whether the address the person has listed is 'no fixed address' or is the address of a crisis accommodation provider; and
- Considering whether a person is connected to disability and mental health support services. The IWG understands that Victoria Police already has the technical capability to quickly obtain this type of information.

The IWG understands that an *Official Warning in lieu of Infringement Notice* policy operates when RONCs are reviewed. In 2009/10, 281 out of 173,426 RONC recipients were issued with official warnings and not issued with an infringement notice. This represents 0.16% of all RONCs issued, which indicates that this is an under-utilised policy that is not operating as an effective mechanism for exiting appropriate people from the enforcement process at an early point.²⁴

The IWG recommends that the warning policy is expanded and effectively implemented to prevent people entering the infringements system inappropriately and unnecessarily.

The IWG also recommends a mechanism of oversight and reporting, which reviews the number and proportion of:

- RONCs made by Authorised Officers where it is subsequently determined that it is not appropriate to issue an infringement notice;
- Infringement notices that are subsequently withdrawn after internal review;
- Enforcement orders that are revoked by the Infringements Court; and
- Infringements that are dismissed by the Magistrates' Court (including in the Special Circumstances List).

This reporting will allow for identification of areas where there is room to improve decision-making to prevent people with special circumstances or exceptional circumstances being caught up in the infringements system.

The Department should have open channels of communication with legal services, financial counsellors and other community services providing advocacy for clients issued with infringements for public transport offences, as this will provide direct insight into systemic issues that should be addressed.

Improved internal review procedures

Internal review provides another opportunity for vulnerable clients to be able to exit the infringements system at an early stage. The IWG's experience is that the DEDJTR's internal review system is inconsistent, unpredictable and operates inefficiently.

The experience of the IWG is that many applications for internal review that are supported by strong evidence of special circumstances are rejected. In some cases the enforcement agencies accept that the applicants have special

²⁴ Victorian Ombudsman, *Investigation into the issuing of infringement notices to public transport users and related matters* (December 2010), p 34.

circumstances but still reject that application for the infringement(s) to be withdrawn. The case study below demonstrates the way in which, even where special circumstances are found to exist by an enforcement agency, the matter may still end up in open court.

Cole: Internal review application refused despite strong evidence

Cole is a 19 year old young man who has been diagnosed with Tourette syndrome, ADD, OCD, short term memory issues, auditory processing deficiency and anger management issues, and is in receipt of a Disability Support Pension.

Cole has presented at a youth homelessness service for housing assistance over a period of 18 months, including being in need of crisis housing a number of times.

Cole also approached a CLC to assist with nine public transport fines totalling in excess of \$2200 (which he accrued as an 18 year old), eight for failing to produce a valid ticket and one for failing to produce evidence of concession.

On Cole's behalf, the CLC applied for internal review to the Department on the grounds of special circumstances of homelessness and mental illness.

Two letters were submitted with the application from homelessness services and from his paediatrician who has been treating him since he was 6. The letters confirm that at the time of receiving the fines, Cole was in and out of refuges every night and specifically that his intellectual disability "has a significant impact on his cognitive functioning, comprehension and ability to touch on/off his myki".

However internal review was refused by the Department and referred to court.

Cole has subsequently received seven separate charge sheets for seven (not all nine) matters (rather than the Department combining them on the one brief), with one matter listed on one day in June and the other six on a different day in June 2016.

Unpredictable, inconsistent approaches to internal review applications by enforcement agencies and the likelihood of ending up in open court mean that people with special circumstances may choose to wait until the Infringements Registrar makes an enforcement order before making an application for revocation.

The IWG welcomes the Fines Reform Act, which will facilitate better and more flexible options for people if an internal review application based on special circumstances is refused (in particular, unsuccessful applications for internal review on the basis of special circumstances will no longer be automatically referred to open court).

However, it remains the case that the DEDJTR's internal review decisions need to be consistent and predictable. To this end, the IWG recommends that the DEDJTR adopt a more transparent and rigorous internal review policy. The IWG recommends that the DEDJTR refer to the City of Melbourne's *Model Operating Policy for Enforcement Agencies* when developing their own rigorous approach to internal review applications.

