

Fines Victoria complaints

April 2019

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The Victorian Ombudsman respectfully acknowledges the Traditional Owners of the lands throughout Victoria and pays respect to them, their culture and their Elders past, present and future.

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973* (Vic), I present to Parliament my report on *Fines Victoria complaints*.



Deborah Glass OBE

Ombudsman

17 April 2019

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Foreword

'When we make a mistake, we pay. When they make a mistake, we pay. That is not fair ... I'm very lucky that I'm only supporting myself but can you imagine someone who has four or five kids and the family relies on his ability to earn an income?'

'I'm at my wit's end, I don't know what to do, that's why I'm calling you ... I don't know what to do about [my son's] fines. And I just can't get them to answer. No one answers my letters or my emails. What do I do?'

'I am getting really frustrated and sick of having to cop the punishment for something that I did not do. I need my licence and my kids depend on me to get them around.'

- Complaints to the Ombudsman

Like death and taxes, fines are a fact of life. Few people in Victoria would not have dealt with a fine or infringement at some point, whether from a traffic camera, parking offence or any one of numerous other matters, including someone else driving their car too fast.

Fines Victoria came into existence on 31 December 2017 to administer all fines in the State, replacing Civic Compliance Victoria. Its gestation was part of major fines reform which enjoyed strong bipartisan support; in the words of the then Attorney-General: *"designed to make Victoria's fines system fairer and more equitable for vulnerable and disadvantaged members of the community."* Its intent was laudable; not only to be a *"single, central and accessible point of contact"* for people with fines, but to introduce a range of social justice initiatives, including addressing recommendations of the Royal Commission into Family Violence.

In the year following this worthy initiative, however, complaints to my office began to soar, in some months more than double that of its predecessor. Indeed it was the third most complained about agency in Victoria in 2018, no mean feat considering over a thousand public bodies are within the Ombudsman's jurisdiction.

We had meetings with Fines Victoria throughout 2018, to alert them to the patterns of complaints and understand what they were doing about them. This report sets out those themes and the agency's response. It was quickly clear that the cause of many of the complaints was the new IT system, which has still not been fully rectified.

Many complaints were about delay; in the processing of nominations, completing reviews and implementing payment plans. Others were about call wait times and difficulties making contact, many by people deeply anxious about the impact of the delays. Other complaints raised issues with the way Fines Victoria shares information with VicRoads, including the frustration people felt being referred between agencies.

The impact of these issues should not be underestimated. People had their licences wrongly suspended, or were treated as liable for substantial fines, when they had committed no offence. Payment plans by people facing serious financial hardship were not being administered properly. The worry and frustration were then compounded by people's inability to get through to the agency and have their complaints fairly resolved. They plainly were causing sleepless nights; people told us of anxious elderly parents, frustration, anxiety and sometimes, trauma.

In the vast majority of these cases, it should not have taken the intervention of the Ombudsman for Fines Victoria to have simply done the right thing.

Fines Victoria has been candid about its failings and was quick to recognise its performance was less than satisfactory. They advised us of significant resources put into eliminating backlogs and addressing the IT challenges that had contributed to them. This report does not seek to investigate the IT delays, although I note the lengthy history of IT failures in the management of infringements in Victoria. I also note that the agency was launched before the IT system was fully functional, and that the deadline for full functionality continues to be set back.

However, we have pointed out that the issues are not solely caused by IT failures. Some stem from poor communication, inflexible exercise of discretion, or poor handling of complaints. While these are, sadly, perennial themes in many agencies, if the system is failing it is even more important to get the human element right.

We continue to receive complaints about Fines Victoria, and it is too early to tell whether any improvements have had an effect. I am tabling this report to draw attention both to the problems identified by the complaints and the solutions put forward by Fines Victoria, and to make clear I am keeping the agency under review to see whether further investigation is warranted. There has been significant public investment in this area; agencies and the public have a common interest in it working as well as the speeches in Parliament intended.

Deborah Glass

Ombudsman

About this report

In 2018, the Ombudsman received 605 complaints about Fines Victoria. This report looks at the emerging themes from these complaints and the efforts of Fines Victoria to address them. It includes a number of complaint case summaries. The names of all complainants, related parties and other identifying information have been changed to ensure anonymity.

The Ombudsman's purpose is to ensure fairness for Victorians in their dealings with the public sector, and to improve public administration. The Ombudsman has a number of functions; resolving complaints and investigating matters received from the public is a central function.

In a majority of cases, complaints can be resolved by Ombudsman staff informally without the need for a formal investigation. An informal resolution may involve:

- referring a complainant back to the authority to seek to have their complaint dealt with internally
- making enquiries with an authority and relaying the response to the complainant
- facilitating an appropriate solution which is accepted by a complainant and the authority.

Ombudsman complaints tell a story about the public's interaction with government. They assist in identifying whether there may be a problem with how a government authority is operating. Analysing a body of complaints can help identify systemic issues in the operation of the agency or government authority.

Fines Victoria had a challenging year in 2018. Those challenges are detailed in this report. This report aims to share the experiences of Victorians affected by these challenges, along with providing commentary on themes arising from the complaints.

Interaction with Fines Victoria in 2018

Fines Victoria commenced operation on 31 December 2017. From early in 2018, Ombudsman staff observed a significant increase in the number of complaints received about Fines Victoria in comparison to those received under its predecessor agency: Civic Compliance Victoria.

Complaints received about Fines Victoria in 2018 represented a 74 per cent increase from the number of complaints received the previous year about Civic Compliance Victoria. Fines Victoria was the third most complained-about agency of all the agencies within the Ombudsman's jurisdiction in 2018. By comparison, complaints about Civic Compliance Victoria ranked seventh in 2017.

In addition to the rise in the number of complaints, Ombudsman staff observed a change in the nature of the complaints. People were expressing frustration about delays and being unable to make contact with Fines Victoria much more frequently than with the predecessor agency. There was also an increase in complexity about the administration of infringements which meant many complaints could not be resolved through a quick series of enquiries.

Dan's story illustrates the types of complex complaints the Ombudsman received in 2018.



Dan's story

Dan contacted the Ombudsman about infringements incurred by his late son who had died in tragic circumstances. Dan said he made multiple attempts to call Fines Victoria, but on each occasion the phone went to an automated service, or he was on hold for a long time. Dan also said he had sent through multiple complaints online but had not received a response.

We contacted Fines Victoria, providing a copy of the Coroner's 'confirmation of death certificate' for Dan's son. We followed up several times after receiving no response. Fines Victoria said later they had not received the email from us.

Dan received further enforcement letters which he said was extremely stressful and upsetting. He became increasingly concerned the Sheriff would go to his son's home which he had shared with housemates.

Fines Victoria put all 27 outstanding matters, totalling \$7,636.60, on hold pending their withdrawal. The enquiry process, however, went for close to 40 days. This is despite Dan providing all relevant information to Fines Victoria a number of times before contacting us.

In response to our draft report, Fines Victoria acknowledged the difficulty Dan had experienced:

Both these issues have now been addressed through the engagement of extra staff within the contact centre. Fines Victoria is confident that a relative of a deceased person seeking to inform Fines Victoria of a death would not face difficulties similar to those faced by [Dan]. Fines Victoria is also provided with routine notification of deaths by the Registry of Births, Deaths and Marriages. This ensures that in most cases a deceased's relative is not required to advise Fines Victoria of a death.

In or around October 2018, Fines Victoria implemented a call back feature on its phone line. This allowed members of the community to leave a contact number and receive a call back, rather than remain on a phone queue for an extended period of time. While we continued to receive complaints that people could not reach Fines Victoria by phone as late as 27 November 2018, the frequency of these complaints has decreased.

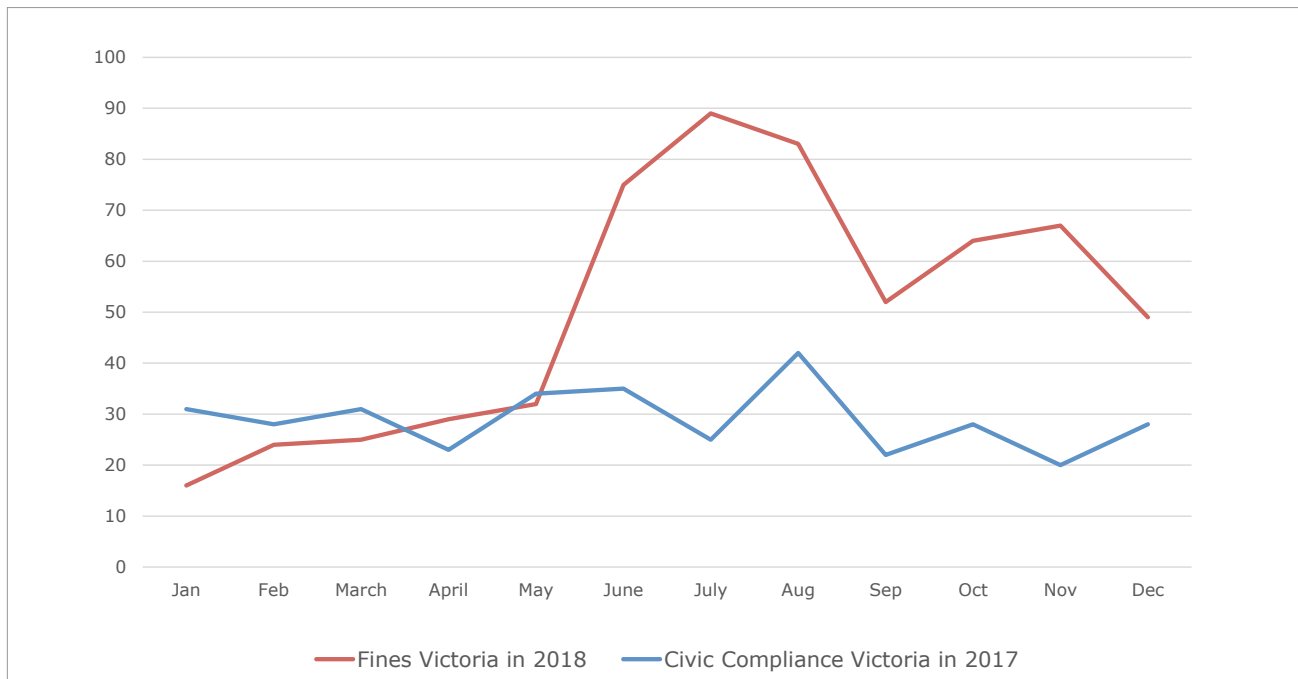
Fines Victoria reported 'average call wait times returned to acceptable levels of around two minutes in October 2018.'

The number and complexity of the complaints received and delayed responses from Fines Victoria meant what might have been simple matters could not be resolved quickly.

In May 2018, and again in October 2018, we met with Fines Victoria staff to discuss administrative issues affecting the efficient resolution of our enquiries and the processes for resolving complaints. Ombudsman staff were regularly in contact with officers at Infringement Management Enforcement Services (IMES) within the Department of Justice and Community Safety to resolve individual complaints. IMES manages the operation of Fines Victoria as well as several functions related to the infringements system, such as enforcement of warrants by the Sheriff's office.

At the end of 2018, we analysed six months of complaint data and wrote to Fines Victoria outlining the emerging themes. We included 14 case summaries, some of which had been satisfactorily resolved and some that were still to be dealt with conclusively. Fines Victoria provided responses on both the individual cases and broader issues. But as we continue to receive complaints this has been a protracted and ongoing process.

Figure 1: Number of complaints made to the Ombudsman about Fines Victoria, compared with complaints made about its predecessor



Source: Victorian Ombudsman

About Fines Victoria

Fines Victoria was established by the *Fines Reform Act 2014 (Vic)* as part of a series of reforms aimed at improving the collection and enforcement of legal debt in Victoria. In the Second Reading Speech for the Fines Reform Act, Fines Victoria was described as follows:

Fines Victoria will be a central, accessible body for the public to deal with in relation to fines, providing a single point of entry to deal with legal debts. This will make it easier for individuals to access the system and understand their total liability and will make payment arrangements easier to access by providing consistent payment options and payment methods.¹

A key feature of the reforms was to enable the recovery of both infringement and court fines within a single agency. People with infringements originating from multiple enforcement agencies, registered court fines and fines at various enforcement stages would be able to apply to the Director, Fines Victoria for the administration of their fines. The reforms would enable the consolidation of all infringements issued to an individual into a single account and make significant improvements to the process for making payments and otherwise having fines dealt with.

