

Health **Agency to** Court

Tackling the Fines System Evaluation Report 2018-2019
Published in September 2020



Generously funded by the Victorian Legal Services Board and Commissioner

WEstjustice

Footscray

Level 1/72 Buckley Street, Footscray VIC 3011
Tel: + 61 3 9749 7720
Fax: + 61 3 9749 8276
Email: admin@westjustice.org.au

Werribee

Level 1/8 Watton Street, Werribee VIC 3020
Tel: + 61 3 9749 7720
Fax: + 61 3 9749 8276
Email: admin@westjustice.org.au

Sunshine

Visy Cares Hub, 80B Harvester Road, Sunshine VIC 3020
Tel: + 61 3 9091 8237
Fax: + 61 3 9091 8207
Email: sunshine@westjustice.org.au

WEstjustice provides free legal help to people in the Western suburbs of Melbourne. We can help with a broad range of everyday problems. Please call (03) 9749 7720 to find out more about our services or to make an appointment.



© WEstjustice Western Community Legal Centre 2020
westjustice.org.au

Written by Shifrah Blustein with support from Emily Scott, Melissa Hardham, Liz Morgan, Gillian Davy, Shannon Lang and Dean Stevenson.

Cover photo credit: [Unsplash.com](https://unsplash.com)

Amy Hirschi, [Christina wocintechchat.com](https://www.wocintechchat.com), Elliott Reyna, Jan Baborak, Krishh, Mimi Thian, Trung Thanh

WEstjustice acknowledges the ancestors, Elders and families of the Kulin nations, who are the traditional owners of Western Melbourne, the country we are located on. As we work to achieve a just and fair society we pay our respects to the deep knowledge embedded within the Aboriginal community and Aboriginal custodianship of Country. We acknowledge this land as a place of age-old ceremonies of celebration, initiation and renewal, and that the Kulin peoples' living culture has a fundamental role in the life of this region.

"...knowing that there's people out there to help was a big weight off my back."

GLOSSARY

Clients	Consumers who have accessed the Health Agency to Court Program through the Werribee Mercy Hospital's fines and debts legal clinic.
Creditors	Companies that provided credit to consumers. This includes banks, payday loan providers, other financial services, and 'quasi-credit' providers such as energy retailers.
Enforcement agency	Agency who issues a fine, for example Victoria Police, Transport for Victoria (the Department of Transport), local councils, or the Victorian Electoral Commission.
Judgment proof	A person who is protected from enforcement of debts under the <i>Judgment Debt Recovery Act 1984</i> (Vic) because their sole source of income is from a social security payment.
Practitioners and social workers	Doctors, nurses, social workers and other health workers providing services to clients as part of the partnership.
Enforcement review	Process for reviewing infringements in Victoria, whereby Fines Victoria considers cancelling the enforcement of fines after which the enforcement agency can choose whether to pursue the underlying criminal offences via prosecution in the Magistrates' Court. Enforcement review applications can be made on the basis of 'special' or 'exceptional circumstances'.
Special circumstances	A ground for enforcement review of fines, defined in the <i>Infringements Act 2006</i> (Vic) (' <i>Infringements Act</i> ') ¹ as: <ul style="list-style-type: none">a. a mental or intellectual disability, disorder, disease or illness where the disability, disorder, disease or illness results in the person being unable—<ul style="list-style-type: none">i. to understand that conduct constitutes an offence; orii. to control conduct that constitutes an offence; orb. a serious addiction to drugs, alcohol or a volatile substance within the meaning of section 57 of the <i>Drugs, Poisons and Controlled Substances Act 1981</i>² (Vic) where the serious addiction results in the person being unable—<ul style="list-style-type: none">i. to understand that conduct constitutes an offence; orii. to control conduct which constitutes an offence; orc. homelessness determined in accordance with the prescribed criteria (if any) where the homelessness results in the person being unable to control conduct which constitutes an offence; ord. family violence within the meaning of section 5 of the <i>Family Violence Protection Act 2008</i>³ (Vic) where the person is a victim of family violence and the family violence results in the person being unable to control conduct which constitutes an offence.
Waiver	Relinquishment by a creditor of the debt owed to them by a client, meaning the debt is cancelled.
Work and Development Permit	The Work and Development Permit (WDP) scheme is an initiative introduced in 2017 to provide vulnerable and disadvantaged people with a non-financial option to address their fine debt. A WDP allows an eligible person to work off their fine debt by participating in certain activities and treatment.

¹ http://classic.austlii.edu.au/au/legis/vic/consol_act/ia2006161

² http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/dpacsa1981422

³ http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/fvpa2008283/

**HELPING THE MOST VULNERABLE
TACKLE THE FINES SYSTEM**

EXECUTIVE SUMMARY

People with acute mental health conditions are disproportionately impacted by fines and debt, while those living in outer suburban areas are more likely to accrue toll road infringements due to limited public transport options, increased reliance on driving and frequent use of privately operated toll roads.

Current laws provide a process for people experiencing 'special circumstances'—such as poor mental health or substance dependence—to seek review of their fines. However, in practice this process is complex and onerous. This pathway also imposes a harsher punishment on those with reduced culpability for their conduct by requiring them to plead guilty at court and be sentenced by a Magistrate.

In response to these challenges, WEstjustice developed the Health Agency to Court Program ('HACP'). The HACP is a partnership primarily between Mercy Mental Health Adult Inpatient Unit (Werribee) and WEstjustice, with involvement from Mercy Mental Health's Community Care Unit, Victoria Legal Aid, the Infringements Working Group, Transurban and the Economic Abuse Reference Group. The HACP aims to enhance collaboration between, and capacity of, health and legal services to support complex clients with unpaid fines, debts and other legal issues, and to provide collective advocacy to reduce the financial and health impacts of infringements on vulnerable communities. The program does this through the provision of a number of components:

- A fines and debt legal clinic embedded within the Mercy Mental Health Adult Inpatient Unit co-located at the Werribee Mercy Hospital;

- Efforts to encourage the take-up of Work and Development Permit sponsor opportunities in the community sector; and

- Advocacy activities to contribute to legal and systemic reform.

This early intervention integrated response model is known as a Health Justice Partnership ('HJP'). This evaluation examines the effectiveness of each of the three components identified in the HACP. It provides insights from clients and practitioners, an analysis of data gathered from the hospital clinic, and a study of advocacy activities interpreted via a program logic framework. The evaluation also assessed the HACP against the core elements of an HJP.

Working with clients in the Mercy Mental Health setting provided many valuable insights into the mental health system, health justice partnerships and the complexities of clients facing significant mental health issues. It afforded us the opportunity to forge client relationships with a cohort that were very much in need of legal assistance but would likely not find their way to our centre if it were not for our health-justice partnership with the hospital.

HACP assisted 169 clients in 2018–19 in the Inpatient Unit and Community Care Unit (Mercy Mental Health's residential rehabilitation service for people with severe mental health conditions), and 242 over the life of the project since 2016. More than \$1 million worth of debt was identified and close to \$700,000 worth of infringements for these very vulnerable clients.

According to social workers surveyed, the assistance provided significantly reduced stress for patients and reduced readmissions to hospital. Clients surveyed attested to the sometimes life-changing nature of the assistance provided, aiding them to reign in financial problems and reduce stress and poor health outcomes.

We achieved many significant systemic advocacy wins, including major reform of the toll fines system, influence into major reviews of the fines system, and an Ombudsman investigation into one of our local councils.

“Unpaid fines and outstanding debt lie not within the individual as a personal failing, but within the social and economic drivers of financial hardship.”

1. RECOMMENDATIONS	11	7. BARRIERS TO EFFECTIVE CLIENT OUTCOMES	53
Project recommendations	12	Hospital delays with letters	54
Systems and legislative recommendations	12	Fines Victoria, the legislative regime, and recommendations for change	55
2. BACKGROUND	15	Impact of fines reform	55
2016–17 project	17	Attempts to prevent unfair prosecutions	55
Partnership with Mercy	17	Problems with the nexus test	56
3. HEALTH-JUSTICE PARTNERSHIP POLICY LANDSCAPE	19	Increased standard of proof	56
Policy landscape	20	Impact of poverty	56
Defining the problem	22	The two tiered approach	57
4. METHODOLOGY	25	The abolition of the Special Circumstances List	58
5. HEALTH AGENCY TO COURT PROGRAM	29	Prosecution following successful special circumstances enforcement review	60
Program aims	30	Lack of social work support and other challenges with the model	62
Program description	32	The need for consistent social work support	62
How the fines and debt legal clinic works	34	Capacity challenges	62
Move away from bulk approach to more holistic service provision	36	Future project considerations	63
6. FINDINGS AND DISCUSSION	39	8. WORK AND DEVELOPMENT PERMIT ACCREDITATION SUPPORT PROJECT	65
Client demographics	40	Accredited agencies	68
Client outcomes	48	Support to accredit as WDP sponsor	70
Social work surveys	50	Impact of accreditation for clients	70
Staff training	51	9. BROADER ADVOCACY AND LAW REFORM	73
		Fines reform	74
		Special Circumstances List	76
		Fairer toll campaign	76
		Legislative change	76
		Toll fines recall protocol	77
		Transurban hardship scheme	78
		Tolling Customer Ombudsman	79
		Maribyrnong Council complaint	80
		Family Violence Scheme	81
		VicRoads	82
		Submission to the Royal Commission into Victoria’s Mental Health System	83
		Vulnerable person’s product	83
		Civil debt advocacy	84
		Payday loans	84
		Alcohol interlock devices and debts	85
		10. LEARNINGS FROM THE EVALUATION	87
		Conclusion	88



PROJECT RECOMMENDATIONS

1. Future iterations of the project should consider the following:
 - a. Embed the HACP lawyer within an outpatient community mental health setting so that clients get the benefit of consistent and stable case management and social work support;
 - b. Expand the range of legal services available to clients to make it a truly holistic service;
 - c. Embed a financial counsellor into the service;
 - d. Continue undertaking systemic policy and advocacy work.
2. Structure better provision of support letter mechanisms for responding to requests for letters.