Recommendation 4 – Better oversight and reporting to support early exit from the infringements system

Guidelines and a mechanism for oversight should be put in place to ensure that the decision to issue an infringement notice is not a rubber stamp and is instead an effective juncture for identifying when people should be exited from the system. Once an infringement notice is issued, the internal review process should be improved so that it provides a meaningful opportunity for people to exit the system early.

Measures should include:

- A requirement for the Department to confirm whether a person has an Access Travel Pass; check whether a person has received a number of RONCs or infringements recently or in the past; consider whether the address the person has listed is 'no fixed address' or a crisis accommodation provider; and check whether the person is receiving support from disability or mental health support services;
- A mechanism of oversight and reporting, which reviews the number and proportion of RONCs and infringements that are subsequently withdrawn or dismissed, including on the basis of special circumstances;
- Increasing the scope of the *Official Warning in lieu of Infringement Notice* policy at RONC review stage;
- Introducing a more transparent and rigorous internal review policy. The policy could be based on the City of Melbourne's *Model Operating Policy for Enforcement Agencies*; and
- Open channels of communication with legal services, financial counsellors and other community services providing advocacy for clients issued with infringements for public transport offences, to provide direct insight into systemic issues that should be addressed.

Reducing the financial burden of public transport infringements on low income people

Reduced infringement penalties for eligible concession card holders

Public transport users come from diverse backgrounds and have varying levels of capacity to pay fares and infringements. The current public transport ticketing infringement framework operates in discriminatory ways against those who cannot afford to pay. People who can afford to deal with their infringements by payment can avoid the stress of going to court, contesting an infringement and potentially receiving a criminal record.²⁵ People experiencing poverty cannot afford to exit the system.

By way of example, the average weekly earnings in Australia as at May 2015 is \$1484.50, whereas the weekly income of a person on Newstart Allowance is only \$261.70 i.e. 17.63% of the average weekly earnings. In practice

²⁵ 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. The presence of a criminal record acts as a barrier to future employment opportunities for our clients. For asylum seekers, the finding of guilt can be regarded as a breach of their Code of Behaviour, which can result in visa cancellation or refusal. The IWG supports removal of the requirement to plead guilty in the Special Circumstances List.

this means that infringements hit low income people harder. For example, a \$223 infringement for not having a ticket on the tram or train is 85% of the weekly income for a person relying on the Newstart Allowance.

The case study below highlights the inability of low income travellers to afford the full infringement penalty.

Anthony: ‘it will still hurt them in the pocket and realistically they can still pay it’

Anthony became homeless in his late 20s. He slept rough and couch-surfed for about two years and he got about \$3000 in fines for travelling on public transport without a ticket, having his feet on the train seat and possessing an open container of liquor. Anthony now feels hopeful about his future. He is in recovery, has stable housing and is looking forward to returning to work or study.

“I became homeless when my drug use became out of control and got kicked out of home. I tried living out of home in a rental place but I couldn’t afford the rent as I was using drugs. I found myself on the streets, couch surfing, and that continued for about two years.

Most of my fines consisted of transit fines. They were basically – I’d jump on a train, tram or a bus to either score to get drugs or to get to appointments, cause I didn’t have money to buy a ticket. I had to get to where I had to get to. When I got fined, most of the times I didn’t actually worry about it at the time I was getting fined, but when the fines accumulated, it just adds pressure, because you know you’re not going to have the money there at all, but it’s still going to be hanging over your head.

Well I know the fines really don’t work, so making the system better could be making a concessional fine for people on concession. If you’re looking at someone on unemployment benefits, a \$207 transit fine is probably 80% of their weekly income, so maybe drop it to \$40. It will still hurt them in the pocket and realistically they can still pay it.”

The current infringements regime already recognises that some public transport users have less capacity to pay fines than others. Children are subject to a fine of \$76 for a variety of offences. For the more serious of these offences, \$76 is 20% of the full Infringement Penalty that would be otherwise payable.

Offence	Infringement Penalty for adult	Infringement Penalty for child (under 18)
Failing to produce a valid ticket	\$223	\$76
Littering on a vehicle or premises	\$228	\$76
Trespassing	\$303	\$76
Travelling on part of a vehicle not meant for travel without a reasonable excuse	\$379	\$76

The unaffordability of Infringement Penalties is particularly pronounced when numerous fines are incurred over a long period of time. The case study below demonstrates the hardship caused by the accumulative effect of unaffordable fines.