The Fines Reform Act confers a number of information gathering and decision making powers on the Director, Fines Victoria. That role is occupied by the Executive Director, IMES in the Department of Justice and Community Safety. Central amongst these decision making powers is the power to administer the enforcement review scheme.

Several additional processes were introduced in the Fines Reform Act which had the effect of increasing the options for individuals in situations of vulnerability, or who were in financial hardship, to deal with their infringements. These included:

- the introduction of the Work and Development Permit scheme which allows people experiencing disadvantage with non-financial options to expiate their infringement fine debts and address the causes of their offending through approved activities and treatments
- a separate regulatory scheme for children and young people who are in default.

Delayed stages of commencement for Fines Victoria

The commencement date for Fines Victoria under the Fines Reform Act was to be 30 June 2016. However, on 9 March 2016, the Victorian Parliament passed the *Fines Reform and Infringements Acts Amendment Act 2016 (Vic)* which extended the commencement date for Fines Victoria to 31 December 2017. The extended commencement date was 'to allow sufficient time for the government and enforcement agencies to implement a raft of regulatory, operational and organisational changes'.² A major aspect of these changes related to the procurement of a new information technology system that, at the time the Amendment Act was introduced to the Parliament, had not been procured.

¹ Victoria, *Parliamentary Debates*, Legislative Assembly, 8 May 2014, 1554 (The Hon Louise Asher, Minister for Innovation).

² Victoria, *Parliamentary Debates*, Legislative Assembly, 24 February 2016, 561-562 (The Hon Martin Pakula, Attorney-General).

The Amendment Act also established the following:

- The Work and Development Permit scheme was expanded to include infringements that are registered for enforcement.
- The ‘time served’ scheme for prisoners was reinstated, allowing the Sheriff to apply on behalf of a prisoner for an order to convert outstanding infringement warrants to prison time.
- Internal review processes were changed, including the introduction of a new ground for internal review where a person is unaware of the infringement notice having been served and an internal review oversight function for the Director, Fines Victoria.³

On 12 December 2017, the Victorian Government passed the *Fines Reform Amendment Act 2017* (Vic). This Act again extended the default commencement date of the Fines Reform Act, this time to 31 May 2018. In the second reading speech the then Attorney-General, the Hon Martin Pakula MP, explained the extension to the default commencement date:

While it is intended that the Fines Reform Act commence on 31 December 2017 as currently planned, the bill will extend the default commencement date of the act to 31 May 2018 to allow sufficient time to consider the changes to the VIEW [IT] system necessary to support these reforms and to maintain the integrity of Victoria’s infringements system. The extended default commencement date will provide the flexibility necessary to ensure that the commencement of the Fines Reform Act aligns with the commencement of the VIEW system.⁴

This 2017 reform also introduced the Family Violence Scheme, which allows for infringements to be withdrawn if a person is a victim of family violence and the family violence substantially contributed to their inability to control the offending behaviour.

On 31 December 2017, Fines Victoria began operation with only partial IT functionality. Problems with IT functionality, and related procedural and processing issues, have been apparent since the inception of the agency and have created significant challenges, some of which are outlined in detail throughout this report. Fines Victoria did not commence issuing Notices of Final Demand, for example, until April 2018, which led to a significant rise in activity and resulting processing backlogs.

It was not clear why, with a default commencement date of 31 May 2018, the decision was taken to commence earlier than this on 31 December 2017. This decision was perplexing considering Fines Victoria was reporting that significant IT challenges were affecting its operation from the time it commenced. In response to our draft report, Fines Victoria said this decision was taken by the Government, rather than the then Department of Justice and Regulation (DJR) or by Fines Victoria.

In response to our draft report, the Secretary of the Department of Justice and Community Safety responded on behalf of the former Attorney-General.

In short, the Secretary advised that the department had received specialist technical advice that:

[T]he new system would be functional at go-live with outstanding issues expected to be resolved within a short timeframe of this date.

This view was supported by various checkpoint processes that confirmed the system could be deployed by this deadline with risks able to be effectively managed. It was also supported by the fact that it was becoming increasingly unsustainable to continue to use the legacy IT system, including the financial exposure for the state in continuing with the existing provider.

The Secretary’s letter is provided as Appendix 1 (page 44).

³ Ibid 563.

⁴ Victoria, *Parliamentary Debates*, Legislative Assembly, 20 September 2017, 2871 (The Hon Martin Pakula, Attorney-General).

Operational structure

Fines Victoria exercises a range of functions and powers relating to the processing, collection and enforcement of fines. This includes collecting payments, establishing payment arrangements and issuing Notices of Final Demand.

The Director, Fines Victoria has a number of decision making powers including the power to receive and determine applications for enforcement review.⁵

Fines Victoria works with 130 different enforcement agencies and the courts. However, it has significant interactions with two key statutory agencies, each with distinct functions:

- Victoria Police issues notices relating to road safety offences.
- VicRoads manages demerit point and licence consequences.

Fines Victoria outsources certain key functions such as the Fines Victoria call centre and the processing of incoming and outgoing correspondence. The current contractor for these services is Civica Business Process Outsourcing Pty Ltd (Civica BPO). Civica BPO is also engaged by the Traffic Camera Office (the TCO) of the Victoria Police to fulfil a number of functions.

The IMES Business Services Agreement (the Business Services Agreement) was entered into by the Attorney-General and Minister for Police with Civica BPO in August 2017. The objectives of the Business Services Agreement include to 'meet the needs of Government, Police, the Director, Fines Victoria, the Sheriff, the IMES Unit and other enforcement agencies' and to 'provide efficient, effective and reliable assistance for the prosecution, enforcement and collection of Fines and Infringement Penalties'.⁶

The TCO is responsible for a number of functions relating to Victoria Police operated traffic cameras in Victoria. Of importance for this report is that the TCO makes decisions on driver nomination statements and conducts internal reviews of traffic infringements.

In response to our draft report, the TCO said:

Part of [Civica BPO's] role is to perform administrative functions, under contract to support the TCO. One of those functions is the processing of nomination statements received in respect to infringement notices issued by the TCO.

VIEW system

Fines Victoria is supported by an IT system, the Victorian Infringements Enforcement Warrant (VIEW) system. The former Department of Justice and Regulation engaged Civica Pty Ltd (a separate but related company to Civica BPO) to deliver VIEW in September 2016.

The VIEW system is an essential element of the fines management model introduced through the Fines Reform Act. VIEW was introduced to pull together data from multiple agencies and allow Fines Victoria to fulfil its role as the centralised portal where Victorians could review and pay their fines.

On the VIEW system, Fines Victoria told the Ombudsman:

The VIEW system was scheduled to go 'live' in full on 31 December 2017, to coincide with the commencement of the Fines Reform Act. Shortly before this time, it became clear that this would not be possible, and so a decision was made to launch VIEW on this date with core functionality only and for additional functionality to be implemented progressively throughout the course of 2018. The progressive implementation has been slower than first anticipated and is regrettably still not complete. This lack of functionality has led to significant impacts on customers.

⁵ *Fines Reform Act 2014 (Vic) s 32.*

⁶ *Infringement Management and Enforcement Services, The Infringements Management and Enforcement Services Business Services Agreement (August 2017) Department of Justice and Regulation [50].*

A lack of functionality has meant that many of the procedural steps in the fines lifecycle were not supported by VIEW, or could only be undertaken with resource intensive manual workarounds. To address these gaps a 'front to end' approach was taken, meaning effort was concentrated on deploying functionality and implementing workarounds to matters at the start of the fines lifecycle, as these are the steps that affect the largest proportion of customers.

In a media interview in July 2018, the Director, Fines Victoria said all IT functionality would be fully operational by February 2019.⁷ At a meeting between Ombudsman staff and IMES in January 2019, Fines Victoria reported that full IT functionality would not be achieved before the end of June 2019.

History of infringement management IT in Victoria

VIEW replaced the Victorian Infringement Management System (VIMS), which was over 20 years old and not equipped to provide the functions required by the Fines Reform Act.

VIMS was found to have had 'a number of inadequacies' in a 2013 Ombudsman investigation into unenforced warrants and factors affecting the enforcing of warrants.⁸ In that report, IMES acknowledged 'VIMS is inadequate, and no longer supports best practice enforcement of outstanding infringements'.⁹

In 2007, the Victorian Government engaged Tenix Solutions to design, build and implement a new infringement management enforcement system to be delivered in 2009. The agreement was varied twice and the delivery date was extended. In March 2015 the Government terminated the agreement without a product being delivered.

A 2016 Auditor-General's report into this IT project found:

Following significant project delays and ongoing performance issues with the contractor, the government terminated the project in March 2015. The \$59.9 million actual project cost at termination was over twice the planned cost. The delays and ultimate cancellation of the project mean that DJR has no choice but to use a dated legacy system. Moreover, proposed legislative reforms that are dependent on DJR's delivery and deployment of the new system have been postponed.¹⁰

The infringement lifecycle

The process of an infringement under the Fines Reform Act regime, from the time it is issued to the stage where a warrant is enforced by the Sheriff, is complex. For the purpose of this report, the following is a summary of the stages in the fines lifecycle. The stages are also explained in Figure 2 on pages 12 and 13.

Infringement stage

Over 130 agencies in Victoria issue infringements for a range of offences. When an individual or business receives an infringement notice, they have 21 days to deal with it by either paying, nominating another driver, or requesting a review.

After 21 days, if no action has been taken, the individual or business will be issued with a Penalty Reminder Notice. A fee may also be added to the infringement. The reminder will give the individual an additional 14 days to pay or otherwise deal with an infringement.

During the infringement stage, a party can elect to have a matter heard in the Magistrates' Court.

7 Emma Catford. Interview by Neil Mitchell, *3AW Mornings with Neil Mitchell*, 19 July 2018 <www.3aw.com.au/fines-crisis-may-not-be-fixed-until-next-year>.

8 Victorian Ombudsman, *Own motion investigation into unenforced warrants*, (2013) 16.

9 Ibid 18.

10 Victorian Auditor-General's Office, *Digital Dashboard: Status Review of ICT Projects and Initiatives – Phase 2*, (March 2016) 10.

Enforcement stage

If a party fails to deal with an infringement during the initial stage, it can be registered with Fines Victoria. The Director, Fines Victoria will issue a Notice of Final Demand and a fee may be added to the infringement.

At this stage, the option of seeking an internal review by the issuing agency is no longer available. However, a party can seek an enforcement review from the Director.

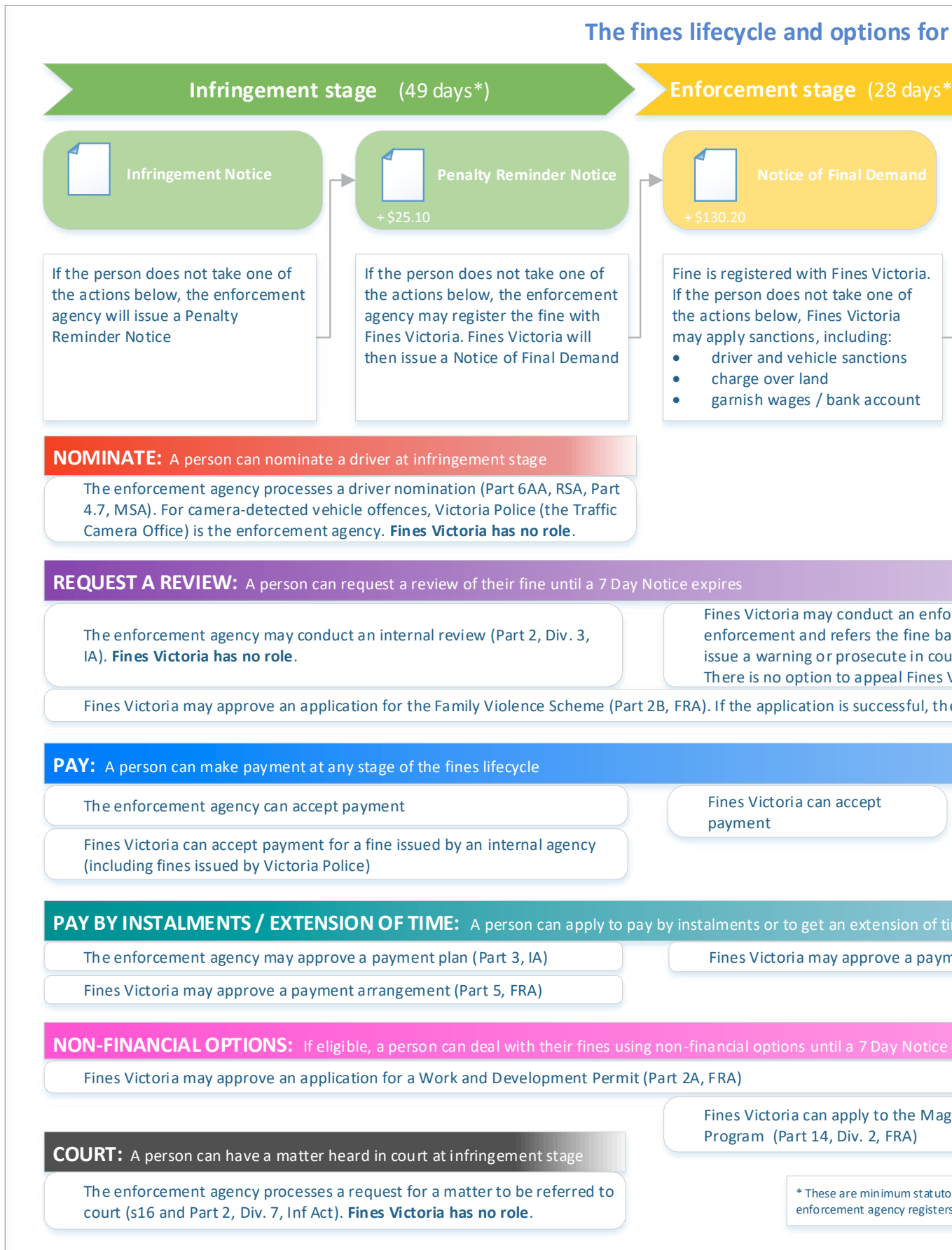
Warrant stage

The Magistrates' Court may issue an enforcement warrant if an infringement has not been paid or otherwise dealt with within 28 days after a Notice of Final Demand is issued. If an enforcement warrant is issued, a Sheriff's Officer can take certain action including wheel clamping or seizing property, depending on the circumstances and nature of the infringement.