SYSTEMS AND LEGISLATIVE RECOMMENDATIONS

3. Reformulate the test for special circumstances so that it is accessible to more vulnerable people by:
 - a. Introducing a prognosis test that can be used as an alternative to the nexus test;
 - b. Exempting people receiving compulsory mental health treatment from satisfying the prognosis or nexus test to access the special circumstances regime (this should be seen as prima facie evidence);
 - c. Restoring the balance of probabilities standard of proof to the nexus test (the current standard of proof is unnecessarily onerous).
4. Urgently reinstate the Special Circumstances List to ensure the most vulnerable can access a specialised therapeutic jurisdiction when their special circumstances fines are not withdrawn.
5. Introduce concession-based fines of 5% of the value of a fine for Centrelink recipients and others on very low incomes (a more proportionate, fair and credible system for penalising minor conduct).
6. Abolish fines as sanctions for children and replace these with innovative, non-fiscal responses to minor offending.
7. Develop a new process for initiating prosecutions whereby enforcement agencies need to justify their decision to prosecute to Fines Victoria, and Fines Victoria (or another independent agency) has to sign off on the prosecution. This should be coupled with prosecution guidelines for enforcement agencies, so that people with special circumstances are subject to consistent, principled decision-making regarding the filing or withdrawal of charges.
8. Operationalise the toll fines recall protocol so that cases of hardship can be appropriately responded to by toll road operators outside the punitive and difficult-to-exit fines system.
9. Introduce legislative reform to make toll fines exempt from the limitations set out in s 20(2) of the **Fines Reform Act 2014 (Vic) ('Fines Reform Act')**⁴ to enable the Director of Fines Victoria to deregister toll fines at any point in the infringement lifecycle. This would mean the toll road operator could deliver a tailored hardship response to all toll road users irrespective of where in the system their matters are, including at the penalty enforcement warrant hearing stage.
10. Waive additional late fees when a person is undertaking a Work and Development Permit.
11. Review outdated laws that treat debtors as criminals by repealing arrest, bail and imprisonment powers for failure to present at court for civil debts.



Photo Christina wocintechchat.com

⁴ http://classic.austlii.edu.au/au/legis/vic/consol_act/fra2014138





Clare Moore Building

Photo from Werribee Mercy Hospital

2016–17 PROJECT

HACP began in 2016 with a grant from the Victorian Legal Services Board, and Commissioner (VLSBC). The first two years of the program were evaluated by Good Shepherd.⁵ That report found that HACP had achieved some significant client and systemic outcomes within the fines system.

In 2017, WEstjustice ceased providing the Penalty Enforcement Warrant duty lawyer service at the Werribee Magistrates' Court, due to poor court practices which meant the service had to operate as much more than a duty lawyer service, and also because of poor court outcomes despite extensive advocacy. Our strategy was to oblige the Court to hear matters unrepresented and enquire about special and other circumstances. We anticipated being invited back to run the duty lawyer list once the Court grappled with the difficulty of dealing with unrepresented litigants, but this did not occur. Therefore, this report does not include the duty lawyer service in the services it evaluates.

In 2017, we were successful in obtaining a further grant from the VLSBC. This report evaluates the second funding term of the program, namely 2018–19.

PARTNERSHIP WITH MERCY

In 2016, WEstjustice entered into a partnership with the Werribee Mercy Hospital (part of Mercy Health) to provide two legal clinics, a fines and debt service within the mental health unit and a family violence service within the antenatal clinic. These two clinics aimed to bring legal assistance to vulnerable health service consumers as part of two health-justice partnerships. A Memorandum of Understanding was entered into, service design activities were undertaken, regular management meetings were held, and training was conducted for health practitioners coming into contact with the legal services in the hospital. These two clinics have been running in parallel since 2016. This report only evaluates the fines and debt service within the mental health Inpatient Unit.

⁵ H Forster, Good Shepherd Australia New Zealand, *The Health Agency to Court: Cradle to Grave Project Evaluation* (Report, 2018).



**HEALTH-JUSTICE PARTNERSHIPS
POLICY LANDSCAPE⁶**

⁶ This section builds on the analysis of Good Shepherd undertaken as part of the evaluation of the previous iteration of this project: *ibid.*

POLICY LANDSCAPE

People on low incomes who are experiencing poor mental health are particularly vulnerable to high levels of debt. As with other social and economic determinants of mental health, there is a bi-directional relationship between poor mental health and debt, including fines; poor mental health places people at greater risk of debt, while debt can exacerbate pre-existing mental health conditions and trigger new ones.⁷ Legal services can struggle to reach clients with acute mental health conditions because of the severe and episodic nature of these conditions, as well as other barriers to legal assistance. Known barriers for clients include simply not knowing that a problem has a legal remedy, lack of awareness of community legal services, and perceptions of time involved, anticipated stress, cost, and competing problems.⁸ People living with a disability—including mental health conditions—have the highest prevalence of legal problems out of all disadvantaged groups in Australia.⁹

One policy response to this problem has been to nest community lawyers within the health service system where people are already accessing support. These sites include local health services, family violence services and mental health clinics within hospitals. These integrated responses are known as Health Justice Partnerships ('HJPs'), and many have been developed across Australia in recent years.¹⁰

This innovative early intervention model places legal and health professionals together to identify and assist clients with legal problems, such as unpaid debts and outstanding fines, before they progress to further penalties such as loss of licence, warrants and risk of imprisonment. The core elements of HJPs are integrated, person-centred service responses (such as co-located treatment and support by health practitioners and accompanying legal assistance by legal practitioners); casework and individual advocacy (for example, with enforcement agencies and other decision-makers to waive fines /debt); and the exploration of further policy and practice responses to create systemic change.

HJPs emerged in the United States in the 1990s in the form of Medical Legal Partnerships, in recognition of the link between legal need and health outcomes.¹¹ These partnerships are now supported by the National Centre for Medical Legal Partnerships, with hundreds of partnerships in operation across the country.¹² HJPs are still relatively new in Australia, having emerged in 2008.¹³ International evidence shows that HJPs can be successful in alleviating individual financial and psychological distress as well as reducing the burden on health and legal systems.¹⁴

The evidence base in Australia is growing, with researchers such as Liz Curran finding positive outcomes for clients and communities, with a 'transferral of trust' from the clinical practitioner to the legal practitioner enabling a positive secondary consultation and successful legal engagement.¹⁵ An additional benefit of the partnerships is the capacity building among health professionals to identify and respond to legal needs and to understand when a referral to a lawyer may be necessary.¹⁶

The innovation that HJPs represent has been developed in a context of increasing demand for legal assistance for disadvantaged groups and government funding shortfalls. They are broadly reflective of the 'no wrong door' approach that has guided service system development in many sectors and jurisdictions in recent years. In New South Wales, for example, domestic and family violence 'Safer Pathway' reforms have developed around a person-centred approach in which various agencies work together to provide integrated, joined-up responses to individuals assessed as at high risk of victimisation.¹⁷

These approaches have emerged following the recognition that traditional service models do not necessarily meet the needs of vulnerable populations. Within health and disability sectors the approach has been informed by a social model in which the individual clients are recognised as active participants, if not experts, in their own care.¹⁸ The goal for service providers is to work with individual clients where they are, according to their needs and capabilities.

The features of HJPs can be summarised according to four elements:

- **Integration**—collaboration between health and legal services through joint planning, training and impact assessment, including development of trust and shared goals, with the aim of transforming the service system.
- **Early intervention**—the health service benefits from legal remedies to address the social and economic circumstances that lead to poor health outcomes while the legal service has the opportunity to identify and engage with people who may not perceive their problem as a legal one. The combination of approaches can also enhance the client's personal agency to support their own future health and wellbeing.
- **Systemic change**—through training health professionals to identify legal needs and either refer patients to legal assistance or provide preliminary advocacy, and through policy and law reform in response to identified patterns of unmet need.
- **Person-centred**—combining the principles of person-centred care and client-focused services to best meet the needs of clients, including in non-traditional health settings such as health service outreach locations and housing estates.¹⁹

In Victoria, the development of HJPs has been supported by VLSBC grants. WEstjustice's HACP is one of approximately 29 HJPs currently in operation across the state.

¹⁰ See list of Australia-wide Health Justice Partnerships: 'Health Justice Partnerships Across Australia', *Health Justice Australia* (Web Page) <<https://www.healthjustice.org.au/hjp/health-justice-partnerships-in-australia/>>.

¹¹ Peter Noble, Clayton Utz Foundation Fellowship, *Advocacy and Rights Centre, Advocacy-Health Alliances: Better Health through Medical-Legal Partnership* (Final Report, August 2012) (*Advocacy-Health Alliances*).

¹² Mental Health Commission of New South Wales, *Health Justice Partnerships in New South Wales* (Position Paper, October 2016).

¹³ See 'What is a Health Justice Partnership?', *Health Justice Australia* (Web Page) <<https://www.healthjustice.org.au/hjp/what-is-a-health-justice-partnership/>>.

¹⁴ *Advocacy-Health Alliances* (n 8); Tishra Beeson, Brittany Dawn McAllister and Marsha Regenstein, National Centre for Medical-Legal Partnership (US), *Making the Case for Medical Legal Partnerships: A Review of the Evidence* (Report, February 2013).

¹⁵ Liz Curran, 'Lawyer Secondary Consultations: Improving Access to Justice: Reaching Clients Otherwise Excluded Through Professional Support in a Multi-Disciplinary Practice' (2017) 8(1) *Journal of Social Inclusion* 46 ('Lawyer Secondary Consultations').

¹⁶ Linda Gyorki, *Breaking Down the Silos: Overcoming the Practical and Ethical Barriers of Integrating Legal Assistance into a Healthcare Setting* (Report, September 2014), cited in Curran, 'Lawyer Secondary Consultations' (n 12).

¹⁷ New South Wales Ministry of Health, *NSW Domestic and Family Violence Blueprint for Reform 2016–2021: Safer Lives for Women, Men and Children* (Report, 2016).

¹⁸ Mental Health Commission of New South Wales, *Health Justice Partnerships in New South Wales* (Position Paper, October 2016) 7.

¹⁹ These summary areas were developed by the Mental Health Commission of New South Wales: *ibid*.