Hannah: \$9000 of public transport fines for young person experiencing homelessness

Hannah left home at 19 to escape family violence at the hands of her father. She started sleeping on the streets, couch-surfing and staying in boarding houses but had difficulty finding somewhere stable to live. Her only way of getting around was to use public transport, but she often didn't have enough money to top up her myki.

She usually didn't know that she'd been fined because even though her ID had her parents' address, she wasn't living there and had no contact with her family. She didn't have a new address that she could use on her ID because she was constantly moving around. The infringement notices kept getting sent to her old addresses, but she didn't receive them.

She had no family supports and no one to provide any financial assistance. She started engaging in sex work to make extra money as she struggled to survive on her Centrelink Youth Allowance income, which would often be cancelled as she didn't receive the mail that Centrelink would send to her old address.

At 22, she sought housing assistance and was referred to a CLC to find out if she had any fines. Hannah had over \$9,000 owing for 26 unpaid myki fines from the last 3 years when she was transient.

The CLC assisted Hannah to write to the Infringements Court to apply for revocation based on special circumstances. The Infringements Court revoked the enforcement orders, but the Department of Transport decided not to withdraw the fines and prosecuted her in court. Hannah's matter was heard in the Melbourne Magistrates' Court and all the fines were found proven and dismissed.

The IWG recommends that fines for eligible concession card holders are substantially reduced, reflecting their reduced capacity to pay. This approach is consistent with the approach adopted in Finland for traffic infringements. In that jurisdiction, fines are adjusted based on the recipient's income, in order for the fines to represent an equal proportion of recipients' disposable income.²⁶

The benefits of concession based infringements were recognised by the Sentencing Advisory Council (**SAC**) in its May 2014 report, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria Report*. SAC recommended:

- *Infringement penalty recipients who are experiencing financial hardship should receive a reduced infringement penalty amount of 50% (Recommendation 39).*
- *Eligibility for the adjusted penalty should be the same as eligibility for automatic entitlement to a payment plan outlined in the Attorney-General's Guidelines to the Infringements Act 2006 (Recommendation 40).*²⁷

²⁶ The Australia Institute, *Income based traffic fines* (30 January 2016), <http://www.tai.org.au/content/income-based-traffic-fines>.

²⁷ Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria Report* (May 2014) x1. Note that the eligibility requirements in the Attorney-General's Guidelines are receipt of any one of the following: a Commonwealth Government (Centrelink) Pensioner Concession Card; a Department of Veterans' Affairs Pensioner Concession Card or Gold Card; or a Centrelink Health Care Card (all types including non-means tested).

In formulating its recommendations, SAC stated:

The adjusted penalty amount is intended to provide equality before the law by appropriately mitigating the penalty amount for eligible infringement recipients. This will afford the infringements system a broad measure to recognise the differential impact of an infringement penalty amount on people experiencing financial hardship compared with people who are not. The credibility and effectiveness of the infringements system will be improved by enhancing the equality of its impact, perceptions of fairness, and the prospects of compliance by low-income infringement recipients.²⁸

...

Inherent in an effective infringements system is the need to balance fairness with compliance and system efficiency, as recognised in the Attorney-General's Guidelines. Tailoring a high volume, highly automated system to accommodate fairly those experiencing financial hardship is not an easy task. However, the merit of a system that better provides for equality of punishment between those who are and those who are not experiencing financial hardship outweighs the administrative burden of establishing the system.²⁹

While in many cases, payment will not be the best option for the client (because a special circumstances application or work and development permit will be more appropriate), it is important that the public transport ticketing infringement framework has a variety of options in place to allow disadvantaged people to address their infringements. Some people may want to resolve their infringements through payment and, for this to be a possibility, the system needs to recognise that people on very low incomes cannot pay the same amount as people on average to high incomes.

As mentioned above, the average weekly income of a person on Newstart Allowance is \$261.70, which is 17.63% of the average weekly income in Australia (\$1484.50 at May 2015).³⁰

Accordingly, the IWG recommends that for eligible people, infringements should be set at 20% of the standard rate. Children who are subject to an eligible concession card (e.g. children covered by a parent's Healthcare Card) should be subject to infringement penalties of 20% of the standard children's rate (ie 20% of \$76 = \$15.20).