A '7-day Notice' can be issued as a final warning to deal with an infringement. At the expiry of the '7-day Notice', a person may be arrested. At this stage their only option is to pay the fine, along with the relevant enforcement and other costs that have been added.

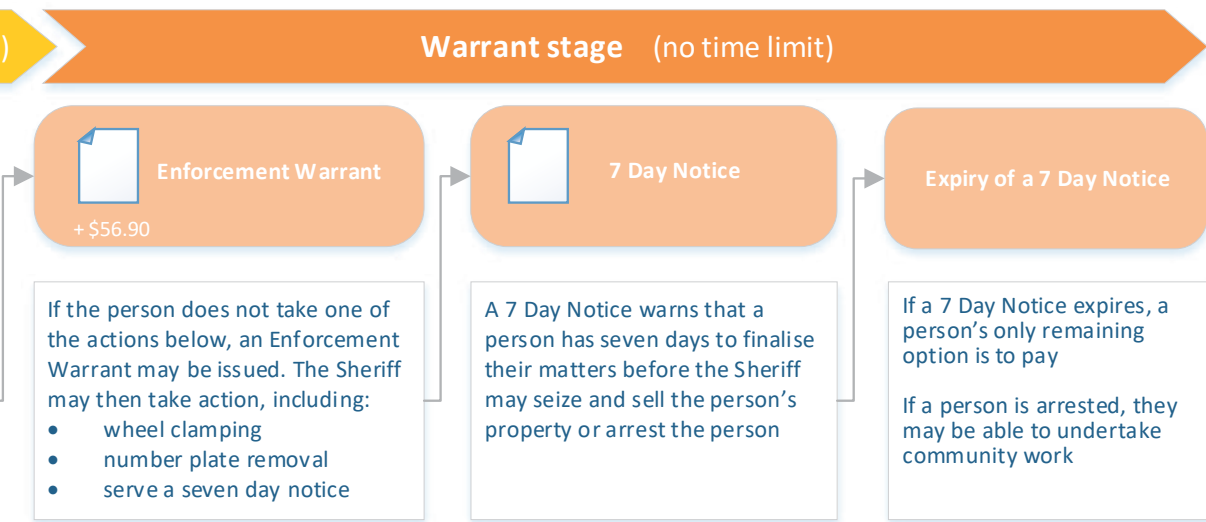
Importantly, a payment plan can be entered into at any time before the expiry of a 7-day Notice. An eligible party can also apply for a Work and Development Permit or for an infringement to be withdrawn under the Family Violence Scheme.

Figure 2: The lifecycle of a fine



Source: Fines Victoria

a person to deal with their fines



enforcement review (Part 4, FRA). If the review is successful, Fines Victoria cancels the fine and returns the matter to the enforcement agency for action, including the option to take no action, issue a new fine, or issue a new notice. If the review is unsuccessful, the fine is confirmed and enforcement continues. The person may appeal Fines Victoria's decision.

If the fine is withdrawn. If the application is unsuccessful, enforcement continues.

Fines Victoria and the Sheriff can accept payment

time to pay until a 7 Day Notice expires

payment arrangement (Part 5, FRA). This option is available until a 7 Day Notice expires.

expires

Magistrates' Court for a person to deal with their registered fines under the Prison

any timeframes. In practice, these timeframes may be longer, depending on if/when an appeal is made against a fine, and if/when the Director, Fines Victoria applies for an enforcement warrant

COMMUNITY WORK

The Sheriff can arrest and bail a person on a Community Work Permit, supervised by Corrections Victoria

Legislative references

FRA = *Fines Reform Act 2014*
RSA = *Road Safety Act 1986*

IA = *Infringements Act 2006*
MSA = *Marine Safety Act 2010*

Processing delays and system errors

The Ombudsman analysed approaches from the public received over a six month period, from 1 July to 31 December 2018. This helped form an understanding of the major themes of Fines Victoria complaints. An explanation of the themes, along with case summaries, was put to Fines Victoria in January 2019.

Processing delays

Complaints involving delays by Fines Victoria to respond to requests and to applications, or to process documents, were a feature of the approaches made to the Ombudsman in 2018. Between 1 July and 31 December 2018, 133 members of the public approached the Ombudsman with complaints about Fines Victoria delays. This represents 34.5 per cent of approaches about Fines Victoria.

The three most significant areas where delay was reported were in the processing of nominations (26 per cent), completing reviews (43 per cent) and implementing payment plans (19 per cent).

Fines Victoria reported they were not surprised that delays were a major area of concern. It advised that issues with VIEW lead to significant processing backlogs from early in 2018. VIEW functionality issues severely impacted Fines Victoria's ability to process applications and requests in two ways:

- VIEW did not support some processes required by Fines Victoria, meaning that fines were placed 'on hold' until there was sufficient functionality.
- Functionality issues were addressed with manual workarounds that took staff significantly more time than similar processes under the previous VIMS system.

Data provided by Fines Victoria shows the backlogs were particularly acute regarding the processing of 'nomination' requests and requests for payment arrangements. Figure 3 on the following page illustrates the accumulation of matters that created backlogs. It also shows when Fines Victoria say that backlogs on some matters returned to 'business as usual' levels.

In response to our draft report, the Traffic Camera Office said;

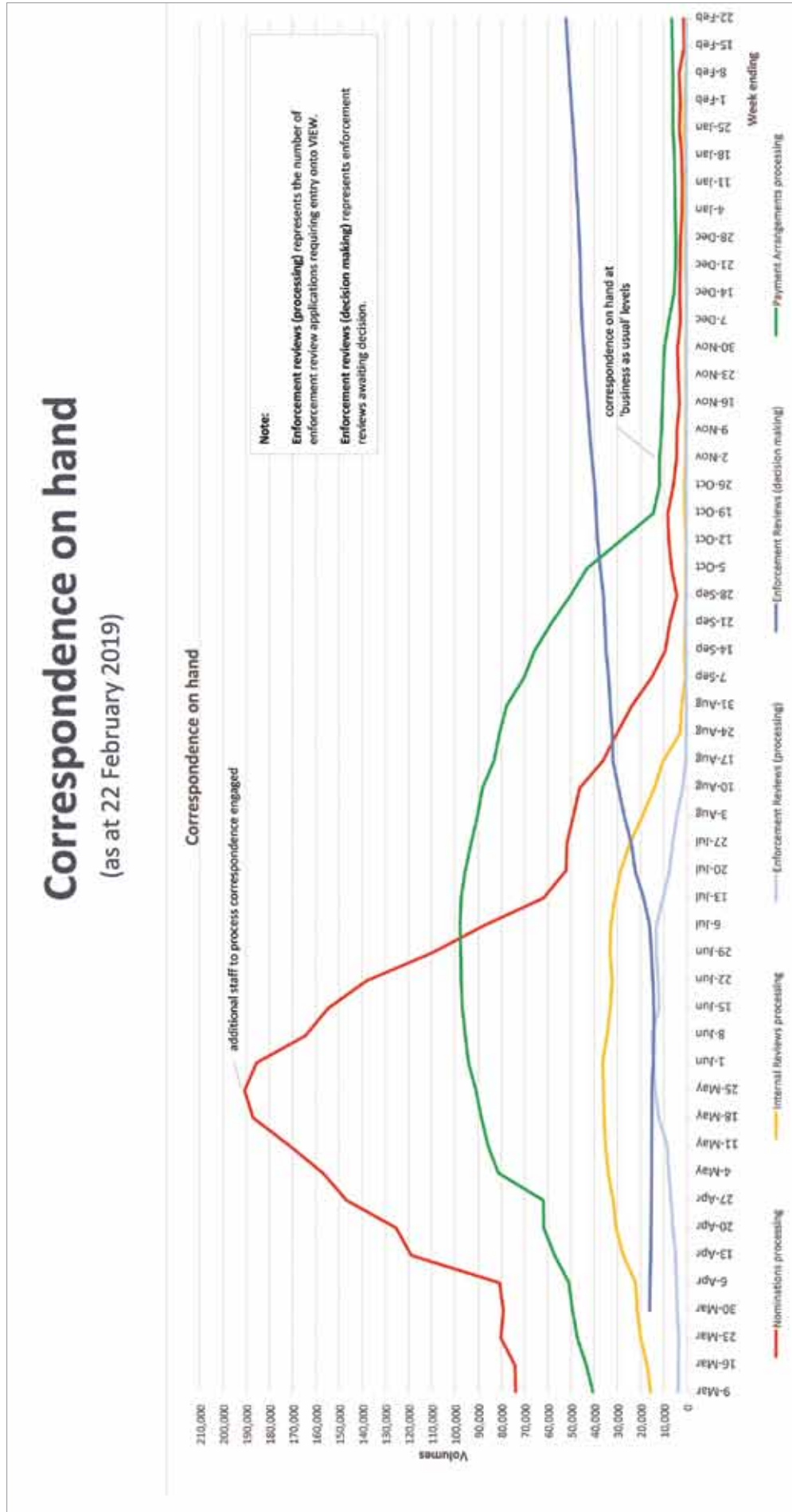
It is acknowledged upon the implementation of 'VIEW' there were some system and functionality limitation issues. This resulted in significant backlogs across all TCO administrative workflows, including the processing of nomination statements. In June 2018, there was a backlog of approximately 200,000 nominations which lead to the requirement to employ additional contract staff to support the functioning of both Civica and the TCO.

It is further acknowledged that due to the extensive backlog in the early stages some of Fines Victoria's customers would have experienced longer than usual delays in having their enquiries being answered by Civica.

Fines Victoria said it engaged additional staff to process correspondence throughout 2018. It also took the following specific action during the period of significant backlogs:

The priority of Fines Victoria during this time was to ensure customers were not materially disadvantaged by delays. Fines were placed ... 'on hold' until such time that the matters could be dealt with, meaning no additional fees were added. Nevertheless, it is acknowledged that these delays were a significant source of frustration for customers.

Figure 3: Correspondence on hand



Source: Fines Victoria

Processing delays caused confusion and misinformation in some cases, and led to collateral issues and errors in others, as demonstrated in Yolanda's story.



Yolanda's story

Yolanda received an infringement for a red light related traffic offence in March 2017. She could not afford to pay the \$389 infringement up front so she applied for, and was granted, a payment plan.

Yolanda paid \$50 per month at her local post office as part of her payment plan. She was careful to make each monthly payment before it fell due and kept the receipts she received from each payment.

In September 2018, Yolanda received a notice from Fines Victoria demanding payment. She contacted Fines Victoria and was told she had missed a payment. Yolanda told them she had receipts for each payment she had made. Fines Victoria undertook to investigate and contact her back but Yolanda did not receive a follow-up phone call.

In December 2018, Yolanda received a Penalty Reminder Notice and Notice of Final Demand. These notices advised that fees had been added to her original infringement.