⁷ Martin Ryan, Beverley Kliger and Bill Healy, Good Shepherd Youth and Family Service, *Smiling For The First Time: Bankruptcy for People with a Mental Illness* (Project Report, September 2010).

⁸ Christine Coumarelos et al, Law and Justice Foundation of NSW, *Legal Australia-Wide Survey: Legal Need in Australia* (Survey Report, August 2012).

⁹ *Ibid* xv

DEFINING THE PROBLEM

At its core, the problem that partnerships such as the HACP seek to address is one of social inequality. The reasons that a person ends up with unpaid fines and outstanding debt lie not within the individual as a personal failing, but within the social and economic drivers of financial hardship.

At an individual level the problem can worsen, with a small fine or debt initially representing a large proportion of a person's low income, a burden which then grows over time with interest, penalties and/or additional debts rapidly magnifying the initial amount. The effect can be a downward spiral, as paying a fine may mean not paying for essential items, and punitive debt recovery measures can create psychological stress while also pushing people into further criminal penalties. People who are particularly vulnerable are those experiencing severe mental health conditions, a cohort that is more likely to be transient and not in regular contact with services. People living in outer suburban areas are also disproportionately affected due to the absence of public transport, the sprawling nature of outer suburbs and their reliance on driving and in particular using privately operated toll roads, with toll road fines representing a large share of infringement debt.²⁰

ZHANG

Dealing with fines and the nexus requirement

Our client Zhang* was struggling when we met her, due to having to make high repayments on a payment plan for her fines and being pursued by an insurer following a motor vehicle accident. Zhang suffered from psychosis and the financial stress of having to deal with her fines was exacerbating her condition.

We intervened by cancelling the payment plan and placing the fines on hold—immediately providing Zhang with some financial and psychological relief. We also immediately referred Zhang to WEstjustice Motor Vehicle Accident service.

Zhang's fines were incurred when her mental health was poor. The majority of the fines were non-police (public transport) fines, so Zhang wished to have these submitted to enforcement review, noting the smaller risk of prosecution.

Unfortunately, Fines Victoria did not accept Zhang's support letter from Mercy Mental Health as the nexus requirement in the report stated that Zhang's mental illness 'may' have contributed to her incurring the infringements and Fines Victoria advised that they required the support letter to state that it was 'likely', in order to meet the nexus required. It is notable that this represented a departure from the previous approach seen at Fines Victoria.

We subsequently had to request an amended letter from Mercy Mental Health. This generated more work for the hospital and also created difficulties as by the time Fines Victoria advised that they would not accept the original support letter, it had been quite some time since Zhang had been treated there. Thankfully we were able to obtain an updated letter from the Mercy Mental Health's Freedom of Information Officer. This had a huge impact for Zhang in that it meant we could submit the majority of her fines to enforcement review. The application was successful without any of the agencies proceeding to court.

For Zhang's police fines, we submitted an application to bring these back to their original costs, by removing all the added fees (application for waiver of prescribed costs). Due to the significant delays in processing applications at Fines Victoria, we did not hear back on this application for 8 months.

Fortunately, we were still in contact with Zhang and we then advocated for these fines to be placed on a payment plan for the lowest possible amount (\$10 per fortnight). It should be noted that clients are unable to access a payment plan for this low amount by calling Civica. Rather, a written application by an advocate is required. Therefore, unrepresented people experiencing extreme financial hardship may be put on payment plans that push them further into poverty, as was initially the case for Zhang.

We also referred Zhang to an external financial counsellor who could assist her with managing the cost of her utilities.

* Alternative names have been used in all case studies to protect the client's identity.

At a systemic level, the *Fines Reform Act* provides a process for people experiencing 'special circumstances' (such as poor mental health or substance dependence) to seek enforcement review of their fines. However, in practice this process is complex and onerous. It also imposes a harsher punishment on those with reduced culpability for their conduct by requiring them to plead guilty at court and be sentenced by a Magistrate where the enforcement agency elects to prosecute the conduct for which the unpaid fine was issued, as Victoria Police and some councils most often do. In contrast, people without special circumstances can pay their fines and avoid a criminal record.

In 2016–17, only one per cent of enforcement orders issued were revoked (the pre-Fines Reform process for review of fines) on the basis of special circumstances,²¹ even though special circumstance infringements commonly rank as the third most common legal problem that community legal services address.²² Post Fines Reform, the special circumstances regime still contains many barriers and complexities that exclude vulnerable people from effectively accessing it. For example, to apply for enforcement review, clients must produce evidence that their condition (e.g. mental ill-health) impacted on their behaviour when they incurred the fines. By the time clients seek assistance the fines are often years old. Obtaining evidence of a client's mental health status at an earlier point in time is extremely difficult and often impossible for those individuals who are transient or not in regular contact with health services. The barriers to effective resolution of fines of people experiencing mental ill-health as observed by the HACP is discussed in greater detail in [section 7](#) of this report.

Toll road matters take up a significant proportion of Magistrates' Courts' time, putting pressure on court resources and other community support resources. WEstjustice and other concerned organisations undertook substantial advocacy on the tolls system,²³ some of which has led to major reform (discussed in the findings of this report, [page 76](#)).

The HACP operates in the Wyndham City Local Government Area ('LGA'), where the impact of toll infringements and other fines on residents is significant. Victorian Department of Justice and Community Safety figures show that 147,716 warrants for unpaid fines were issued to almost one in eight Wyndham residents in 2013–14.²⁴ These 22,529 individuals collectively owed \$54.2 million in unpaid fines, or an average of \$2,406 each. In 2014–15, Wyndham's fines debt jumped to more than \$70 million, the fifth highest in the state.²⁵ The Department has not released updated statistics broken down by local government area since.

In 2017–18 nearly 27,000 infringements were issued to Wyndham residents for failing to pay fees of between two and eight dollars for driving on Citylink and/or Eastlink. Seventy-five per cent of these infringements went unpaid and progressed to an infringement warrant, at which point each debt had escalated to \$370 through associated penalties for non-payment.²⁶ This represents a substantial drop on the 2015–16 figures (when 40,000 toll fines were issued to Wyndham residents and three-quarters proceeded to enforcement), likely due to reforms introduced in the interim in response to WEstjustice and Victoria Legal Aid advocacy.

²⁰ Data accessed by a WEstjustice Freedom of Information request supports this claim.

²¹ Infringement Management and Enforcement Services (Vic), Department of Justice and Regulation, *Annual Report on the Infringements System 2016–17* (Report, 21 March 2018) 20.

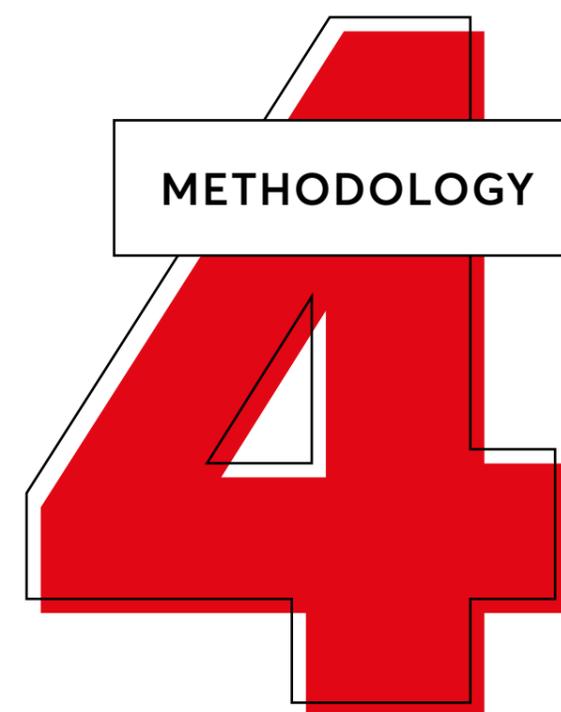
²² Federation of Community Legal Centres (Vic), *Annual Report: 2016–17* (Report, 2017) 5.

²³ See, eg. WEstjustice et al, *Our Plan for a Fair and Effective Toll Enforcement System for Victoria* (Briefing Paper, April 2017); 'Toll Reforms are Vital and Must Not be Lost in Debate about New Road', *Victoria Legal Aid* (Web Page, 12 December 2017) <<https://www.legalaid.vic.gov.au/about-us/news/toll-reforms-are-vital-and-must-not-be-lost-in-debate-about-new-road>>.

²⁴ Department of Justice and Regulation (Vic), 'Sheriff's LGA Figures Released Today' (Media Release, 23 December 2015).

²⁵ *Ibid.*

²⁶ Department of Justice and Regulation (Vic), *Annual Report: 2017–18* (Report, October 2018).



This evaluation is a point-in-time snapshot of the activities and outcomes of the HACP. The evaluation has been undertaken through a mixed-methods approach, drawing on both quantitative and qualitative data.

This report draws on data collected through WEstjustice's HJP database, which includes demographic, case and outcome data for all clients assisted by the project.

The report also draws on client interviews, social worker surveys and Work and Development Permit partner surveys conducted at the conclusion of the project.



Photo Christina wocintechchat.com



HEALTH AGENCY TO COURT PROGRAM

PROGRAM AIMS

The HACP is a partnership primarily between Mercy Mental Health (Werribee Mercy Hospital) and WEStjustice, with involvement from Victoria Legal Aid, the Infringements Working Group, Transurban and the Economic Abuse Reference Group.

The HACP aims to reduce the disproportionate impact fines and debts have on individuals with acute mental health conditions through individual casework and advocacy and to enhance collaboration between and capacity of health and legal services who support these clients. Through systemic advocacy it further aims to reduce the burden of toll infringements on outer-suburban disadvantaged communities and improve the effectiveness and fairness of the infringements system for vulnerable groups. The program does this through the provision of:

- a. A fines and debts legal clinic within the Werribee Mercy Hospital Psychiatric Inpatient Unit (Clare Moore Building) and Mercy's long-term supported accommodation facility (the Community Care Unit in Werribee), supported by training to health practitioners, social workers and other professionals within the partnership;
- b. A project to disseminate information about the Work and Development Permit ('WDP') scheme to organisations and practitioners supporting vulnerable youth and the provision of support to these organisations and individuals to accredit to become WDP sponsors;

- c. Systemic advocacy and law reform activities including:
 - i. Implementing a campaign to reform the toll enforcement system;
 - ii. Co-convening the Infringements Working Group including preparing submissions and engaging in advocacy with fines system decision-makers on behalf of the legal assistance and financial counselling sectors;
 - iii. Advocacy aimed at reinstating the Special Circumstances List;
 - iv. Submitting a complaint to the Victorian Ombudsman relating to Maribyrnong City Council's infringements practices;
 - v. Other action to develop systemic approaches to assisting vulnerable clients with fines; and
 - vi. Advocacy on payday lending and unconscionable lending tactics, as well as court processes and powers for people with civil debts.