Waiver of enforcement fees for eligible concession card holders

Many IWG members' clients, due to their vulnerabilities and special circumstances, are not in a position to pay public transport fines within the required time. Enforcement fees and costs are added to the original infringement penalty at different stages if payment is not received. The table below shows that by the time an infringement reaches warrant stage, fees and costs can cause the original penalty to increase significantly with additional fees charged. A person's poverty and special circumstances may mean that they are unable to pay their fines or to engage with the review process within required timeframes. Infringements and penalty costs and fees can become overwhelming debts and cause significant stress and financial strain for disadvantaged Victorians.

	Cost added	Total
Not having a ticket on public transport		\$223
Penalty reminder notice issued	\$24.50	\$247.50
Notice of enforcement order issued	\$81.60	\$329.10

²⁸ Ibid xi.

²⁹ Ibid 252.

³⁰ Australian Bureau of Statistics, *Average Weekly Earnings – Australia* (May 2015), <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0/>.

Warrant issued	\$59.80	\$388.90
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Source: *Infringements (General) Regulations 2006 (Vic)*; Government Gazette S86, 17 April 2015.

The IWG recommends that these additional enforcement fees are waived for eligible concession card holders. The elimination of these fees would increase the likelihood of repayment and acknowledge the stress and hardship that the imposition of additional fees has on vulnerable people who have already been penalised for their offending.

Recommendation 5 – Reduce infringement penalties for eligible concession card holders

Given the wide disparity of incomes amongst public transport users, concession card holders should be subject to reduced infringement penalties. The IWG recommends:

- Setting infringement penalties for eligible concession card holders at 20% of the standard rate. By way of example, a fine for not having a ticket on public transport would be \$44.60 i.e. 20% of the current infringement amount of \$223.
- Waiving additional enforcement fees (penalty reminder notice fee, enforcement order fee, infringement warrant fee) for concession card holders.

This system would give eligible card holders a realistic chance to be able to pay off their infringements, whilst retaining a deterrent effect for all public transport users.

Removing harsh penalties for concession card holders

The Infringement Penalty for the offence of failing to produce a concession card is currently \$223. Public transport users commit this offence where they fail to produce evidence of concession entitlement, even where they are in fact entitled to the concession fare (e.g. they left their concession card at home).³¹

The \$223 Infringement Penalty is disproportionate compared to other offences – for example, an infringement for exceeding the speed limit by less than 10km/hour is only \$190. The Infringement Penalty is also disproportionate to other public transport offences. As the table below shows, the offence carries almost the same penalty as not having a valid ticket or jumping over a barrier, and is not far below the Infringement Penalty for far more serious offences, such as destroying property.

Section	Infringement	Infringement Penalty from 1 July 2015
Transport (Ticketing) Regulations 2006		
6(1)	Failing To Hold Valid Ticket - while travelling in a passenger vehicle (adult)	\$223

³¹ *Transport (Ticketing) Regulations 2006 (Vic)* reg 9.

Section	Infringement	Infringement Penalty from 1 July 2015
Transport (Compliance and Miscellaneous) (Conduct on Public Transport) Regulations 2015		
14(5)	Jumping or climbing over barrier without reasonable excuse (adult)	\$228
20	Destroying, damaging or defacing property (adult)	\$303
30(2)	Distributing handbills, soliciting money or goods or busking (adult)	\$228

The unnecessary strain that the current offence places on individuals and the justice system is apparent from the below case study.

Timothy: situation with man experiencing mental illness escalates when approached for proof of concession

Timothy is travelling home from a university exam where he has managed to start studying as a mature aged student. Timothy has several complex diagnosed mental health issues.

While exiting Southern Cross Station with a valid concession myki Timothy is stopped by Authorised Officers to produce evidence of his concession.

Timothy is agitated by this request and stressed by his recent exam. He looks for his concession but can't find it. He feels bullied and surrounded by the four Authorised Officers.

Timothy fails to produce evidence of concession. He then argues with the Authorised Officers and allegedly uses offensive language. He flees the scene and throws a half-eaten hamburger at the ground while running away.

Timothy is charged with failure to produce a valid concession, using obscene or offensive behaviour and two assault charges in relation to throwing the hamburger.