Yolanda contacted the Ombudsman. Fines Victoria told us a payment made in January 2018 was dishonoured due to an error at Australia Post. This was corrected and processed by Fines Victoria in September 2018. However, due to processing delays, the dishonoured (and corrected) repayment resulted in a default being recorded which led to the Penalty Reminder Notice and Notice of Final Demand being sent out in December 2018. Effectively, the notices had been sent due to a processing delay and a processing error.

Fines Victoria agreed to remove the fees arising from the Penalty Reminder Notice and Notice of Final Demand, leaving Yolanda to pay the final instalment on her infringement.

Yolanda's story demonstrates the problems that arise when delays are compounded by processing errors. An analysis of Fines Victoria processing errors is set out later in this report.

Fines Victoria's processing delays in 2018 created uncertainty for Victorians trying to have their infringements fairly dealt with.

Generally, people with complaints involving delays understood there were deadlines for dealing with infringements and additional penalties could be applied if those deadlines were exceeded. Some people spoke of the anxiety they felt each time they were informed by Fines Victoria that their matter was still being processed. Adam's story (page 19), and Kaye's story illustrate the uncertainty and frustration that can arise because of processing delays.

'I said "this is harassment, you are harassing me." Because I paid and what happened with my payment I have no idea and I have no control over that.'

Yolanda



Kaye's story

Kaye is 90 years old and suffers from a number of physical and cognitive conditions. Through late 2017, her son, Victor, incurred 33 infringements for driving on tollways without an e-Tag or making another appropriate arrangement. The total amount owing at the beginning of December 2017 was \$10,678. Victor suffers from addiction and mental health issues. A revocation request was lodged by Kaye's family on her behalf in or around December 2017. As part of the transfer to the system administered by Fines Victoria, the revocation request was converted to a request for enforcement review in January 2018.

Between 7 January 2018 and 1 December 2018 Kaye's other son, Ben, who had her power of attorney, contacted Fines Victoria more than 12 times seeking an update. On each occasion, Fines Victoria told him the matter was being processed.

Kaye's family told our office of their concerns about the impact the infringement issues were having on her health.

On 1 December 2018, on the advice of the Ombudsman, Ben lodged a formal complaint on Kaye's behalf. Ben received no response to his complaint letter and on 3 January 2019, we made enquiries. On 9 January 2019, the then Department of Justice and Regulation informed our office that the decision on the review was still being processed. It could not confirm whether this information would be communicated to Kaye or the timeline for processing the enforcement review.

Following further enquiries, Fines Victoria requested the Traffic Camera Office (the TCO) consider accepting late nominations for the relevant obligations. The TCO agreed to do so.

In response to our draft report, the TCO said:

[T]he situation arose because 'the required nomination statements [were not submitted] within the prescribed period.'

Fines Victoria responded to Kay's case stating:

It is acknowledged that there have been unacceptable delays in processing [Kaye's] various requests for enforcement reviews.

Kaye's matter has now been resolved satisfactorily for her family.

Kaye's story shows the human cost of delays and the challenges with making contact with Fines Victoria. Also, a frequent line of complaint by customers experiencing delays was that they were unable to get clear information from Fines Victoria about their case. These are discussed in more detail later in this report.

Fines Victoria said it has put significant resources into eliminating backlogs. In October 2018, the Executive Director of IMES reported \$16 million in additional funds had been allocated to Fines Victoria and '[q]uite a lot of that has been spent on addressing the backlog'.¹¹

¹¹ Emma Catford. Interview by Neil Mitchell, *3AW Mornings with Neil Mitchell*, 16 October 2018 <www.3aw.com.au/weve-got-some-work-to-do-extent-of-issues-plaguing-fines-victorias-it-system-revealed/>.

Delays and other issues regarding enforcement reviews

Regarding enforcement reviews, Fines Victoria acknowledged that delays in 2018 were significant:

The Fines Reform Act introduced a new process for enforcement reviews. It is much more resource intensive than the process it replaced, more than had been anticipated. Further delays in the implementation of the VIEW system have also resulted in enforcement reviews taking longer to process.

We note that enforcement review decisions were the only item in the Correspondence on Hand graph (page 15) where the backlog had not decreased.

Fines Victoria explained this was because it adopted a ‘front to end’ approach to resolving issues with VIEW. This approach concentrated on deploying functionality to resolve issues which arose at the start of the infringement lifecycle. Lower priority was given to resolving issues at the enforcement stage.

Fines Victoria’s reason for adopting this approach was ‘the majority of customers interact with the initial stages of the fines lifecycle, and as such this approach would make the most significant improvements to the largest proportion of customers.’

Kaye’s story also demonstrates another issue with the reforms introduced under the Fines Reform Act regarding the power of the Director, Fines Victoria to determine enforcement reviews.

The enforcement review process is part of the reforms that came into operation under the Fines Reform Act in January 2018. Under the former system, a party could apply to the Infringement Court for a revocation of an infringement. This is what Kaye did. The revocation process was replaced with the enforcement review process under the Fines Reform Act.

Transitional provisions supporting the commencement of the Fines Reform Act provide, generally, that notices issued prior to commencement (before 31 December 2017) be dealt with under the (new) provisions of the Fines Reform Act. Effectively, ‘old’ infringements, being those issued prior to 31 December 2017, are dealt with under the (new) legislation.

Under the previous regime, Kaye could have applied for a revocation on grounds including that another person was the driver and there were circumstances that had prevented a more timely nomination.

There are no comparative grounds on which an enforcement review can be determined in the Fines Reform Act. An enforcement review can only be determined on the following grounds:

- there was a mistake of law
- there was a mistake of identity (for example, because the person in question did not commit the offence)
- the applicant has special circumstances
- the conduct of the applicant should be excused having regard to any exceptional circumstances
- the person was unaware of the notice having been served and service of the infringement notice was not executed by personal service.¹²

Nominating another party outside of the statutory deadline in which a ‘nomination’ can be accepted is not a ground upon which an enforcement review can be determined. In Kaye’s case this means while she could have had the infringements revoked in December 2017, once the new regime came into operation in 2018, her ability to deal with the infringements by nominating her son outside of the nomination period was extinguished. This is despite the fact that Kaye had a valid reason for why she did not nominate within the prescribed period.

¹² *Fines Reform Act 2014 (Vic)* s 32.

It is not clear how many cases have arisen like Kaye's story (page 17), involving a revocation request that was converted into an enforcement review, with the effect of extinguishing the central grounds for having the relevant infringement reconsidered.

Enforcement reviews are the last area still experiencing a backlog due to the 'front to end' approach taken to address all backlogs. Considering Kaye's case was only resolved satisfactorily after the Ombudsman became involved, and only concluded in January 2019, it is likely there are more individuals with enforcement review matters from early in 2018 (or before) which remain unresolved.

Fines Victoria acknowledge that enforcement reviews were not prioritised as a result of its 'front to end' approach. It outlined plans to address the enforcement review backlog through the engagement of a 'surge team' of staff to complete reviews, and expects enforcement review activity will return to 'business as usual' in 2019.

Adam's story is another example of issues arising from delays and enforcement reviews that took a long time to resolve.



Adam's story

Adam incurred toll infringements in 2017. He applied to the then Civic Compliance Victoria for a revocation and was advised to call each month and ask for an extension on the deadline for payment of his infringement while his revocation application was being considered.

In November 2017 Adam was granted an extension to 30 December 2017. He was not made aware that, as a result of the operation of the Fines Reform Act, Civic Compliance Victoria would cease from 22 December 2017.

On 30 December 2017, Adam became worried that the deadline for payment of his infringement would expire and he would be liable for additional fees. On 3 January 2018, Adam paid the infringement, expecting that his revocation request would still proceed.

Adam was unaware that his revocation request would be converted into an enforcement review request with the commencement of Fines Victoria.

On 16 April 2018, Adam was notified that because he had paid his infringement in full, his application for enforcement review could not be considered, as under section 32(4) of the Fines Reform Act, his offence was deemed to be expiated. This would not have been the case under the previous regime.

On 19 June 2018, Adam submitted a complaint to Fines Victoria. He did not receive a response and on 13 August 2018 he contacted our office and we made enquiries.

Fines Victoria said that, '[d]ue to transitional delays, [Adam's] complaint was caught up in a backlog of complaints received.' It 'considered [Adam's] review a further time and removed the additional fees' associated with the infringement on 17 August 2018. However, he did not receive his refund until 28 November 2018, more than five months after he lodged the complaint.

Call wait times and difficulties making contact with Fines Victoria

Between 1 July and 31 December 2018, we received 55 approaches from members of the public who could not get through to Fines Victoria by phone. Approaches of this type spiked in July 2018 but continued throughout the second half of 2018. Through July, complaints that individuals could not make contact with Fines Victoria were an issue in 34 per cent of approaches to the Ombudsman. Individuals complained of long wait times or of being cut off while being in a phone queue. By November and December 2018, this problem had diminished, amounting to under 11 per cent of complaints regarding Fines Victoria.

Fines Victoria said that, due to the lack of functionality in VIEW, call centre staff needed to spend more time on the phone to customers while accessing information in the system:

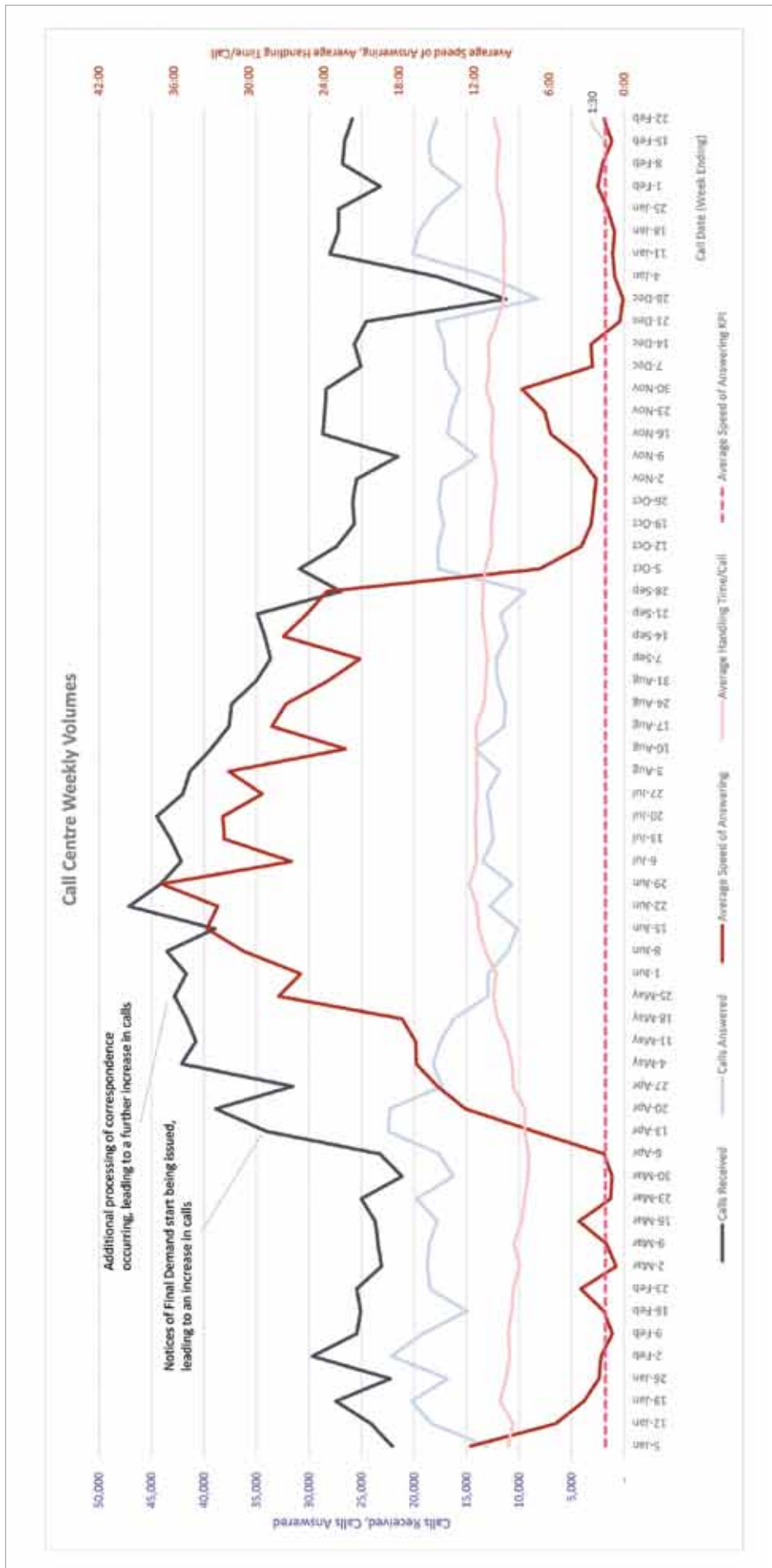
Excessive call wait times alone caused enormous frustration to customers, but this frustration was compounded where a customer sought to resolve other issues caused by Fines Victoria. Unfortunately, the call wait times significantly increased the level of frustration experienced by customers caused by the underlying issue.