AMINA

Complex, overlapping legal issues

Our client Amina, a refugee from Eritrea, came to Australia to seek a better life and to make money to be sent back to her family who remained in a refugee camp.

In order to do this, Amina took out a credit card and three loans and subsequently sent all the funds overseas to her family.

Shortly prior to our meeting with Amina at the Mercy Mental Health Adult Inpatient Unit, Amina had found out she was pregnant. The stress of the pregnancy and the knowledge that it would add a further, significant financial burden to her, combined with having to make repayments on her loans and credit cards whilst trying to support her family in the refugee camp, caused Amina to have a mental breakdown. While mentally unwell, Amina also incurred a significant number of fines—further adding to the extreme financial pressure she was under.

We obtained a letter of support from the Mercy Mental Health Adult Inpatient Unit for Amina and accordingly submitted her non-police fines to the enforcement review scheme. Amina did not seek review of her police fines as the prospect of having to go to court if the fines were referred to prosecution by Victoria Police was understandably too stressful for her.

We accordingly discussed the WDP scheme with Amina, who wished to be linked in with a psychologist. We were able to set up a WDP for her with her local psychologist—in order to 'work off' her fines issued by Victoria Police, while rehabilitating from her mental health crisis.

With respect to Amina's debts, we requested information and documents in relation to the establishment of the loans and credit card—as in our view, the fact that Amina was so desperate for funds to send overseas to her family ought to have raised some responsible lending concerns.

Upon receipt of these documents, we were able to identify that Amina had also been signed up to loan protection and credit card insurance that she did not know she had. The premiums on these had been direct debited from her bank account over a number of years.

We calculated how much Amina had paid toward the debts and insurance products and sought the following:

- *Waiver of all amounts outstanding on the credit card and personal loan.*
- *Compensation for non-financial loss as a result of the stress caused to Amina linked to the irresponsible lending.*
- *A refund of all premiums paid on the insurance products, plus interest.*
- *A refund of all bank fees incurred by Amina as a result of the multiple direct debits going into her account.*

Ultimately, we were successful in our demands and Amina ended up with all debts waived, and an extra \$15,000 comprising refunds and compensation in her bank account—a huge step forward in terms of alleviating Amina's financial hardship.

PROGRAM DESCRIPTION

Through the HACP, WEstjustice leads and participates in a number of major activities to contribute to alleviating the enormous burden that debts and infringements constitute for vulnerable community members. The program components are outlined in Figure 1 below:

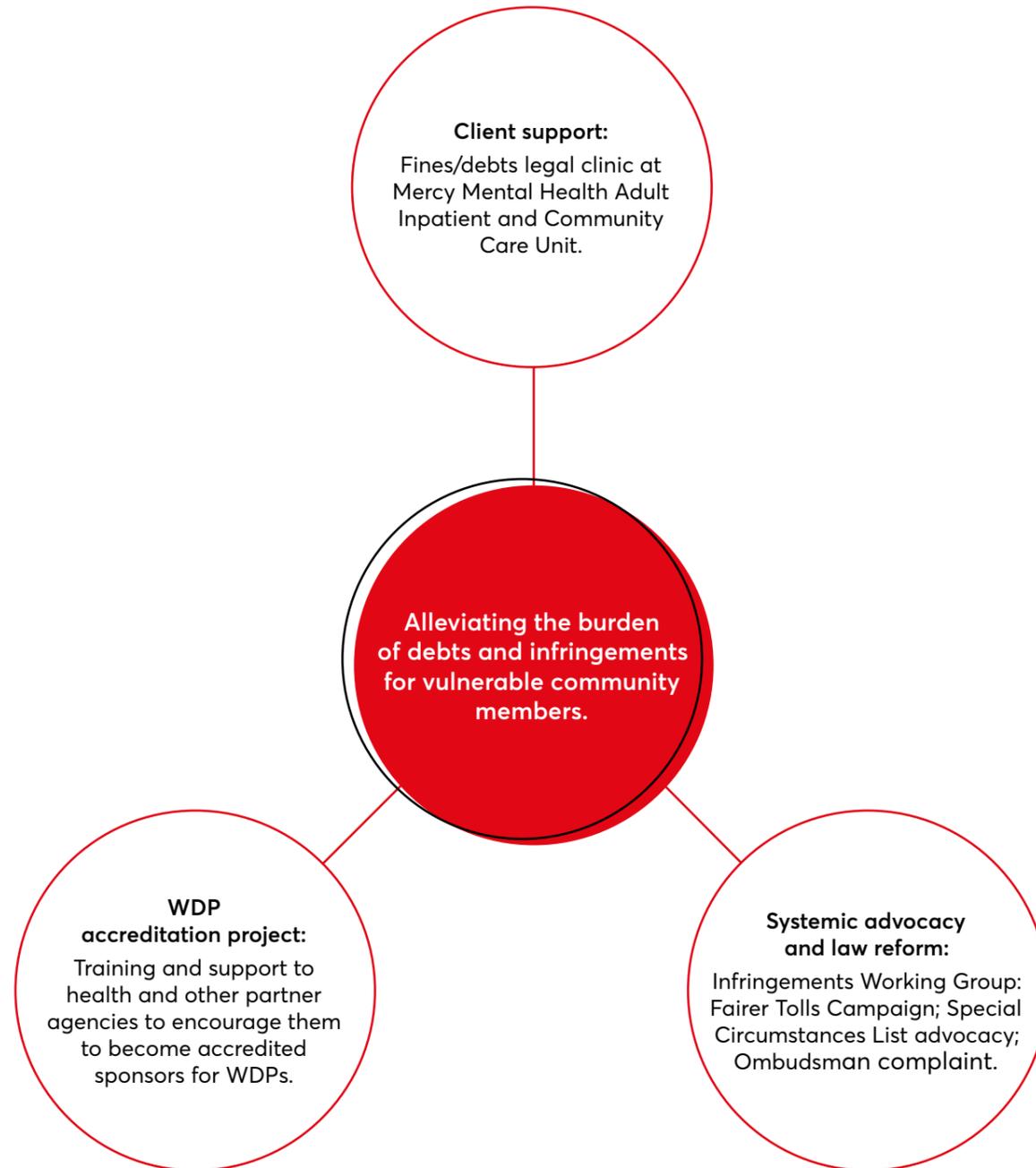


Photo by Dean Bennett

HOW THE FINES AND DEBT LEGAL CLINIC WORKS

Clients with unpaid fines or debts are identified by the Mercy Mental Health Adult Inpatient Unit and Community Care Unit ('CCU') social workers within the Inpatient Unit and CCU. A series of questions developed by WEstjustice to identify relevant clients are asked, including:

- Is anyone chasing you for money? Who?
- Has the Sheriff contacted you recently?
- Do you have letters from Fines Victoria?
- Do you owe money (e.g. on your mobile, utilities, contract with Cash Converters or other payday lenders, bank, etc.)?

Based on the responses, the social workers then refer clients with unpaid fines and debts to the health-justice lawyers at the fines and debts clinic.

A health-justice lawyer meets with the client while they are an inpatient in the mental health unit or a resident in the CCU to obtain instructions and provide advice on the options available to deal with their debts and fines. The health justice lawyer will then open a file for clients who want assistance dealing with their fines or debts. Advice and referrals are also provided for other issues, often internally to other WEstjustice legal services—thereby reducing the impact of multiple story telling.

The health-justice lawyer will attempt to negotiate a waiver with creditors where a client has one or more unpaid debts, is judgment proof or almost judgment proof, and/or if there has been irresponsible lending. The lawyer will also attempt to obtain compensation or restitution in appropriate cases, based on client instructions.

Assistance is less straightforward where there are unpaid fines. All clients accessing the fines and debt clinic within the mental health unit potentially qualify for 'special circumstances' due to their poor mental health. However, it has proved difficult to obtain evidence in support of their special circumstances, and further challenges have been encountered due to changes to the fines system since the *Fines Reform Act* commenced and the Special Circumstances List was abolished. Namely, this has meant that instead of assisting clients with a special circumstances application as a standard form of assistance, the fines assistance provided has had to become much more diverse. Depending on a client's circumstances and wishes, the service may assist them with one or more of the following:

- Special circumstances enforcement review application.
- Family Violence Scheme application.
- Establishment and facilitation of WDP.
- Application to waive prescribed costs (late fees added on to original infringement cost).
- Application for payment plan.

PENNY

Family violence and fines

Our client Penny had multiple toll and speeding fines in her name, for which her licence had been suspended.

Penny revealed to us that she had experienced significant family violence, and that her ex-partner used to take her car and incur numerous fines. Penny was not in a position to nominate him for the fines, as she feared this could cause an escalation in his violence. Penny had a newborn baby, and had recently escaped the relationship, so she did not want to risk aggravating her ex-partner.

Penny advised that following a violent incident, police had applied for an intervention order to protect her. With Penny's consent, we wrote to the court to obtain a copy of the application. We knew that this would provide us with some background insight into the violence Penny had experienced, without Penny having to go through the re-traumatising process of explaining all the details.

We were then able to prepare a Family Violence Scheme application with supporting evidence. Due to the licence suspension, we marked the application as extremely urgent. The fines were all cancelled and withdrawn within a matter of days, and the suspension on Penny's licence was lifted—meaning she could use her car to access necessary support services.