Upon seeking legal assistance at a community legal centre Timothy reluctantly accepts his best legal outcome is a Diversion Order in the Magistrates' Court. Thankfully this was consented to by the Department of Transport Prosecutor and Timothy had no previous charges.

Timothy writes a letter of apology to the Authorised Officers but still feels aggrieved by the behaviour of the Authorised Officers.

The following recommendations aim to improve the fairness and equity of the current system for overseeing proof of concession.

Avoiding infringements where proof of concession is subsequently provided

In recognition of the challenges many concession card holders can experience, including homelessness, mental illness, disability, caring obligations and/or substance dependence, the public transport ticketing infringement framework should allow evidence of entitlement for a concession fare to be provided within 28 days of (a) being approached by an Authorised Officer, resulting in a Report of Non-Compliance; and (b) receiving an infringement notice.

This would present two opportunities for concession card holders to avoid being inappropriately caught up in the infringement system.

Such reforms recognise the life realities for most concession card holders and move away from the current regulations, which impose absolute liability on these vulnerable people who, despite having a valid ticket and being entitled to a concession, fail to produce evidence of their concession status “without delay”.

The IWG also notes that the current policy of the DEDJTR is not to withdraw infringements based on evidence of entitlement provided at a later date; except for students where it is their first offence.³²

This case study highlights the way in which this approach causes people to be caught up in the infringements system who shouldn't be.

Abdul: Failure to immediately produce evidence of entitlement to a concession fare

Abdul was travelling with a valid concession myki when he was stopped after exiting Flinders Street Station. Abdul receives Austudy and was entitled to concession travel, however on this day, unbeknown to him, Abdul had lost his concession card and was unable to provide immediate proof of his concession entitlement.

Abdul was issued with an infringement for failing to provide proof of entitlement and was told that he could apply for internal review, enclosing proof of his entitlement.

Through his local CLC, Abdul applied for internal review, including providing proof that he was entitled to concession travel at the time of the fine.

Contrary to the comments made by the Authorised Officer, the internal review was rejected on basis that the offence is for failing to provide proof of concession entitlement rather than failing to be entitled to concession travel.

The IWG recommends that the words “without delay” be removed from the relevant provisions of the *Transport (Ticketing) Regulations 2006* and that:

³² Department of Economic Development, Jobs, Transport and Resources, *Transport Infringements – Internal Review* (15 May 2015), <http://economicdevelopment.vic.gov.au/transport/legislation/public-transport-fines/transport-infringements-internal-review/>.

- An infringement notice for failing to produce evidence of entitlement to a concession fare should not be issued if evidence of a concession entitlement is provided within 28 days of a Report of Non-Compliance being issued;³³
- An infringement notice for failing to produce evidence of entitlement to a concession fare should be withdrawn if evidence of a concession entitlement is provided within 28 days of the infringement notice; and
- Proof of concession entitlement should be construed broadly and be able to be provided by post, email or fax.

The IWG submits that the above changes are necessary to ensure that vulnerable Victorians are not unfairly caught up in the infringements system despite having a valid ticket and being entitled to a concession fare.

Allowing other methods of proving concession entitlement for students

Passengers aged 17 years or older travelling on a concession fare must carry appropriate proof of their concession entitlement.³⁴

For students, this means a special VPTCC card issued by Public Transport Victoria. School-issued identification cards or wearing school uniform are not sufficient.³⁵

The IWG is aware of many instances where passengers who are clearly high school students have been issued with infringement notices due to not having the correct form of proof of concession entitlement.

This case study highlights the problems that can arise from the current rigid approach to proof of concession for school students.

Lauren: student from low income family pays fine despite eligibility for concession

Lauren is a seventeen year old in her final year of high school.

She is travelling on the train in school uniform with a valid concession myki and carrying her mother's Health Care Card as she is listed as a dependant on that card.

Authorised Officers inspect her myki and issue a report for failure to produce a valid concession as she is not entitled to rely on either her school uniform or her mother's Health Care Card as evidence of concession.

Lauren would rather focus on her studies and is scared of attending Court so despite her family's financial hardship decides to just pay the infringement.

The approach in Victoria differs from other Australian jurisdictions which adopt the following approaches to proving concession entitlement for students:

³³ The process, including the test of reasonableness, has an analogy in *Road Safety Act 1986* (Vic) s 59(3), which allows people to produce their driver licence at police stations within 7 days.