Fines Victoria provided detailed data of the call wait times which is set out Figure 4 on the following page. It shows the increase in call volumes when Notices of Final Demand began being issued in April 2018, and when additional staff were engaged to deal with processing delays in May 2018. Fines Victoria acknowledged that call wait times were 'unacceptably high' in mid-2018.

The issues created by the processing delays, set out earlier in this report, were compounded when members of the public could not speak directly with an officer at Fines Victoria. Sarah and Paul's story (page 22) is an example of an issue which should have been resolved simply but for their inability to speak to someone at Fines Victoria.

Issues relating to communication with Fines Victoria had a knock on effect on the Ombudsman, as well as a number of community services who assist people interacting with the infringements system. Additional time and resources were expended making contact with Fines Victoria.

Figure 4: Fines Victoria Call Centre - Weekly Volumes



Source: Fines Victoria



Sarah and Paul's story

Sarah incurred an Excessive Speed Infringement (ESI) in late June 2018. At the time of the incident her husband, Paul, was the driver. Sarah paid the infringement in early July 2018 before submitting the request to nominate Paul, so he could be issued with the relevant demerit points.

Fines Victoria sent an infringement to Paul requiring the same payment as Sarah had already made, which he paid on 23 August 2018. The amount Sarah paid was not refunded. Paul attempted to set out the situation in writing hoping to get a resolution. His written correspondence, however, was treated as a request for internal review, and he received a response affirming that an offence was committed and an infringement correctly issued (which he did not dispute). Paul then called Fines Victoria repeatedly without success; each time he was on hold for significant time and gave up waiting.

Paul subsequently contacted the Ombudsman, stating:

What I have been trying to get through to them is that I am happy to pay the fine provided they reimburse my wife, or, leave my wife as having paid the infringement and cancel the second infringement ... If you're not able to help me I am going to be forced to waste everyone's time by going to a Magistrate and getting him to do it.

Following the Ombudsman's enquiries, Fines Victoria agreed to refund Sarah's payment.

Fines Victoria's response stated of Sarah and Paul's complaint:

[I]t is acknowledged that there was a delay in issuing the refund to [Sarah]. Customers are advised that refunds can take up to six weeks to process. This refund took longer than that. Fines Victoria is working to resolve issues that are leading to delayed refunds.

Sarah's and Paul's circumstances are common in that they involve a party paying an infringement and then nominating another party (generally their spouse or family member) for the demerit points.

Fines Victoria report that in such circumstances, the only process available is to refund the individual who paid the infringement and re-issue an infringement to the nominated party. It is not possible to transfer the payment by the nominating party across to the nominee.

We understand the frustration of people in this situation. When they have nominated another party, and their refund is delayed, they can feel as if they are being pursued for payment of an infringement which they have already paid.

Processing errors

Complaints involving apparent processing errors by Fines Victoria were frequent in 2018. Often the Ombudsman will make enquiries with Fines Victoria to determine if an error has occurred. Where there has been significant delay or other complicating factors relating to an infringement or series of infringements, it can be difficult to determine where an error has occurred. For this reason, it is not possible to accurately report statistics on processing errors.

Fines Victoria advised of a series of errors arising from issues with VIEW:

Fines Victoria placed 'holds' on matters to ensure customers were not materially disadvantaged by the delays and backlogs. The holds would prevent the issuing of Penalty Reminder Notices and Notices of Final Demand while customers awaited responses to nominations and other correspondence. This measure was put in place to ensure that demerit points were not issued before they ought to have been.

In July 2018, the department became aware that in a small proportion of these cases, these steps failed, and further notices were issued for fines that ought to have been on hold. There has been no one cause of these failures, but a combination of system and human errors.

As a result of these 'holding errors', we understand 397 people had their licences wrongly suspended in 2018. There were many other adverse consequences flowing from these holding errors, some of which are detailed in the following case summaries. Isabella's story on the following page, Yasmine's story (page 27) and Leanne's story (page 37) all detail the experiences of people whose matters were incorrectly progressed because of IT failures. Each were affected differently and required intervention from the Ombudsman.

Fines Victoria said:

These failures have been a significant source of inconvenience for customers, particularly when they occurred in circumstances where customers were unable to conveniently contact Fines Victoria by telephone to discuss their situation.

Fines Victoria also acknowledged while it 'has made efforts to detect and identify affected customers before errors progress to tangible impacts upon customers', it is often reliant on people who have suffered adverse effects from holding errors to bring them to Fines Victoria's attention. It expects to continue receiving complaints about holding errors into 2019:

[T]he impact of a holding error is often not apparent until some months after the error has occurred. No adverse impact accrues to the customer the moment their fine goes 'off hold'. Rather, it is when a fine progresses, which may be months later, that fees are added, and it can be many months until demerit points are applied. It is at this point that, if the error has not already been detected by Fines Victoria, it will be identified by the customer.

Fines Victoria states it has taken steps to deal with the adverse circumstances arising from the holding errors. It says it has put significant resources into analysing and proactively identifying affected customers. Its efforts to eradicate the processing backlogs that were experienced in 2018 should also ensure that similar holds to those placed on infringements in 2018, which led to the errors, will not be needed in the future.

It is concerning that Fines Victoria cannot identify the breadth of issues arising from holding errors, errors which it created. Similarly, it is concerning that no time limit can be put on when complaints arising from holding errors will stop. Fines Victoria acknowledges that the legacy of customers affected by holding errors has not been comprehensively addressed.



Isabella's story

Isabella loaned her company vehicle to a friend. On 20 August 2018, while in possession of the vehicle, her friend incurred an ESI.

Isabella submitted a nomination form to Fines Victoria which was received on 11 September 2018. However, the form did not have a date on it. Accordingly, the nomination form was rejected by the TCO, and she was told the deadline for re-submitting was 28 September 2018.

At the time Isabella was in New South Wales and was worried that she would not be able to resubmit the form in time. She contacted Fines Victoria by phone and asked for an extension, which Fines Victoria agreed to over the phone.

Shortly after, Isabella received a letter from Victoria Police advising that her nomination was not received by the due date.

The Ombudsman made enquiries with Fines Victoria – it reported that the TCO had reconsidered the nomination statement and decided to accept it late. While this resolved the issue, this decision was made by the TCO alone, they were not bound to make this decision, and they made the decision without any formal approach or demand from Fines Victoria or the Ombudsman.

Fines Victoria said:

The letter sent to [Isabella] from the TCO which advised that the nomination had been rejected, incorrectly advised that the deadline for re-submitting the nomination was 28 September 2018. This was incorrect as no authority to extend the statutory deadline existed.

[Isabella] then called Fines Victoria on 27 September 2018, as she quite reasonably thought the deadline was about to expire (when it had in fact expired on 17 September).

The extension of time granted to [Isabella] on 27 September 2018 was in fact only an extension of time to pay the fine. Had this fine not been an [ESI], this extension would have also operated as an extension of time to nominate. However, Fines Victoria cannot grant an extension of time to nominate an ESI offence.

'They told me, "yes, you can have the extension." The [phone] recording says they said "yes" ... They did agree that they did say that on the tape, but then it was like "too bad".'

Isabella

Payment plan processing errors

Issues with payment plans formed a portion of complaints to the Ombudsman between 1 July and 31 December 2018. Forty nine complaints were made, with Fines Victoria confirming it made errors in at least 18 per cent of these. The other major area of complaint regarding payment plans was delay.

A payment plan must be offered to any natural person who meets the eligibility criteria set out in the *Attorney-General's Guidelines to the Infringements Act 2006* (the Guidelines). There is a discretion to offer a payment plan to people (or corporations) who do not meet the Guidelines. The Fines Reform Act and the Guidelines do not set a time limit for when a payment plan can be entered into; but difficulties in applying a payment plan, including the accrual of extra costs, can arise if a matter has proceeded to enforcement stage or beyond.

We understand that some errors associated with payment plans arose because of an issue with multiple debtor IDs being assigned to individuals. A debtor ID is a number attributed to an individual making payments towards an infringement. Issues arose where individuals who had multiple infringements were assigned multiple debtor IDs. This resulted in payments made under a payment plan not being effectively applied to all infringements issued to an individual.

From the complaints we received about processing errors relating to payment plans, two themes emerged:

- issues where payments were made by Centrepay
- issues where payment plans were in place prior to 31 December 2017.

Regarding the broad issues relating to payment plans, Fines Victoria said:

[The] backlog in payment arrangements took longer than other backlogs to be reduced.

These functionality issues led to a particular delay to payment applications where the customer sought to make payments by Centrepay, meaning these applications took even longer to be resolved.

Functionality issues with payment arrangements have now been resolved, and the backlog of applications has been addressed.

Members of the public contacting the Ombudsman about processing errors (or significant delays) relating to payment plans were often frustrated. Understandably, people seeking to deal with fines through a payment plan can feel they are doing their best to address their infringements responsibly, in circumstances where the very system which has brought the infringement upon them cannot adequately respond.

Payment plan issues where individuals made payments through Centrepay

Centrepay is a system where people can have payments for certain specified expenses paid directly out of the income support payments they receive through Centrelink. This process is different from a direct debit arrangement, which takes funds out of an individual's bank account. With payments made through Centrepay, the money is deducted from an individual's Centrelink payments before the money is paid to them.

Payment plan arrangements are generally utilised by people with low incomes or high living costs, where paying an infringement in full is not an option. This is particularly the case for those making payment plans through Centrepay as they are on sufficiently low incomes to qualify for social security payments through Centrelink. Errors relating to payment plans, therefore, impact some of the most disadvantaged people in the community.



Ron's story

Ron, a pensioner living in country Victoria, paid off an infringement via a payment plan between October 2016 and February 2018. He made fortnightly payments of \$10 and a final payment of \$9 which was deducted from his pension payments via Centrepay.

On or around 8 June 2018, Ron received a notice from Fines Victoria informing him \$1 was payable under the payment plan. The due date for this payment was 5 June 2018. Ron attempted to access information about the infringement via the Fines Victoria online payments portal, but it would not accept the reference numbers on the payment notice. He then attempted to contact Fines Victoria by phone but was unsuccessful. Concerned that he would incur additional fees, Ron travelled to his local post office and attempted to pay the one dollar owing. However, the amount sought was below the \$5 minimum that Australia Post could accept.

Ron contacted the Ombudsman. We advised him to use Fines Victoria's complaints process, which he did, and come back to us if the issue was not resolved. Although he received an automatic acknowledgement from Fines Victoria, he did not receive a response within 28 days. Ron then recontacted our office, by which time he had received two further letters saying that he owed \$9 and \$10 respectively.

In response to our enquiries, Fines Victoria said 'a number of small system errors occurred in this matter, leading to [Ron] being sent a letter of demand for [\$1]':

The first error that occurred in this matter was when the arrangement was established a total of \$369, rather than \$379 was set.

The second error is that the payment made on 7 September 2016 was 'missed' by VIMS (the previous IT system used to manage fines, which has now been replaced by VIEW). It is possible this occurred because an internal review of this fine was being processed at the time - however [this] cannot be confirmed.

These two errors led to the Centrepay arrangements ceasing while \$20 was considered owing on the fine, which in turn led to a series of letters of demand which must have been frustrating for [Ron].

Fines Victoria agreed to waive the outstanding amount owing, which was \$10.

Ron's story highlights Fines Victoria's problems in establishing payment arrangements using Centrepay. Fines Victoria said:

In early 2018 a lack of functionality in the VIEW system prevented the establishment of payment arrangements such as [Ron's].

This functionality was deployed progressively during the year; further, the ability to establish payment arrangements using Centrepay arrived later than other payment arrangement functionality. These issues have now been resolved.

'I am now at a loss as what to do next as I can't afford any legal action as I am a 77 year old pensioner and in this ridiculous situation I am now left spending 65 cents on this letter for a \$1 fine.'

Ron

Payment Plan issues arising prior to 1 January 2018

A number of processes operating prior to 1 January 2018 were disrupted with the commencement of Fines Victoria in unforeseen ways.