Thankfully, none of the speeding fines were in excess of 25km over the speed limit and as such, all the speeding fines incurred by Penny's ex-partner were eligible for the Family Violence Scheme. This is because even if Penny was not herself responsible for an excessive speeding fine and could not nominate due to family violence or a delay in time, she would still be required to wear the licence suspension and financial penalty an excessive speeding fine attracts. While Penny was lucky not to be in this situation, we have had many clients that have been and, as such, were without any options for recourse.

We also contacted Linkt and Eastlink and made applications for any outstanding toll fines to be cancelled on the basis that they were incurred in circumstances of family violence. The applications were successful resulting in cancellation of approximately \$300 worth of invoices.

Penny also told us that shortly after she disclosed her pregnancy to her boss, she was told she was no longer needed at work. We accordingly linked Penny in with WEstjustice's employment law service.

MOVE AWAY FROM BULK APPROACH TO MORE HOLISTIC SERVICE PROVISION

The 2016–17 fines and debt clinic model applied a bulk approach where possible. This involved consolidated special circumstances applications to Fines Victoria (or the Infringements Court, as it was then known) on the basis that the applicants had received acute inpatient psychiatric treatment. The Infringements Court was constrained in its efforts to apply a bulk method because of legislation requiring it to establish the nexus for each matter. Once decisions had been made to revoke fines, we liaised with enforcement agencies (in bulk) for this group of clients and advocated for withdrawal of the fines on the basis that all clients had serious mental health conditions. This aspect of advocating to enforcement agencies in bulk was largely successful.

With the introduction of the *Fines Reform Act*, the abolition of the Special Circumstances List, and Victoria Police's overzealous prosecution of the reviewed fines, this bulk approach was forced to change. A more diverse range of applications was required, including applications to waive prescribed costs, WDP applications and payment plan applications in conjunction with special circumstances applications for some fines, in the interests of avoiding prosecution. At the same time, more complex debt and consumer law issues were arising for clients and resulting in more complex debt work to meet this need.

Overall the clinic has moved away from a bulk approach towards a more classic health-justice partnership model of holistic service provision offering legal services across multifaceted areas of law. As a result, the health-justice lawyer has skilled-up in a range of new areas of law, and the clinic has made numerous internal referrals to WEstjustice services such as tenancy, mortgage stress, crime and family violence.

YASMIN

Avoiding police prosecutions by engaging the WDP system

Our client Yasmin had been experiencing serious bipolar disorder for many years.

Whilst affected by her mental illness, Yasmin had incurred a number of fines and was also being pursued for a credit card debt. When we met her, she was at risk of being evicted from her home due to being in rent arrears.

First of all, we linked Yasmin in with the WEstjustice tenancy service to assist her with her housing as a priority.

With respect to her fines, Yasmin had fines for not voting, so we contacted the VEC and had these withdrawn, placing her on the vulnerable voters list—so that she wouldn't obtain any fines for not voting in future.

Yasmin was eligible for an enforcement review application, but was understandably anxious to avoid court and was very stressed about the idea of having anything on her record. As such, enforcement review for her police fines was not an option she wished to take.

Luckily, Yasmin wished to undertake a course through an accredited WDP provider. Yasmin was accordingly able to deal with her fines in this way as her attendance at course lessons counted to 'work off' her fines at a rate of approximately \$50 per hour. This meant that Yasmin was able to up-skill in an area she was interested in, while working off the fine debt without any court risk.

Accredited WDP agencies are unfortunately few and far between—meaning that for clients like Yasmin who do not wish to risk court for police fines, if a WDP is not available then the only option that remains to deal with fines is to go on a payment plan—which is extremely difficult for those in financial hardship.

With respect to Yasmin's credit card, this had been taken out by her when she was desperate for money. Yasmin was being bombarded by the creditor to try to force her into making payments with exorbitant interest that she could not afford. Once we intervened, we put a stop to any further collections activity, alleviating Yasmin's stress. We then successfully advocated to have the remainder of the credit card debt waived in full by conducting advocacy directly with the creditor and also by escalating the matter to Australian Financial Complaints Authority.



Photo by Trung Thanh



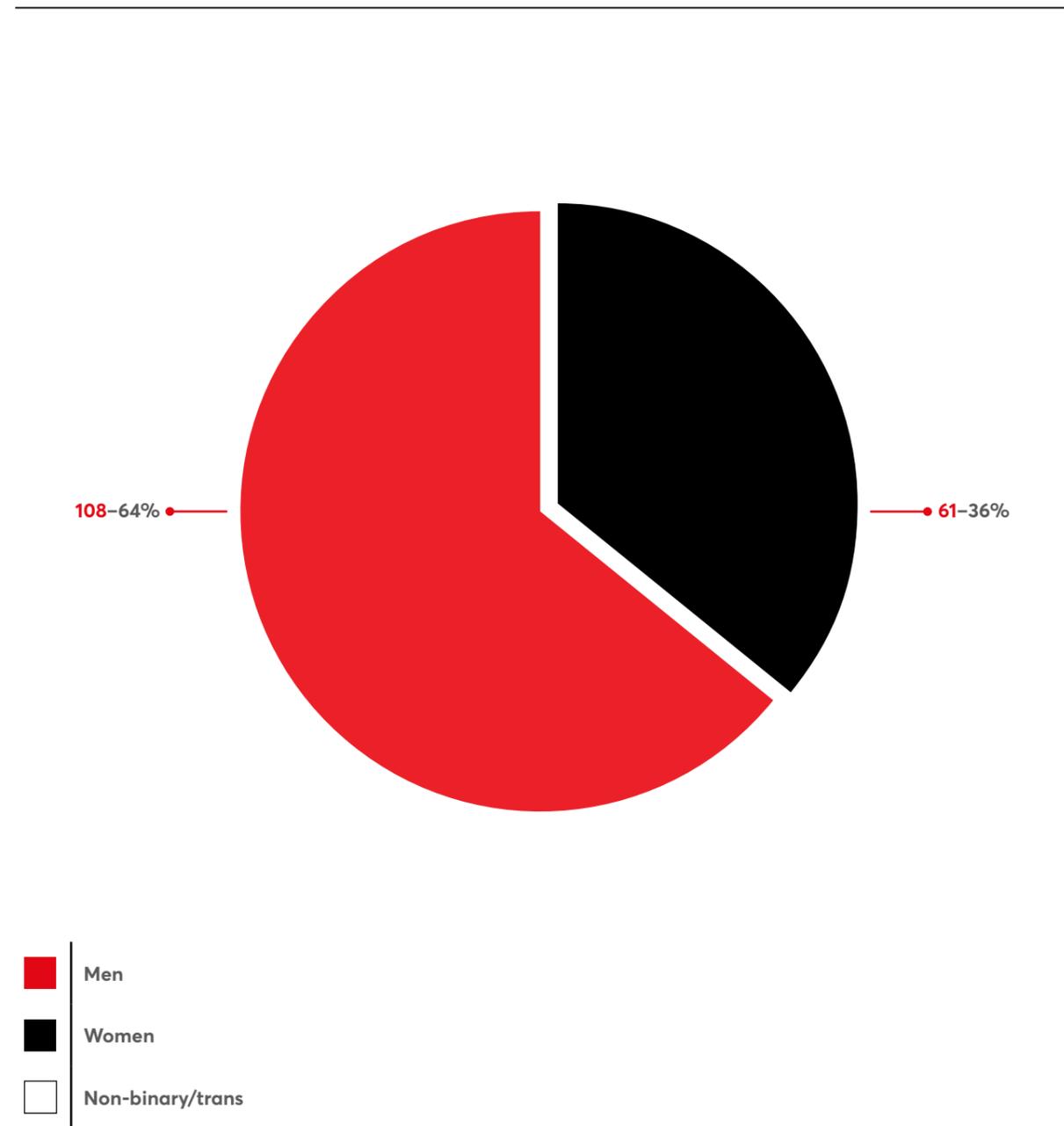
FINDINGS AND DISCUSSION

CLIENT DEMOGRAPHICS

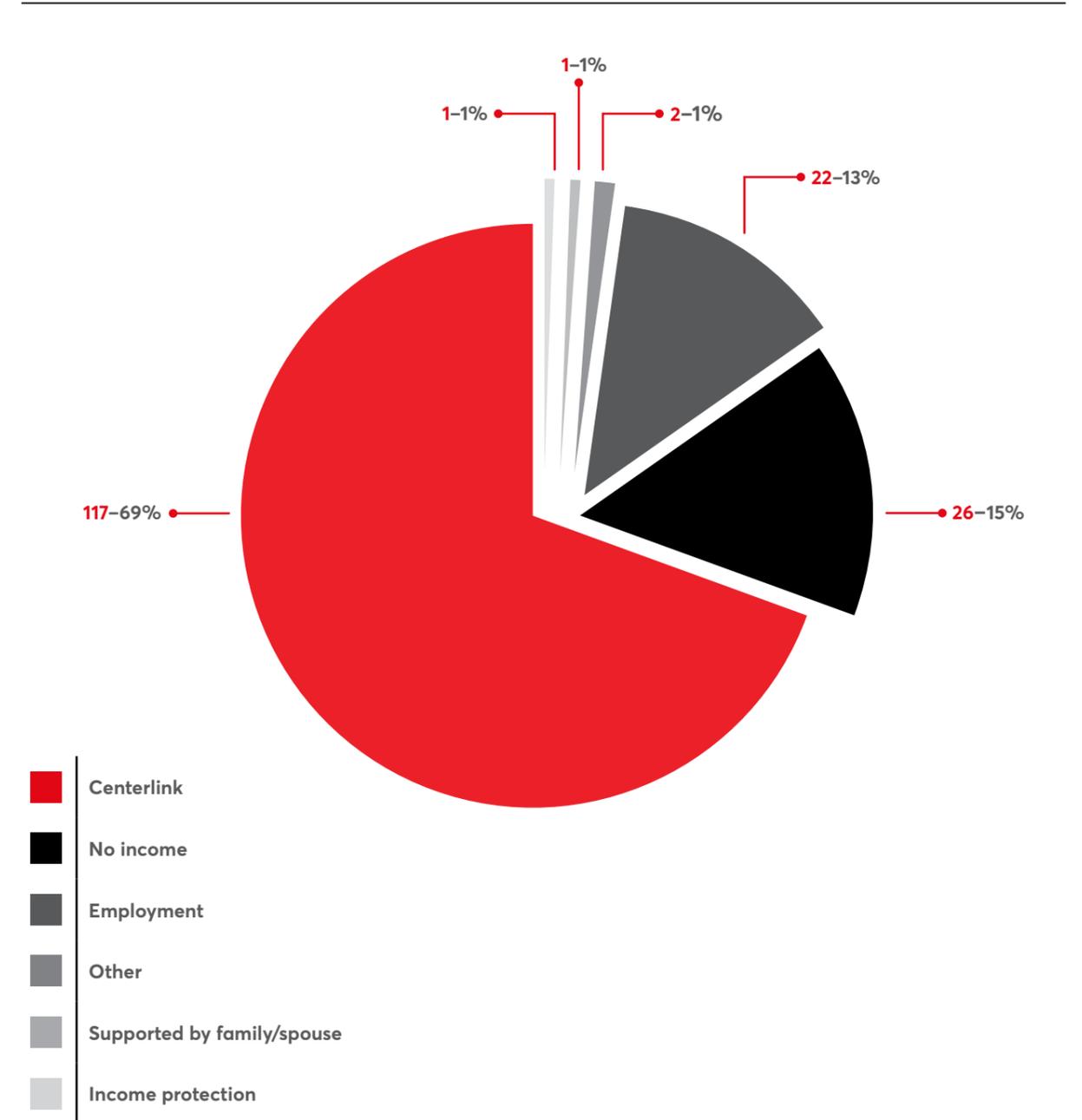
In 2018–19, this project assisted 169 clients (some of these files were pre-existing matters opened in 2016–17). Since its inception in 2016, we have assisted 242 clients.