³⁴ Public Transport Victoria, *Victorian Fares and Ticketing Manual 2015*, p 18. In Victoria, children from 4 to 16 years of age can travel on a concession fare and don't need a concession card: see Public Transport Victoria, Children on Public Transport (available at: <http://ptv.vic.gov.au/tickets/children-on-public-transport/>).

³⁵ Ibid pp 19-20.

- In the Northern Territory, wearing school uniform or showing school-issued ID is sufficient.³⁶
- In the Australian Capital Territory, school-issued ID cards are accepted.³⁷
- In Queensland, school uniform or school-issued ID is sufficient.³⁸
- In Western Australia, policy dictates that officers do not issue infringements to secondary students in uniform if they are unable to display proof of concession.³⁹

To bring Victoria into line with the sensible positions adopted by other states and territories, school issued ID and school uniform should be accepted as valid proof of entitlement to a concession.

Provide an option for proof of concession entitlement to be registered to a myki card

Many of the IWG's clients have received fines for failing to provide proof of their concession entitlement, in circumstances where they are in fact eligible for a concession fare, but are not carrying proof of their entitlement on their person when their ticket is checked by an Authorised Officer.

To help address this issue, the IWG recommends that registered myki card holders are provided with the option of uploading proof of their concession entitlement (e.g. a scanned copy of a Health Care card) to the myki website. Authorised Officers could then be notified on their handheld myki scanners that the person is entitled to travel on a concession fare and/or DEDJTR staff could be alerted to the entitlement at RONC review stage.

This system would be particularly advantageous for vulnerable public transport users who, due to their special circumstances, are unlikely to carry proof of concession entitlement with them when using public transport. These users could be assisted by support workers to register their concession entitlement online.

Reducing the disproportionate infringement amount for concession offences

Each of the above proposals is intended to prevent people being issued with infringements for failure to produce their concession card, through sensible, practical measures, recognising that the circumstances of concession card holders, including disability, mental illness, youth and/or age, can also affect day-to-day decision-making and organisation. In short, the same factors that entitle a person to a concession card make it more likely that they will be travelling without proof of that entitlement.

If, however, a person is unable to be exited from the system via one of these mechanisms, the IWG recommends that the infringement penalty amount is significantly reduced to more appropriately recognise the circumstances of concession card holders and the minor nature of the offence.

As discussed above, the infringement penalty for the offence of failing to produce a concession card is currently \$223.⁴⁰

³⁶ Northern Territory Government, *Fares, Concessions and Subsidised Travel* (2014) <http://www.transport.nt.gov.au/public/fares-concessions-and-subsidised-travel>.

³⁷ ACT Government, *Concessions* (8 January 2016) https://www.transport.act.gov.au/catch_a_bus/myway/concessions.

³⁸ Queensland Government, *Concessions* (2016) <http://translink.com.au/tickets-and-fares/concessions>.

³⁹ Western Australia, *Parliamentary Debates*, Legislative Assembly, 6 May 2010, (Mr M J Cowper).

⁴⁰ *Transport (Ticketing) Regulations 2006* (Vic) reg 9; Department of Economic Development, Jobs, Transport and Resources, *Public Transport Infringements and Court Penalties* (2015-2016) http://economicdevelopment.vic.gov.au/__data/assets/pdf_file/0005/1114727/2015-16-LLS-Public-Transport-Infringements-and-Court-Penalties-1Jul2015.pdf.

This amount ignores the vulnerability, hardship and limited incomes of concession card holders; as well as the seriousness of the offence, which is essentially administrative in nature.

Recommendation 6 – Reducing the harsh penalties for concession card holders

The following measures should be introduced to reduce the harsh impact of the current system for enforcing concession eligibility:

- Allowing evidence of concession entitlement to be provided within 28 days to avoid an infringement notice being issued or to have an infringement notice withdrawn. Proof of concession entitlement should be construed broadly and be able to be provided by post, email or fax;
- Consistent with other Australian jurisdictions, allowing school uniform and school-issued ID as proof of concession entitlement for school students;
- Providing the option for registered myki card holders to upload proof of their concession entitlement to the myki website; and
- Substantially reducing the infringement penalty for failing to produce evidence of entitlement to a concession fare to appropriately reflect the severity of the offence.