Yasmine's story illustrates some issues experienced by individuals in regard to payment plans. Kaye's story (page 17) highlights issues with enforcement reviews requested prior to the change over.



Yasmine's story

Yasmine had a number of infringements which were being paid via a payment plan. In October 2017 she incurred an additional infringement. In November 2017, she requested this infringement be incorporated into her existing payment plan. The request for a payment plan incorporating the later infringement was not processed by Fines Victoria, and Penalty Reminder Notice fees were added to her additional infringement in December 2017 and again in April 2018.

Yasmine told our office she made multiple phone calls to Fines Victoria through 2018 requesting that her payment plan be actioned. This did not happen. In her August 2018 complaint to our office, Yasmine said she was worried she would have the Sheriff 'knocking on [her] door'. As a result of our enquiries, Fines Victoria implemented her payment plan and applied to the TCO to have the late payment fees withdrawn.

Fines Victoria provided a detailed response on 1 February 2019:

It is unclear why [Yasmine's] first request to add this fine to her payment arrangement was not actioned. It is possible that this was due to [Yasmine's] surname being misspelled on her notice (a handwritten, officer-issued notice). This does not excuse the error as [Yasmine] had brought the spelling error to the attention of Fines Victoria.

The error was compounded by [Yasmine's] request not being actioned in early 2018, despite her repeated requests to Fines Victoria.

While the 2017 failure appears to be human error, the 2018 failure was due to a lack of functionality in establishing payment arrangements in early 2018. The VIEW system went live on 31 December 2017 with some functionality missing, including the ability to establish payment arrangements.

Given this situation and to ensure customers were not unduly inconvenienced, where a payment arrangement had been requested but could not be created, the customer's fine was to be placed 'on hold'. This meant that the fine would not progress to the 'penalty reminder' status or [have] fees added, ensuring that customers were not disadvantaged.

Fines Victoria is aware that in a small proportion of cases, these 'holds' failed leading to customer's receiving additional fees. This occurred in the case of [Yasmine].

It also said it 'is proactively reviewing the data to determine where holds have been misapplied in similar circumstances and reversing any fees which have been improperly added.'

'I know I sound like I'm whingeing but why do they need me to go as far as the Ombudsman to get them to hurry up when they told me six months ago they are going to fix it all.'

Yasmine

Nomination issues

Issues relating to the ‘nomination’ of infringements were the most common area of complaint raised by members of the community with the Ombudsman. Complaints regarding the nomination process largely involved delay and processing errors.

Between July and December 2018, members of the public made 115 complaints where nomination of infringements was an issue. This comprised almost 30 per cent of all approaches about Fines Victoria at the time.

As set out in Figure 3 on page 15, the backlog of nomination requests was around 190,000 in May/June 2018. Complainants often said they were frustrated with delays in the nomination process, where they were aware their infringement was approaching the deadline for nominating another driver, but they had not had confirmation that their nomination statement had been accepted.

Errors processing nominations were a source of particular frustration as the nominating parties believed they had done everything required to adequately deal with their infringement. Processing errors around nominations create a particularly stark feeling of unfair treatment as a nominating party feels they have been made liable for a fine when they were not the party who offended.

A number of complexities arising from approaches to the Ombudsman about nominations added to the difficulties in obtaining quick and satisfactory resolutions. Fines Victoria’s reported IT failures also led to ‘holding’ failures and some infringements matters progressing incorrectly, as discussed earlier. The holding failures affected a number of nomination statements.

Complexity around the law

Provisions in the *Road Safety Act 1986* (Vic) and the *Infringements Act 2006* (Vic) allow a person issued with an infringement to nominate another person, the person responsible for committing the offence. Fines Victoria processes allow for nominations to be made online or by submitting an approved hard copy form.

Many offences in the Road Safety Act are ‘operator-onus’ offences pursuant to Part 6AA of the Road Safety Act. This means the driver of the vehicle and the registered owner are liable for an offence, and the only defence available to the registered owner is to submit a nomination statement identifying the driver in accordance with the requirements of the Road Safety Act.

There are time limits for submitting nomination statements.¹³ Strict deadlines apply in the Road Safety Act to the category of offences known as ‘Excessive Speed Infringements’ (ESI). An ESI offence is one of a number of offences which involve exceeding the speed limit by 25 kilometres per hour or more, or by driving at a speed of 130 kilometres per hour or more (regardless of the speed limit). The Road Safety Act provides that an infringement notice issued for an ESI offence takes effect as a conviction for the offence 28 days after issue, unless the recipient of the notice elects to have the matter determined by a court or makes a valid nomination statement.¹⁴

In the case of other operator-onus offences, a nomination statement can be submitted any time before the fine is registered for enforcement with the Director, Fines Victoria under Part 3 of the Fines Reform Act.

¹³ *Road Safety Act 1986* (Vic) s 84BE.

¹⁴ *Ibid* s 89A.

Fines Victoria advised that '[o]nce the deadline for nomination has passed, the only review mechanism available is an enforcement review'. However, as noted above, an enforcement review can only be determined on specific grounds set out in the Fines Reform Act. The fact that a recipient of an infringement was not the driver of the vehicle in question and wishes to nominate another driver is not itself a valid ground for an enforcement review.

Complexity around the decision making process

Nomination statements are decided upon by the TCO of Victoria Police. Fines Victoria reported that its role is limited to collecting nomination statements on behalf of Victoria Police and acting on the outcomes of Victoria Police decisions.

Fines Victoria also reported that many of its transactional functions are outsourced to Civica BPO. This includes administrative functions related to the processing of nomination statements.

As noted previously, Victoria Police has also engaged Civica BPO to perform certain administrative functions. In response to our enquiries regarding a complaint not directly referenced in this report, the Department of Justice and Community Safety advised some functions are provided by Civica BPO, including processing nominations, but:

TCO has provided Civica BPO with clear guidelines that specify how Civica BPO must carry out this role, including when a nomination statement should be accepted or rejected. If a matter falls outside of these guidelines, Civica BPO is required to refer that matter to TCO. Civica BPO is not exercising discretion in these matters, but rather, it is carrying out administrative functions as instructed, and in the name of TCO. This arrangement is consistent the requirements of the [Road Safety Act].

The Nominations Business Rules, which are the guidelines referred to by the Department of Justice and Community Safety, set out the procedure for Civica BPO officers when handling nomination requests. Under these rules, an officer of Civica BPO receives nomination statements, either in hard copy or electronic form, and makes an assessment. Broadly, where the officer assesses there is an irregular feature in a nomination statement, the rules require the officer to 'workflow the nomination statement to the TCO for assessment'. The Business Services Agreement sets the target for processing ESI nominations as one business day, and three business days for other nomination statements.

However, where a nomination statement is deemed 'incomplete', the Rules direct the Civica BPO officer to reject the statement on the grounds of incompleteness.

Simon's story illustrates one issue arising from a strict interpretation of what comprises a 'complete' statement.

Since 1 July 2018, the Ombudsman has received at least two other complaints where the circumstances closely resemble those in Simon's story.



Simon's story

In March 2018, Simon incurred an infringement while driving a company car. Simon completed a nomination statement, nominating himself, by completing the required form and sending it to Fines Victoria by post. In completing the form, Simon filled in the section requiring his personal details (section B) including his full name, address, driver licence number and date of birth. On the same page, but further down the form, the nominated party was required to enter their name, signature and date they signed. Simon did this but wrote his name using his first initial 'S' rather than his full name 'Simon'.

An example of the way in which Simon filled out the form is set out below. This form is specific to the infringement issued in Simon's case, although the personal details have been changed to ensure anonymity.

HOW TO COMPLETE THIS FORM

1. Complete the form relevant to your situation. Do not make payment if submitting this form.	2. Send to: Fines Victoria GPO BOX 1916 Melbourne VIC 3001	3. You will receive a notification in the mail to let you know the outcome of your application.
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Your obligation number: 111111111
 Infringement Notice number: 222222222
 Vehicle/vessel registration: ABC123 (VIC)
 Offence date: 12 DEC 2014
 Offence time: 09:05am

11111111 22222222 000

NOMINATION STATEMENT

A I, the authorised corporate officer, state that the corporation was not in possession or control of the vehicle at the time of the offence because (select appropriate option):

<input checked="" type="checkbox"/> Someone else was the driver in possession or control of the vehicle at the time of the offence.	<input type="checkbox"/> The vehicle was sold to someone else or permanently disposed of on this date: / /	<input type="checkbox"/> I believe the vehicle or number plates displayed on the vehicle were stolen. <small>Note: You must attach Police Report or Reference Number.</small>	<input type="checkbox"/> The corporation was incorrectly nominated as the responsible person in relation to the vehicle and I reject the nomination.
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go to B
go to B
go to D
go to C

B List the details of the person or corporation who was in possession or control of the vehicle at the time of the offence.

Surname / Corporation name: HANNAFORD

First name / Corporation ACN: SIMON

Address of person / Corporation: 123 HIGH STREET COLLINGWOOD State VIC Postcode 3066

Driver licence / Permit Number: 123004567 State / Country of issue: VICTORIA Date of birth: 01/01/1970 Taxi DC Number (if applicable):

Note: This statement will be rejected if you don't provide a driver licence number or date of birth for a nominated individual or an ACN for a nominated corporation. If the vehicle is a taxi-cab, you must provide the driver's accreditation number.

go to D

C Tell us what reasonable and diligent enquiries you've made to try to identify the person in possession or control of the vehicle at the time of the offence.

Note: Failure to keep a record of who was in possession or control of the vehicle involved in the offence is not an adequate reason unless you can prove exceptional circumstances. If the offence involves a taxi-cab, you cannot nominate another person if you are recorded as the driver in the operator's records, and you cannot claim you are not aware of, or cannot identify the driver.

If you need additional writing space, please attach a signed extra page.

go to D

D Confirm your current address and sign to complete nomination statement:

It is an offence under the Road Safety Act 1986 (which may carry a fine in excess of \$9,000 and potential licence loss for an individual, or a fine in excess of \$18,000 for a body corporate) to knowingly provide false or misleading information in a nomination statement. I understand that I may be served with a summons to give evidence in relation to this nomination.

COMPANY NAME UNIT 123, 1 SAMPLE STREET THE SAMPLE HILL SAMPLETOWN VIC 3000	Your name <u>S. Hannaford</u>	Your signature
Is your address correct? If not, notify VicRoads or your relevant licensing authority of any changes.		Date <u>03/05/2018</u>

OR



Simon's story - continued

Fines Victoria rejected the nomination statement. The nomination rejection letter stated that the reason for the rejection was 'details provided do not match company named on the notice or authorised officer details incomplete'.

Simon resubmitted the nomination statement and also made several attempts to call Fines Victoria but says he did not have time to wait in the phone queue. On another occasion he reportedly called Fines Victoria and was advised that his paperwork was being processed.

In July 2018, Simon was issued with a Notice of Final Demand. He contacted Fines Victoria and was told his nomination statement had been rejected on the grounds he had not provided his full name in section D. However, Simon's full name was set out clearly in section B. By the time Simon had become aware of this, the deadline for submitting the nomination statement had passed.

Simon complained to the Ombudsman. He was aggrieved that while he had submitted a form with only his initial in section D on more than one occasion, he was never told this was the reason his statement was rejected.

Following our enquiries, the nomination statement was accepted. Fines Victoria said the TCO had originally rejected it because it did not meet the requirements outlined in the Nominations Business Rules. It said 'the TCO is taking a strict interpretation of the Nomination Business Rules rejecting nominations as initials under the Rules do not constitute a match' to the complete name on the notice.

The inflexibility of Fines Victoria's and the TCO's approach is troubling. Simon included all the information required in a nomination statement. It is reasonable to expect an assessment of the nomination statement would consider the information in section B alongside the information in section D. While the TCO ultimately accepted the nomination statement, this type of decision should have been made without the need for Ombudsman intervention.

The rigid approach of the TCO and Fines Victoria is a result of the arrangement with Civica BPO and the strict procedures set out in the Nomination Business Rules which require Civica BPO to assess only if a statement is complete or incomplete.

In response to our draft report, the TCO said 'it is not always the case' that 'the person completing the nomination can be drawn from the same name' as the person being nominated. Accordingly, it applies strict rejection reasons in the Nomination Business Rules which led to the outcome in Simon's story.

To avoid the bureaucratic entanglement that might ensue, we consider the decision maker should have some discretion to make further enquiries, albeit limited, to the nominating party to determine the completeness of the nomination statement.