The following demographic and outcome data represents the clients assisted in 2018–19 only.

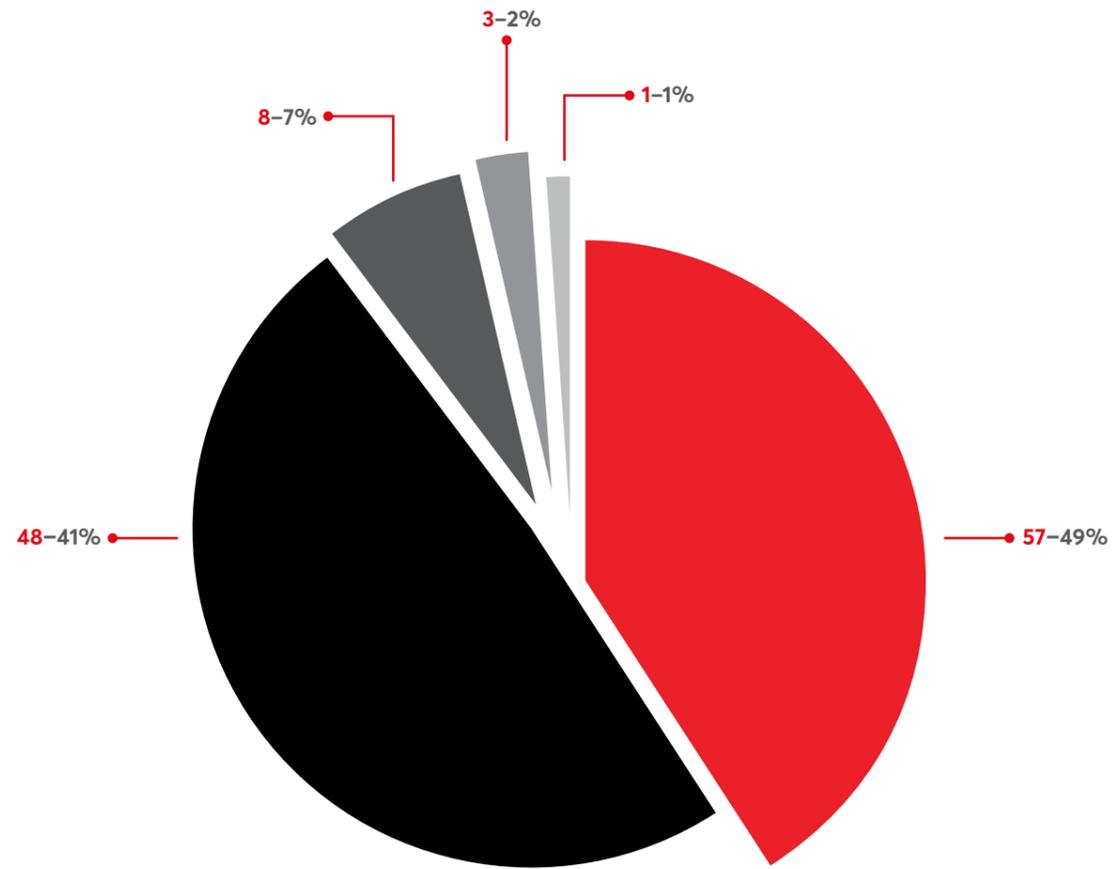
Client gender



Income source

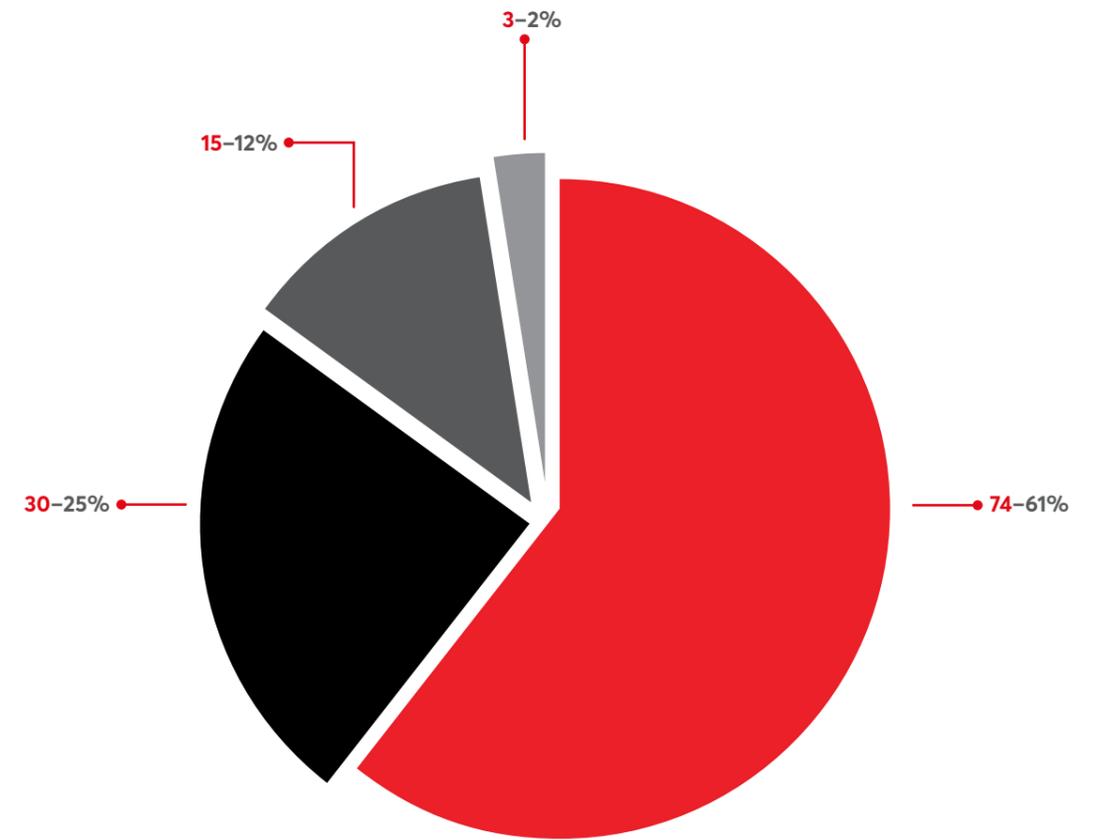


Centerlink income breakdown



- Newstart
- Disability support pension
- Parenting payment
- Carer's payment
- Youth allowance