Repealing on-the-spot Penalty Fares

On-the-spot penalty fares were introduced by the Victorian Government on 10 August 2014 for a 12 month trial period.⁴¹ The IWG understands that a review of on-the-spot penalty fares is due to be delivered to the Transport Minister in early 2016.⁴²

Part 2A of the *Transport (Ticket) Regulations 2006 (Vic)* prescribes a number of offences, including failing to hold a valid ticket or evidence of concession entitlement, as on-the-spot ticket offences. Public transport passengers who commit these offences may opt to pay an on-the-spot penalty fare, currently \$75, rather than be issued with an infringement notice.

The IWG has two key concerns about the use of penalty fares:

- **Discriminatory effect:** on-the-spot penalty fares are out of reach for low income people who would benefit most from paying a reduced amount. The on-the-spot amount is almost 30% of the weekly income for someone on the Newstart Allowance. Even for someone on a slightly higher income, high costs of living, particularly housing costs, mean it is unlikely that they will have \$75 to spare. In this way, the on-the-spot penalty fare system is discriminatory in its effect because it allows middle and high income earners an easy out, while low income earners – who will be hit hardest by the full penalty amount – have little choice but to accept the full amount.

⁴¹ Department of Economic Development, Jobs, Transport and Resources, *Public Transport Fines* (1 July 2015) <http://economicdevelopment.vic.gov.au/transport/legislation/public-transport-fines>; Yarra Trams, *On-the-spot Penalty Fares from August 10*, <http://www.yarratrams.com.au/media-centre/news/articles/2014/on-the-spot-penalty-fares-from-august-10/>.

⁴² The Age, *State Finally Tries to Fix Myki's Fare Mess* (14 December 2015) <http://www.theage.com.au/comment/the-age-editorial/state-finally-tries-to-fix-mykis-fare-mess-20151213-glmkkl.html>.

- **Coercive or misleading:** when on-the-spot penalty fares are issued, the information conveyed to commuters is limited. It is presented as two options: pay \$75 now or pay \$223 later. The range of other options, including, for example, applying for internal review on the basis of special circumstances, are not explained and, once payment is made, these options are no longer available. As identified by Liana Buchanan, executive officer of the Federation of Community Legal Centres, on-the-spot penalty fares, "risk coercing vulnerable people into paying fines they can't afford in circumstances where they may well have made all reasonable attempts to pay, and where there may well be grounds for a successful challenge of fines due to frequently reported flaws in the system".⁴³

In relation to on-the-spot penalty fares, Public Transport of Victoria notes that:

*If a passenger pays an On-the-spot penalty fare they have no right to appeal at a later date and no refunds are provided. If a person believes they have a legal defence to travelling without a valid ticket, they should not pay an On-the-spot penalty fare but should instead provide their name and address and appeal the infringement notice if they receive one.*⁴⁴

The IWG is concerned that this information is not being clearly explained by Authorised Officers to those who opt to pay a penalty fare. These concerns have recently been echoed by the Public Transport Ombudsman of Victoria, who remarked in her 2015 Annual Report that:

*Currently, consumers who opt to pay the \$75 penalty fare are not provided with any information regarding their right to complain or explain their circumstances. 189 consumers contacted us to complain about the penalty fare, 123 of these complaints were received after January 1, 2015; however it is possible many more may have complained to the PTO had they known they could. There is a lack of information given to consumers about their options when they choose a penalty fare and I am concerned that consumers may wrongly assume that 'no appeal' means they cannot complain to us.*⁴⁵

The IWG also echoes the concerns of Julian Burnside QC and others that the use of on-the-spot penalty fares can pressure or intimidate people who have legitimate reasons for not having a valid ticket into paying the penalty fare rather than being issued with an infringement notice and having the ability to apply for review or challenge the matter in court.⁴⁶

Clients of IWG members are particularly vulnerable to being pressured into paying an on-the-spot amount because of the fear of how unmanageable the infringement notice amount is. They are also the most likely to have a valid basis for challenging the infringement notice, including because of their special circumstances. Further, they are the least equipped to pay \$75, which may constitute up to 30% of their weekly income. However, in the absence of clear information regarding the availability of other options, there is a substantial risk that people who cannot afford to pay and have a legitimate legal basis of questioning the infringement will pay on-the-spot penalty fares.