Fines Victoria said when problems with VIEW led to significant backlogs of nomination statements in 2018, 'holds' were put on infringements where nomination statements had been received. This was done to allow the nomination to be assessed, processed and determined without the infringement progressing to enforcement stage.

This did not apply in circumstances where members of the public had submitted nomination statements for ESIs that were considered incomplete. In ordinary circumstances an incomplete nomination would be returned to the nominating party promptly, allowing them to resubmit within the statutory deadline. Where backlogs existed and there was possibility to extend the deadline, as is the case with ESIs, parties were out of time to submit a corrected nomination.

Isabella's story (page 24), provides an example of where an incomplete nomination was returned with insufficient time to resubmit.

Complexity around the Ombudsman's role

The Ombudsman's role is limited to oversight of Fines Victoria and jurisdiction does not extend to Victoria Police.

Under section 15(1) of the *Ombudsman Act 1973* (Vic), the Ombudsman must refuse to deal with a complaint that appears to involve police personnel conduct, other than for the purposes of notifying the Independent Broad-based Anti-corruption Commission.

The Ombudsman's jurisdiction does extend to Civica BPO because:

- it is a specified entity within the meaning of the Ombudsman Act.
- the Business Services Agreement is an administrative services agreement that is subject to the Fines Reform Act.

A clause in the Business Services Agreement expressly acknowledges the Ombudsman has jurisdiction over Civica BPO where it carries out administrative functions for the Victorian Government. The Chief Executive Officer of Civica BPO is the principal officer for the purposes of the Ombudsman Act; and is required to make arrangements to ensure it complies with notices from the Ombudsman.

The circumstances of the engagement of Civica BPO by both the TCO and Fines Victoria means there are challenges in determining which agency has caused the fault. In circumstances of delay, the Ombudsman's jurisdiction is enlivened because Fines Victoria has the role of 'collecting nomination statements'. However, where there is an issue about when a nomination statement was received, or whether a nomination statement was correctly completed, this may be a complaint about the conduct of Civica BPO, or about the conduct of the TCO.

A complaint about the determination of a nomination may well fall squarely outside of the Ombudsman's jurisdiction.

Despite these complexities, Fines Victoria has facilitated resolutions of complaints informally in response to the Ombudsman's enquiries. This includes contacting the TCO.



Harry's story

Harry is a taxi driver and is the registered owner of a taxi which is operated variously by him and two other drivers. On 7 March 2018, Harry was issued with an ESI. One of the other drivers who use his vehicle was driving at the time the infringement occurred and admitted responsibility. Harry submitted a nomination statement by posting the required form and documentation to Fines Victoria. Harry advised our office that he did this some weeks before the deadline for nominating another driver, although Fines Victoria said the statement they received was posted on 3 April 2018.

The statutory deadline for nominating another driver was 4 April 2018 and Fines Victoria advised they received the nomination statement on 5 April 2018. Harry's licence was suspended on 5 April 2018.

On or around 18 April 2018, Harry received a letter from Fines Victoria giving notice that his nomination was rejected as it was made out of time. Harry called Fines Victoria who told him the nomination form was received one day too late. Harry was told there was nothing he could do and the suspension of his driver licence would last for one month.

On 2 May 2018, Harry received a letter from Fines Victoria notifying him his nomination had been accepted and his suspension would be lifted. Harry called Fines Victoria to complain that he had served a suspension for no reason. Harry told the Ombudsman that Fines Victoria also suspended the nominated driver. Harry was of the view that this meant, in effect, two people have served a suspension for the one infringement.

Due to the suspension, Harry lost a month of wages as he was unable to drive his taxi.

Harry contacted the Ombudsman after his licence had been restored. He wanted to register his displeasure with the conduct of Fines Victoria. He stated:

When we make a mistake, we pay. When they make a mistake, we pay. That is not fair ... I'm very lucky that I'm only supporting myself but can you imagine someone who has four or five kids and the family relies on his ability to earn an income ... They [Fines Victoria] should clean up their act and do it better.

Fines Victoria responded to Harry's case:

While it is unfortunate that [Harry] missed the deadline by one day, Fines Victoria is unable to accept a late nomination in these circumstances. [Harry's] licence was correctly suspended.

However, an error did subsequently occur with the processing of this infringement notice. What appears to be an isolated human error led to his nomination statement being considered a second time, and for reasons that are not clear, being accepted. As a result of this action, the infringement was withdrawn from [Harry], his suspension lifted, and the conviction which had been recorded for the offence was removed.

Harry felt at the conclusion of his matter that he had been treated unfairly, but also that the unfair outcome was caused by Fines Victoria's error.

Handling of enquiries and complaints

Some of the more protracted complaints we dealt with show issues with how Fines Victoria respond to complaints and enquiries. Others illustrate issues with the way in which information is shared within Fines Victoria and with VicRoads.

Some issues arise because of difficult circumstances created due to delay or from human or system errors. Delay and system errors, such as those detailed earlier in this report, can be difficult to resolve. It appears that where Civica BPO or Fines Victoria officers have to unpick a series of errors and delays that have created a number of interlocked issues, it can sometimes result in unsatisfactory or inaccurate responses, or responses that do not address the specific grounds for complaint.

Fines Victoria often operates in circumstances where its decision making is bound by statutory time periods or strictly prescribed grounds for review. This can limit the discretion that officers have in any given case.

Isabella's story (page 24) details errors by Fines Victoria in the processing of Isabella's nomination request and in the advice given to her. Effectively, Civica BPO officers, on behalf of the TCO or Fines Victoria, admitted wrongdoing but determined there was nothing that could be done to rectify it. We note that a satisfactory proposal was reached after the intervention of the Ombudsman. We acknowledge that the TCO made this decision alone, however it is concerning that it was only made after an enquiry to Fines Victoria by Ombudsman staff.

This issue, and the similar issues set out in this section, suggest problems with Fines Victoria's internal communication. They also point to an inflexible approach in circumstances where errors were apparent and clearly caused by systems operated within Fines Victoria. In many of the cases detailed in this report, Fines Victoria has facilitated satisfactory resolutions where the Ombudsman has become involved. Again, we question why these cases needed to get to the stage where the Ombudsman becomes involved.

Fines Victoria has been forthright in admitting faults arising from processing and other IT related challenges. However, the manner in which issues arising from these faults has been addressed and resolved has not been equally forthright.

Complainants such as Karen and Brian, on the following page, needed Fines Victoria to approach their situation acknowledging that processing errors had occurred, make a careful appraisal of how these errors might have impacted on their circumstances, and identify how errors could be avoided in the future.



Karen and Brian's story

In January 2018, a car driven by Karen but registered to Brian (her husband) failed to stop at a red light and incurred a traffic infringement. The infringement was issued to Brian's registered address in Bulleen in late January 2018. On the same day, Brian notified VicRoads that his address had changed from an address in Bulleen to an address in Rosanna.

Fines Victoria sent the Penalty Reminder Notice and Notice of Final Demand to the address in Bulleen. As a result of notices being sent to an old address, \$152.80 in late payment fees was added to the infringement.

In May 2018, Karen, who had not previously been aware of the infringement, became aware of the Notice of Final Demand. Karen paid the infringement immediately to avoid the matter going to court. Also on 8 May 2018, Brian submitted a nomination request to Fines Victoria and Karen submitted an enforcement review request to Fines Victoria. One of the grounds for review was that fees and charges had been unfairly added. The requests were submitted online and listed the Rosanna address as their address.

Brian and Karen wrote to Fines Victoria on 6 June and 3 August 2018 as they had not received an update. These letters were submitted by fax and post, and signed by both of them.

In August 2018, Karen contacted our office for assistance resolving her dispute with Fines Victoria. Fines Victoria initially refused to respond to the correspondence, claiming Karen did not have authority to obtain information on Brian's behalf. We had to point out that both Karen and Brian had signed the documents submitted on 8 May, 6 June and 3 August 2018. Fines Victoria then said an acknowledgement was provided to Karen and Brian on 10 July 2018 to the Rosanna address. Upon further enquiries, Fines Victoria conceded the acknowledgement was sent to the wrong address.

Fines Victoria subsequently sent all previous documentation to their Rosanna address and requested that the Traffic Camera Office reconsider the nomination requests. The TCO accepted the nomination, withdrew the infringement and provided a full refund of the infringement, plus fees.

Fines Victoria responded to Karen and Brian's story:

Fines Victoria is aware of and are investigating a further system error that is, in a small proportion of cases, preventing addresses from being updated promptly where VicRoads provides Fines Victoria with updated information.

'The first time we heard about the fine we were getting threatened with legal action ... We don't want any legal action ... So our first thing was pay the fine and then take steps to try and deal with it. It's just distressing. I'm seven months pregnant, and to not have a response after all this time. I don't think I've ever dealt with a government department that has just completely ignored me. It's just ... it's horrible.'

Karen

Communication with VicRoads

Karen and Brian's story also illustrates issues with the way in which Fines Victoria shares information with VicRoads.

The Ombudsman saw a spike in complaints in late 2018 about Fines Victoria sharing accurate and timely information with VicRoads to enable VicRoads to process demerit point nominations and licence suspensions properly. Between 1 July and 31 December 2018, we received 14 approaches regarding this issue. Ten of these approaches were in December 2018, comprising over 10 per cent of approaches for that month.

VicRoads manages the demerit point and licence consequences of traffic infringements issued in Victoria. VicRoads also provides support to Fines Victoria by sharing relevant information about individuals and vehicles for whom infringements are issued. Fines Victoria reports that information is shared on an automated basis, 'as well as on an ad hoc basis where necessary to support Fines Victoria's functions.'

An example of automated information sharing is the process for issuing demerit points. Fines Victoria's role in issuing demerit points is limited to notifying VicRoads of when certain events have occurred. Through an automated process, Fines Victoria notifies VicRoads of an event such as when a fine is paid. If a fine remains unpaid, but is registered to the Director, Fines Victoria for enforcement review, VicRoads is similarly notified through an automated process. Both the above notifications would have an effect on the issuing of demerit points. VicRoads issues demerit points once it receives the relevant notification.

However, Fines Victoria does not consider that information sharing with VicRoads was amongst the significant challenges in 2018. It conceded that 'the delineation of responsibilities between the two agencies, as well as difficulties caused by VIEW, can give the impression this relationship is not as effective'.

From the complaints we received, there appear to be two main themes: sharing of up-to-date address information and referring customers between the two agencies.

Sharing up-to-date address information

Members of the public complained that Fines Victoria was sending notices to old addresses, even after they had reason to know that an address had been updated.

Stories such as Karen and Brian's detail where a member of the public has updated information with VicRoads only to have a reminder notice, or other notice, sent to a previous address. We acknowledge the requirements for issuing Penalty Reminder Notices and other infringement notices set out in section 162 of the Infringements Act. Some of the complaints, such as those from Karen and Brian, involved people who had notified only VicRoads of their address change. However, we note Fines Victoria's community campaign reminding people to do exactly that.¹⁵ Fines Victoria broadly advised individuals to update their personal information with VicRoads.

VicRoads advised that Karen's experience is 'a known issue affecting a small number of customers which has been caused by a failure of the VIEW system to accurately use the information provided'. We did not focus on the extent of this issue in our enquiries.

¹⁵ Fines Victoria, *Change of address? Remember to update your details with VicRoads* (Media Release, 24 September 2018) <online.fines.vic.gov.au/news/change-of-address>.

Referring customers between agencies

Another issue regarding information sharing with VicRoads related to referrals between the two agencies, which is illustrated in Leanne's story.



Leanne's story

Leanne committed a driving offence, and the resulting infringement and application of demerit points meant that her licence would be suspended for 12 months from August 2018. Leanne did not dispute the infringement, and instead applied to Fines Victoria to pay it by way of payment plan.

In November 2018, Leanne received a letter from VicRoads stating that Fines Victoria had informed them that her traffic infringement had been cancelled.

Leanne contacted both VicRoads and Fines Victoria, believing that an issue with the payment plan had resulted in the demerit period re-starting. She was aggrieved that she would have to serve a 12 month period afresh when she had already served almost four months of the demerit period. Leanne was referred between agencies which caused her significant frustration.

Fines Victoria told us the issue arose because Leanne's infringement incorrectly progressed to the Notice of Final Demand stage, due to a problem with the VIEW system that delayed the establishment of the payment plan. Fines Victoria's practice at that time was to place fines 'on hold' in these circumstances. As discussed elsewhere in this report, the 'hold' placed on the infringement failed, and it was permitted to progress to Notice of Final Demand stage which sent an automated notification to VicRoads. Fines Victoria stated:

Following the establishment of the payment plan arrangement, [Leanne's] making of the first payment would have triggered another automated notification to VicRoads to apply demerit points leading to another suspension.