Other special circumstances present for clients

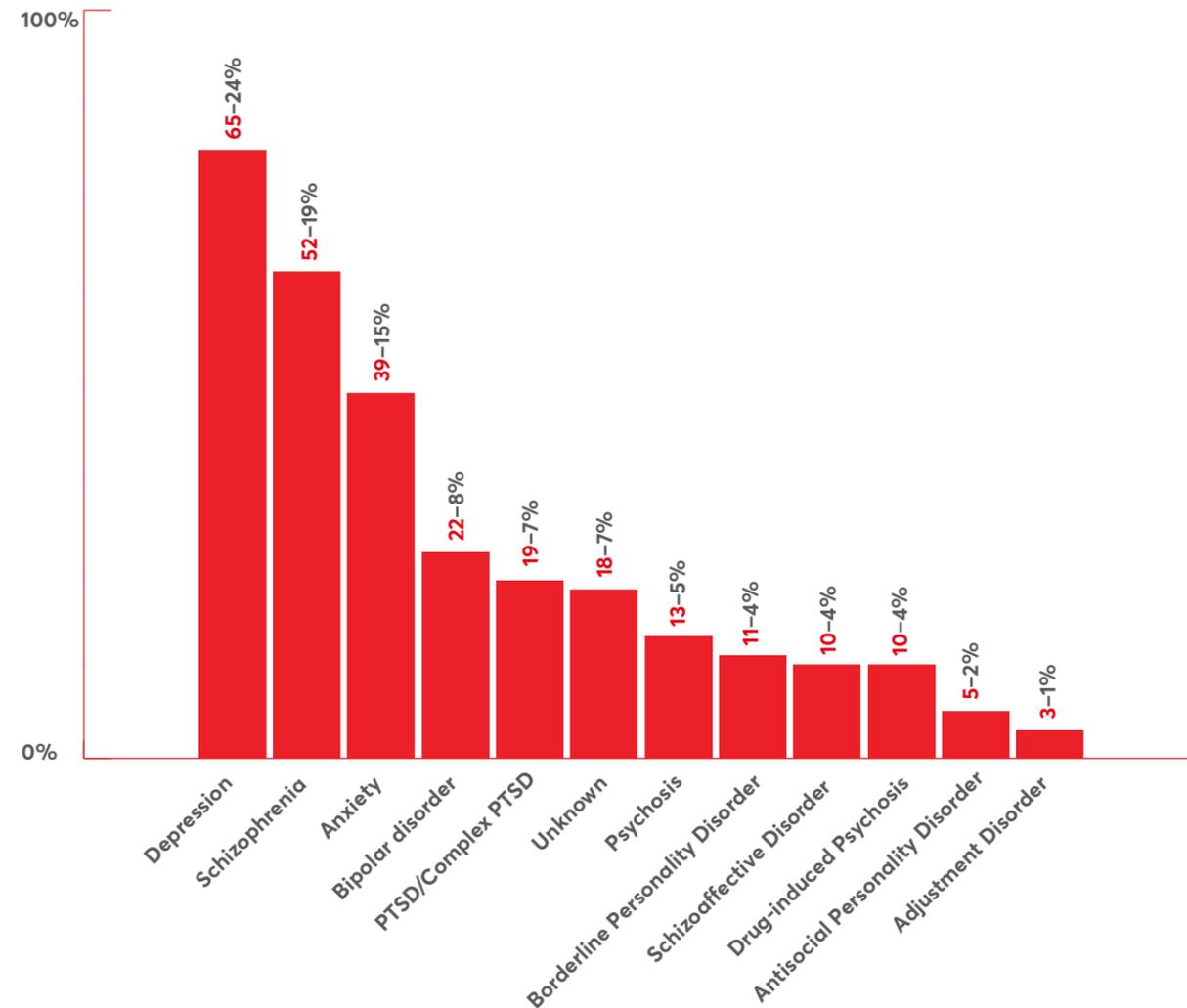


- Alcohol/substance misuse
- Homelessness
- Family violence
- ABI or intellectual disability

Country of birth



Map outline by freepik.com



²⁷ Collected from support letters and self-reported by clients.

■ Number of people with diagnosis

“The clinic was able to significantly reduce financial stressors for clients that had the potential to otherwise be detrimental to their mental health.”

CLIENT OUTCOMES

We assisted 119 clients with fines and 84 clients with debts (some clients have both problems). In most cases, we provided ongoing casework for these clients.

In terms of fines casework, we assisted with the following applications:

- \$692,725.55 of fines identified.
- 62 successful special circumstances enforcement review applications.
- 25 instances of representation and outcomes at court following special circumstances enforcement review (prior to closure of Special Circumstances List).
- Four special circumstances enforcement review applications currently on foot.
- Two successful Family Violence Scheme applications.
- Three Family Violence Scheme applications currently on foot.
- 12 applications for waivers of prescribed costs.
- Two applications for internal review.
- Facilitated six Work and Development Permits.

For clients who wanted, we continued to add clients to the Victorian Electoral Commission's Special Circumstances Register so that they would avoid fines if they failed to vote (but can continue to vote if they choose to).

In terms of debt casework, we achieved the following:

- Debts identified: \$1,240,396.78.
- Waivers obtained: \$517,912.
- Compensation/remediation obtained: \$10,490.

JESSE

Financial hardship can happen to anyone

Our client Jesse suffered a significant deterioration in his mental health after a serious car accident. Jesse had previously worked as a truck driver and the exacerbation of his depression meant that he was no longer able to do his job.

We assisted Jesse with enforcement review of his public transport fines and outstanding debt on a personal loan—as Jesse needed as many resources as possible to fund his mental health treatment.

On Jesse's instructions, we obtained a letter of support from Mercy Mental Health and submitted an enforcement review application for Jesse's fines. Jesse's fines were withdrawn without the need to proceed to court, as the Department of Transport are thankfully in the practice of withdrawing fines following a special circumstances application.

With respect to Jesse's loan, we further used the support letter provided to help outline the difficult circumstances faced by Jesse and how these had the effect that he was now unable to pay. We were able to have the remainder of Jesse's loan (\$10,000) waived in full meaning Jesse was able to focus all his resources on getting better.

As a result of our request for documentation about the loan, we also noticed that it appeared Jesse had been signed up to loan protection insurance without his knowledge. We wrote to the bank on Jesse's instructions and were able to have \$900 in premiums paid refunded to him, in addition to interest.

Prior to the accident, Jesse had been working full time on a steady income—which goes to show how quickly a devastating event can put anyone into severe financial hardship.

We surveyed selected clients about their experience incurring fines and debts, and their experience working with WEstjustice.

Responses to questions regarding their fines and/or debts and what their circumstances at the time of incurrance included:

- "I was just having troubles with my relationships and drug abuse."
- "Basically, sometimes because I'm on medications I just don't even think where I park which isn't good and it just happens. It's hard to explain how it happens. I had family stress going on as well."

Responses to questions regarding whether the fines/debts had an impact upon their health and wellbeing, and if so how, included:

- "Stress and anxiety, it was an imbalance within myself trying to get it out of the way. Difficult to move forward, too much weight to carry. A lot of overthinking and stress."
- "Yeah they did. It caused problems between me and my family, they were getting phone calls and I didn't want to talk about it."

Responses to questions regarding whether the legal assistance they received through the clinic reduced their stress levels and in what way, included:

- "Definitely, knowing that there's people out there to help was a big weight off my back. Helped clearing my mind to be able to figure out a way forward. What you do is letting us know what our rights are, this is a big help that no one else is doing. Thanks to WEstjustice and to god."
- "By a 100%. I feel so relieved these days."
- "Yeah absolutely since Emily and Vu helped it's taken it all off my mind and helped me a lot."

Responses to questions regarding what they would have done about their fines/debts if WEstjustice had not consulted with them at the Inpatient Unit/CCU, included:

- "Wouldn't have paid them and then things would have got worse. I would have gone crazy. Things would have gone from bad to worse. It was a big help getting your assistance."

Responses to questions regarding whether they would recommend the WEstjustice mental health clinic project to other people, included:

- "Yeah I would because the lawyers help people a lot and take a lot of stress off people when you're on Centrelink and you can't afford all the things that happen. I would recommend the service to those badly done by."
- "Yeah, I would because they are just a really good service, they get on top of it straight away and I think it was within a week or two weeks you helped me. It was really good, it just happened so quick and I was like wow."

SOCIAL WORKER SURVEYS

Social workers at the Clare Moore Building and CCU were surveyed to determine their responses to the clinic and the value of assisting their clients with financial and legal problems as a way of alleviating stress that could interfere with their recovery.

The survey yielded the following results:

Question	Response
<p>Respondents were asked to what extent they agreed or disagreed with the following statements:</p> <ul style="list-style-type: none"> a. The fines/debt clinic provided important assistance to vulnerable patients. b. The fines/debt clinic lawyer was professional, sensitive and easy to work with. c. Based on my observations and interactions with patients, the fines/debt clinic reduced stress levels and improved wellbeing for patients with fines and debts. d. The fines/debt clinic enabled me to focus on my core duties because key financial stressors for patients were taken care of. e. Legal help is a vital area of assistance for the patients I work with. 	<p>100% of respondents said they strongly agreed with all the statements.</p>
<p>What was the most beneficial thing about the fines/debt clinic?</p>	<ul style="list-style-type: none"> • "Having a lawyer onsite was extremely beneficial. Our consumers have complex needs and find it difficult to attend appointments independently. It also reduced re-admission and stresses." • "The clinic was able to significantly reduce financial stressors for clients that had the potential to otherwise be detrimental to their mental health."
<p>What was the most challenging aspect of the fines/debt clinic?</p>	<ul style="list-style-type: none"> • "Patients being on leave when lawyers were on site and reminding medical staff to complete letters on time. Also, having a lawyer once per fortnight was also challenging." • "There were no aspects that I found challenging, the staff were prompt in responding to emails/calls and would come and see the clients at the CCU."

STAFF TRAINING

Training was provided to relevant social workers, focusing on identifying clients with fines or debts.

Training was also provided to the Mercy Mental Health Freedom of Information Clinician regarding the special circumstances scheme, the template letter, the nexus requirement and the standard of proof required by Fines Victoria.



BARRIERS TO EFFECTIVE CLIENT OUTCOMES

Throughout the life of the project, it became clear that a number of factors were interfering in the smooth operation of the project and the achievement of effective client outcomes.



Photo by Elliott Reyna

HOSPITAL DELAYS WITH LETTERS

Special circumstances applications rely on the provision of support letters from the support agency, in this case Mercy Mental Health. Since its inception, this project has struggled to settle on a method for production of appropriate support letters. Initially psychiatrists were directly asked to write the support letters using a template produced by WEstjustice. The relevant professionals were largely non-responsive to these requests due to their focus on the clinical demands of their jobs.

The next method involved training two psychiatric nurses to write the letters using the template. This option worked quite well, and many support letters were provided. However, over time the hospital became concerned that nurses were not qualified to give an opinion on the connection between the person's diagnosis and their conduct constituting the offences, even though Fines Victoria entitles psychiatric nurses to provide evidence of the nexus. To overcome this issue, medical officers (junior psychiatrists) were asked to write the support letters, centrally coordinated through the office of the Director of Clinical Services and using the template. This method worked reasonably well, however significant backlogs occurred causing delays in many cases due to multiple other tasks being managed through this office.

Finally, the Mercy Mental Health Freedom of Information Clinician—a psychiatric nurse with a Master's degree in forensic mental health—was trained in the use of the template and produced the letters by reviewing the patients' file overseen by the Director of Clinical Services. This method was the most successful as the FOI Clinician had some flexibility in their role and was able to dedicate time to the project which other roles did not have.

Delays with the provision of support letters created delays in the making of special circumstances applications, which—combined with delays on the part of Fines Victoria in determining applications (discussed below)—led to major delays in the special circumstances process.

Further, despite Mercy Mental Health's best efforts to provide support letters, they encountered significant challenges in doing so because of the causal nexus and the standard of proof requirements (discussed later in this section).