The case study below highlights the level of confusion attached to the on-the-spot penalty fare system for vulnerable commuters.

⁴³ Adam Carey, *On-the-spot penalty fares on public transport under review amid coercion fears* (17 August 2015) *The Age* <http://www.theage.com.au/victoria/onthespot-penalty-fares-on-public-transport-under-review-amid-coercion-fears-20150817-gji0usm.html>.

⁴⁴ Public Transport Victoria, *On-the-spot Penalty Fares*, <http://ptv.vic.gov.au/penaltyfares/>.

⁴⁵ Public Transport Ombudsman, *Annual Report 2015*, http://www.ptovic.com.au/images/2015_Annual_Report.pdf p 23.

⁴⁶ Simon Leo Brown, *Myki fines: Julian Burnside QC considers pro-bono legal team to battle on-the-spot 'standover racket'*, ABC News (3 July 2015) <http://www.abc.net.au/news/2015-07-03/myki-fines-julian-burnside-considering-pro-bono-legal-team/6592948>.

Trish: confusion and intimidation regarding on-the-spot Penalty Fares

Trish is a Vietnamese pensioner with limited proficiency in English. Trish boarded a train at West Richmond Station to travel to Ascot Vale Station. Although she had available funds on her myki at the time of travel, she forgot to validate her myki prior to boarding the train. Upon realising this error, she got off the train at the next available station, which was Jolimont Station.

When she arrived at Jolimont station Trish was met by ticket inspectors who would not allow her to validate her myki. Trish was unsure if she had sufficient funds to cover the cost of the penalty fare so she attempted to pay with cash. However, the ticket inspectors would not accept this method of payment. Due to her limited English, Trish became very confused and was not sure why the Authorised Officers were asking for money but would not accept cash. She attempted to pay by cash again, and was again refused by the Authorised Officers. Trish then offered to try to pay with her bank card but was refused; she was told that it was now 'too late' for her to pay the on-the-spot penalty.

When asked to provide the Authorised Officers with her name and address Trish did not understand what was being asked of her and Victoria Police were requested to attend. Trish waited on her knees surrounded by four Authorised Officers until police arrived; upon their arrival Trish produced her identification.

Trish later received infringement notices for failing to produce a valid ticket and for failing or refusing to give a name and address.

While the IWG appreciates that Authorised Officers cannot accept cash payments, Authorised Officers' difficulty communicating effectively with the diverse range of commuters – in this case an older woman from a non-English speaking background – presents a high level of risk that people are being confused and intimidated by the on-the-spot penalty fare process.

While most low income people simply can't pay and are therefore discriminatorily excluded from this option, in the absence of clear information and communication about options other than pay now or pay later, people who have legitimate reasons for challenging the infringement notice find themselves unable to do so after paying the on-the-spot penalty fare.

Given these flaws in the on-the-spot penalty fare system, the IWG's view is that the system should be repealed as part of a movement toward a fairer, more equitable public transport system.

Recommendation 7 – On-the-spot penalty fares should be repealed

The IWG recommends that on-the-spot penalty fares be repealed due to their discriminatory impact, lack of appeal rights and the failure of Authorised Officers to clearly articulate the impact of paying a Penalty Fare. If Recommendation 7 is not accepted, Authorised Officers should be required to provide a fact sheet explaining relevant information before requiring payment of a Penalty Fare or issuing a Report of Non-Compliance.

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
- FMC Mediation & Counselling Vic. (Financial Counselling & Capability Program)
- Good Shepherd Youth & Family Service
- Hume Riverina Community Legal Service
- Inner Melbourne Community Legal
- Justice Connect Homeless Law
- Lentara UnitingCare
- Loddon Campaspe Community Legal Centre
- 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
- SouthPort Community Legal Service
- Springvale Monash Legal Service
- St Kilda Legal Service
- Upper Murray Family Care
- Victoria Legal Aid
- Victorian Aboriginal Legal Service
- West Heidelberg Community Legal Service at Banyule Community Health
- Whittlesea Community Legal Service
- Women's Legal Service Victoria
- Western Community Legal Centre
- Youthlaw

Annexure 2 – Infringements processes, timeframes and options