The more appropriate outcome here would have been for [Leanne's] original suspension to continue uninterrupted.

Leanne's case is yet to be resolved and the Ombudsman continues to be involved in the matter.

'I cannot get an answer to my queries regarding Fines Victoria communication to VicRoads regarding my traffic infringement ... I have no idea why they've referred me to another department when my question was very factual?'

Leanne

Concerns about the response to Leanne's story

This story raises three areas of concern regarding Fines Victoria's processes and how they connect with VicRoads.

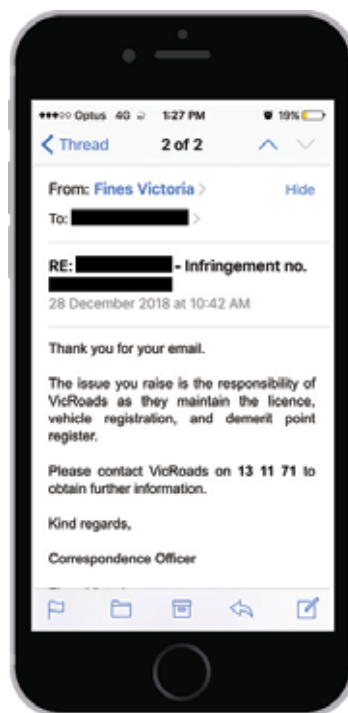
Firstly, Leanne's issue appears to have arisen because automated notifications were sent to VicRoads in error. We acknowledge that the volume of infringements and related activities administered by Fines Victoria which impact VicRoads means that automated notifications are essential. However, this case involves a series of automated notifications being made due to failures within the VIEW system at Fines Victoria. The integrity of many of VicRoads' actions is dependent on the proper functioning of Fines Victoria's IT processes. As Fines Victoria has advised, those IT processes were deficient in 2018.

Leanne said she was referred between the two agencies with both advising they could not assist. This experience has been relayed to us by other complainants. Fines Victoria responded:

... Fines Victoria's practice of referring customers to VicRoads may be frustrating where customers make enquiries about their number of demerit points or their licence status. This practice exists as VicRoads is the only agency able to give definitive advice on the status of a customer's licence. There could be significant consequences if Fines Victoria incorrectly advises a customer that they are able to drive when they have in fact been suspended by VicRoads.

This response fails to acknowledge that Leanne was seeking to have the two agencies work together to resolve her problem. In Leanne's case, each agency referred her to the other. The error could not have been resolved by going to a single agency.

Figure 5: Email Leanne received from Fines Victoria



Finally, it is concerning that Leanne's matter still remains unresolved. It appears that the issues arising where multiple automated notifications have been made cannot be easily retracted. By Fines Victoria's own admission, there has been a number of processing challenges in 2018 and, on balance, it is very likely that some of these resulted in incorrect automated notifications being issued.

Responding to representatives

In addition to enquiries from the Ombudsman, a number of professionals contact Fines Victoria on behalf of clients. These professionals, often representing members of the community experiencing disadvantage or specific vulnerability, play a role in assisting individuals to navigate complex legal systems. Financial counsellors, for example, contact Fines Victoria to obtain information about outstanding infringements to assist individuals experiencing financial hardship to effectively manage their debts.

Fines Victoria allow for nominated persons or organisations to make contact under either a full or limited authority.

A full authority allows a third party to take action on behalf of an individual, while a limited authority restricts a third party to making enquiries or discussing a customer's file. A full authority for a financial counsellor requires the following information:

- the customer's full name, which matches the details held in VIEW
- an additional point of customer identity that can be confirmed from details in VIEW
- the authority is on the organisation's letterhead
- the authorisation states that the third party is authorised to act on a customer's behalf.

The difficulties facing Victorians experiencing disadvantage, and their representatives, are illustrated in the following two case summaries.



Therese and Wendy's story

Therese is a financial counsellor working predominantly with people recovering from addiction. Her client, Wendy, was in residential rehabilitation for addiction issues. Wendy had seven or eight infringements and provided Therese an authority to act on her behalf with respect to each matter. Therese made attempts to contact Fines Victoria to have the payment arrangements cancelled and for Wendy to be put on a Work and Development Permit. Fines Victoria would not accept Wendy's written authority for Therese to act on her behalf. Accordingly, the Work and Development Permit did not commence, and payments continued to be deducted from Wendy's Centrelink payments. Fines Victoria advised Therese that Wendy had to contact Fines Victoria herself, which presented some challenges because Wendy was receiving treatment.

Wendy attempted to cancel the payment plans a number of times and was faced with long call wait times. She was eventually able to cancel the payment plan, at which point, Therese was informed that Fines Victoria had already applied the funds that it was collecting to one of the fines. This meant that even though Wendy was on a Work and Development Permit, one of the fines was not applied to that order.

After enquiries from the Ombudsman, Fines Victoria offered to refund Wendy \$600 in recognition of payments made against infringements after a Work and Development Permit application was received. Wendy has proceeded to deal with the remaining \$625 of her infringements by way of a Work and Development Permit.

Fines Victoria conceded that the authority provided by Wendy allowing Therese to make contact on her behalf was not recognised by the contact centre, however could not explain why:

Fines Victoria is aware that persons who seek the assistance of financial counsellors may not have available to them the necessary information to support the more stringent requirements of a full authority. Fines Victoria is currently seeking to [adjust] the requirements applicable only to authorities provided to financial counsellors.

Like Therese and Wendy's story, Ali's story shows how these communication issues are not caused solely by IT failures or procedural errors but also how individual officers assess whether representatives have 'authority to act' on behalf of others.



Ali's story

Ali, a newly arrived refugee under the age of 18, incurred a series of infringements in and around October 2017. In mid November 2017, Ali's community lawyer submitted an application for internal review on Ali's behalf. As part of the online application, his lawyer selected the option requesting all future correspondence be sent to their office, rather than to Ali and restated this preference in the comments section of the online application form. This request was made because Ali feared that he would be subjected to physical violence if his father were to discover the infringements. Ali had been subject to family violence at the hands of his father in the past.

Later in November 2017, documents were sent to Ali's home address, which instigated a complaint to Fines Victoria from his lawyer.

In April 2018, Fines Victoria again sent documents to Ali's home address. In May 2018, his lawyer again contacted Fines Victoria. The Executive Director of IMES at the time apologised to Ali on behalf of Fines Victoria and provided an assurance that his address had been removed from the system. Despite this, Ali's lawyer advised that Ali continued to receive correspondence at his home address.

Despite confirming correspondence would be sent to his lawyer, a written response to the internal review application was never received. In December 2018, after contacting Fines Victoria by phone, Ali's lawyer was advised that the internal review application was unsuccessful.

Fines Victoria advised:

- It is acknowledged that [Ali's] lawyer's request to direct correspondence to his address was not complied with on a number of occasions.
- While this particular case was caused by a range of human and system errors, it is also important to note that not all requests for notices to be sent to a certain address can be complied with.
- The Infringements Act 2006 and the Road Safety Act contain a number of rules regarding the address at which infringement and other notices must be served. Not complying with these rules can lead to infringements becoming unenforceable.
- For example, were [Ali] to commit further driving offences, the infringement notices would be required to be sent to the address at which his vehicle was registered.

Fines Victoria took the position that, while the documents sent to Ali's home in late 2017 were the result of error, the documents sent in April 2018 were the result of the legislative requirements for the Penalty Reminder Notice in the Infringements Act. We acknowledge that the documents may have been sent to Ali's home in April 2018 as a result of legislative obligation, although Fines Victoria's actions immediately after the notice was issued do not reflect this.

The impact on representatives, particularly those who assist members of the community experiencing disadvantage or vulnerability, who need to spend time following up with Fines Victoria, is that other members of the community may miss out on receiving services. Therese reported having a lengthy case load. Time she has to spend seeking basic information about a client's infringements could be put towards other clients in need.

The impact for the infringements system is also quite clear. Community lawyers and community based financial counsellors assist members of the community who often have trouble advocating for themselves and interacting with agencies such as Fines Victoria. These professionals help the efficient management of the infringements system by guiding their clients through the relevant processes and explaining options. When community services cannot interact effectively with Fines Victoria, their clients can become further marginalised.

Continued monitoring of Fines Victoria

This report has sought to show the key themes and systemic issues arising from 605 complaints received by the Ombudsman in 2018. Fines Victoria admit that implementation of the reforms in the Fines Reform Act has 'led to a range of issues which have caused frustration and inconvenience to customers'.

Fines Victoria's position, broadly, is that a majority of the issues raised by the Ombudsman and illustrated in people's stories, are due to challenges associated with the deployment of its new IT system which was necessary to give effect to the requirements of the new legislation.

We did not set out to investigate the failures of the IT system. However, we note the lengthy history of IT issues associated with the management of infringements in Victoria. We also note that, in October 2018, Fines Victoria said the system would achieve full functionality in February 2019. Subsequently, we have been informed that full functionality will not be achieved until June 2019. The deadline for full IT functionality has been set back repeatedly.

Our analysis of complaints received would suggest such issues are not solely attributable to the IT or administrative challenges reported over 2018. Complaints also highlighted concerns about how discretion is exercised in cases involving error, the quality of communication with the public, and the processes for handling complaints.

The Ombudsman continues to receive complaints about Fines Victoria. It is too early to determine whether the frequency and complexity of complaints has decreased in comparison to 2018. While the number of complaints received in January 2019 (69 complaints) is quite high when compared to previous years, the complaints received in December 2018 (49 complaints) and February 2019 (42 complaints) were relatively low. Ombudsman staff also report that internal processes at Fines Victoria for responding to Ombudsman enquiries have improved.

Fines Victoria has outlined improvements to internal processes which have been set out in the earlier sections of this report. Fines Victoria and Civica BPO have also recruited more staff to clear backlogs and handle processing. These initiatives may alleviate some of the issues raised in this report.

We will continue to monitor complaints received about Fines Victoria, and to liaise with the agency, to see whether the issues set out in this report are indeed being fixed, or whether an investigation by the Ombudsman is warranted.



Appendix 1



Department of Justice and Community Safety

Secretary

Level 26
121 Exhibition Street
Melbourne Victoria 3000
Telephone: (03) 8684 0501
justice.vic.gov.au
DX: 210077

Our ref: BC/19/9769

Ms Deborah Glass OBE
Victorian Ombudsman
Level 2, 570 Bourke Street
MELBOURNE VIC 3000

Dear Ombudsman

I write in response to your letter of 29 March 2019 to the former Attorney-General, the Hon Martin Pakula MP, seeking further comment on the decision to commence operation of Fines Victoria on 31 December 2017.

The transition to a new fines recovery model, which required the development of a new IT solution, has been a significant and challenging process undertaken over a number of years.

As you are aware, in 2016 the default commencement date of the *Fines Reform Act 2014* (the Act) was altered to allow more time for the development of this IT solution.

The decision to ultimately commence the Act on 31 December 2017 was informed by advice from a range of sources, including the department's specialist technical advisor (KPMG) and the IT provider (Civica). The advice was that the new system would be functional at go-live with outstanding issues expected to be resolved within a short timeframe of this date.

This view was supported by various checkpoint processes that confirmed the system could be deployed by this deadline with risks able to be effectively managed. It was also supported by the fact that it was becoming increasingly unsustainable to continue to use the legacy IT system, including the financial exposure for the state in continuing with the existing provider.

The *Fines Reform Amendment Act 2017* (2017 Act) made important changes to the Act, one of which was the introduction of the Family Violence Scheme, which had been recommended by the Royal Commission into Family Violence. To provide absolute certainty that the VIEW system could accommodate this important new scheme, the 2017 Act also changed the default commencement of the Act to 31 May 2018. In addition, the government was considering reforms to Victoria's tolling infringement system.

Personal and health information received by the Department of Justice and Community Safety is managed in accordance with the Victorian privacy legislation. A copy of the Department's privacy policy is available at www.justice.vic.gov.au. For Privacy enquiries, please telephone (03) 8684 0071.

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The government's decision to commence the Act on 31 December 2017 was based on advice from the department that on balance, while there was a spectrum of possible system issues that could arise, the contractor had advised that essential system functions could be deployed by that date, with outstanding functionality to be delivered within a short timeframe.

Thank you for the opportunity to provide further comment to support your report into complaints about Fines Victoria.

Yours sincerely



Rebecca Falkingham

Secretary

Cc: The Hon. Martin Pakula
Minister for Racing
Minister for Jobs, Innovation and Trade
Minister for Tourism, Sport and Major Events

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