FINES VICTORIA, THE LEGISLATIVE REGIME, AND RECOMMENDATIONS FOR CHANGE

IMPACT OF FINES REFORM

Fines Victoria—formerly the Infringements Court—underwent significant reform during the life of the project through the introduction of the *Fines Reform Act*. Their staff and the process for reviewing enforcement review applications was overhauled, leading to major delays in the processing of applications. These delays meant WEstjustice struggled to maintain contact with a portion of its clients, due to the transient nature of this client cohort. Long delays meant this contact was broken in a significant number of cases.

When the project began in 2016, we explored opportunities for early intervention and to fast-track the process. Although initially successful, this was disrupted by the introduction of Fines Reform. Fines Reform included an opt-in prosecutorial system rather than opt-out. This was positive in that most agencies took the approach of not opting into prosecution and withdrawing fines. However, the majority of police offences (excluding tolling offences) are prosecuted. In the absence of a Special Circumstances List, these multiple offences are listed in multiple local Magistrates' Courts. The listings are determined by the place at which each of the offences occurred and are heard in the general criminal list. Lawyers or unrepresented defendants are required to transfer and consolidate each separate matter. As a result, sentences are less predictable, more punitive and less therapeutic, and clients receive a number of separate sentences rather than an aggregate sentence that gives due weight to the principle of totality. Further, due to the listings across different jurisdictions, fine offences of one client could be dispersed across multiple Magistrates' courts thus rendering it difficult for the individual. Community legal centre generally do not have the resources to represent clients in this way, leaving them more vulnerable.

ATTEMPTS TO PREVENT UNFAIR PROSECUTIONS

WEstjustice has accordingly had to advise clients of these risks, with the majority of clients unsurprisingly not wishing to proceed to enforcement review for police fines, in the interests of avoiding prosecution. To circumvent prosecutions in those cases, the health-justice lawyer assists the client to partake in the Work and Development Permit Scheme and address the fines through eligible activities such as counselling, workforce training and medical treatment. These options are not without their challenges (including fines debts that are too high for working off via a viable WDP) but have significant benefits and are preferable to prosecution. Pursuit of these alternative resolutions is also time-consuming and resource-intensive for the HACP lawyer and require concentrated programs to be funded.

PROBLEMS WITH THE NEXUS TEST

The special circumstances regime contains many barriers and complexities that exclude vulnerable people from effectively accessing it. The special circumstances system allows people with mental health and other conditions or circumstances to have their fines deregistered by Fines Victoria and withdrawn by enforcement agencies. However, to achieve this there must be a 'nexus'—that is, a direct causal link between the conduct constituting the offence and the mental health condition or other circumstance. In our experience, the nexus requirement often unfairly excludes people with very serious conditions and circumstances from accessing the system due to the challenges obtaining the required medical evidence. These include:

- Absence of medical treatment at the time of the offence.
- Lack of formal diagnosis.
- Inability to access medical records at the time of the offending due to the passage of time.
- Costs associated with obtaining a medical report.

Even where the person was accessing treatment during the relevant period of time, our experience with Mercy Mental Health and other medical centres is that health practitioners struggle to comment on the nexus question because they do not feel confident to comment retrospectively on the historical connection between a person's illness and their offending behaviour. It should be considered that the staff are general adult psychiatrists with little training in Forensic Psychiatry. It is not an expectation of their role that they are required to address the issue of capacity of the consumer at the time the person was fined. To use an example, the link between a person's diagnosis of schizophrenia and their conduct (for example travelling without a valid ticket on public transport on a particular day), is not a matter of simple calculus—even if it is known that the person was symptomatic at the time. It is rather a complex assessment of causation that can only be guessed at, and which is particularly difficult when a rigid connection between the person's condition and each individual fine is required by Fines Victoria. Suffice to say, it is extremely difficult to track a person's illness trajectory and match this and the person's mental state to the timing of fines.

INCREASED STANDARD OF PROOF

The barriers caused by the nexus between the special circumstance and the conduct constituting the offence became even greater when Fines Victoria increased the threshold. Fines Victoria initially accepted evidence that the condition *may have* contributed to the offence, but recently this changed to require that the condition *was likely* to have contributed to the offending. Under Fines Victoria policy, the nexus required is 'on the balance of probabilities', which is a much lower threshold than *is likely* to. Fines Victoria departed from this standard of proof and have been applying a higher standard and WEstjustice and the Infringements Working Group have raised this issue with Fines Victoria on multiple occasions.

IMPACT OF POVERTY

At law, clients whose mental ill-health contributed to the incurrance of fines are entitled to go through the special circumstances process, but in practice many with significant mental health problems will not succeed due to the burden of proof and inability to obtain satisfactory evidence. Poverty further exacerbates this outcome.²⁸ For example, it is generally easier for a middle-class client with less significant mental health problems to access the special circumstances regime than it is for a person in the mental health unit with severe special circumstances. This is due to the fact that they are more likely to have a private practitioner involved in their care, greater resources available to obtain evidence and more education to understand and navigate the system.

THE TWO-TIERED APPROACH

The special circumstances system is a positive initiative from a theoretically necessary and valuable perspective. However, it is not achieving the desired results of exiting the most vulnerable from the fines system and, given the current challenges, may even be seen to be exacerbating health problems. To ensure that the special circumstances regime does what it is intended to do (protecting disadvantaged and mentally unwell people) we need legislative reform that expands the circumstances necessary to be proven to access special circumstances.

In our view, an additional 'prognosis test' should be introduced. This involves cases where a person can establish that their condition is 'likely to be significant and long-standing' or where they suffer from a 'severe episodic illness', together with other factors such as their illness and disadvantaged status, which makes management of their fines difficult. As with the nexus test, this would require evidence in the form of a support letter or report from a qualified professional. This type of assessment considers a person's current level of impairment, which is more commonly what determines their ability to address their fines and their need to be diverted away from the fines system. The nexus test should remain an option, as people who can show that their special circumstances were operative at the time of the fines should also be redirected away from the mainstream system.

In addition, it may be that some limited cohorts of special circumstances applicants are exempted from the test entirely because of the severity of their circumstances—the 'prima facie test', which would function as a sub-test of the prognosis test. One such class of applicants are persons subject to involuntary treatment under the *Mental Health Act 2014 (Vic)*. In these cases, the acuity of their illness and symptoms, and their inability to manage their fines is likely to render it pointless for various fines management options to be implemented, therefore prima facie demonstrating the application of the prognosis test.

The prima facie test would only apply for as long as the compulsory treatment does. Most compulsory treatment orders are for periods of six or up to twelve months, so it does not divert this category of persons from the fines system for an overly long period.



Extremely vulnerable client excluded from special circumstances regime

Samara has been diagnosed with schizoaffective disorder and is experiencing chronic symptoms of her condition which her treating practitioners expect to be lifelong. She experiences substantial impairment in all aspects of her life. She has been accepted onto the National Disability Insurance Scheme and is on a Community Treatment Order, requiring compliance with involuntary treatment. She incurred fourteen fines for driving on the toll road without paying in 2014 before she was diagnosed when she was starting to become unwell. She is on a Disability Support Pension, can't afford to pay the fines and is experiencing deterioration in her condition because of the stress of the looming infringements. As it stands, Samara cannot do anything about her fines because she cannot demonstrate the nexus between her fines and her condition. Instead, she should be able to access the special circumstances regime on the basis that she has a serious mental health condition for which her prognosis is poor, or on the basis that she is subject to compulsory treatment.

We recommend that legislative change should amend the current test to make it a two-armed test, illustrated below.

Application for enforcement review on basis of special

Evidence needs to establish one limb of test
—health practitioners to choose

Limb one

Nexus test—on the balance of probabilities, the person's condition/circumstance contributed to them not being able to understand or control the offending conduct.

OR

Limb two

Prognosis test—the person's condition /circumstance is likely to be significant and long-standing or they suffer from a severe episodic illness AND their condition/circumstance means they will have difficulties managing their fines for the foreseeable future.

Sub-test of limb two

Prima facie test—the person is subject to compulsory mental health treatment.

²⁸ See, eg, Michael Marmot, 'Social Determinants of Health Inequalities' (2005) 365(9464) *Lancet* 1099.

THE ABOLITION OF THE SPECIAL CIRCUMSTANCES LIST

Since 2019, WEstjustice has been calling for the urgent reinstatement of the Special Circumstances List to ensure that those with acute special circumstances can have their matters determined by a trained, compassionate decision-maker instead of having to deal with the unpredictability of open court, similar to the Assessment and Referral List for criminal matters. For more than a decade, people whose fines were linked to their special circumstances were able to have their matters heard in a specialist therapeutic jurisdiction where the focus was on rehabilitative outcomes and where progress in treatment was recognised and rewarded.

The most common sentences imposed in the Special Circumstances List were good behaviour bonds (adjourned undertakings) or dismissals of charges. Small proportionate aggregate fines were sometimes imposed where the person had committed more serious (public safety) offences or where there were many offences.

When vulnerable people with mental health issues are funnelled into the traditional criminal justice system, the damage can be immense. Opt-in prosecutions were meant to divert more people away from the criminal justice system, but some enforcement agencies—most visibly Victoria Police—are prosecuting large numbers of fines that have been deregistered following special circumstances enforcement review. This acts as a deterrent to the making of special circumstances applications because of the fear and stress of court, resulting in further deterioration of mental health and the risk of punitive unjust outcomes. As a result, many vulnerable Victorians who are eligible for the special circumstances scheme are instead electing to enter into payment plans (sometimes after making applications for waiver of prescribed costs). This is not how the system was designed to operate and is especially onerous for these people, noting the apparent link (borne out through our casework) between financial hardship and severe mental illness.

As noted in the above paragraphs, since the removal of the Practice Direction establishing the Special Circumstances List, charges are scattered at potentially dozens of court locations as a consequence of the 'proper venue' rule, which provides that a charge should be heard in the court closest to where the offending occurred. This means that, where previously a person would have one consolidated hearing in the Special Circumstances List, now an individual may have to attend many court hearings during which their circumstances will be repeated and where in all likelihood a separate fine will be imposed for each offence. In these circumstances, important sentencing considerations, such as the Totality Principle, cannot be given adequate consideration or weight. In addition, without a Special Circumstances List, Victoria Legal Aid's special circumstances duty lawyer service is no longer applicable. Nor will community legal services be in a position to act without a serious injection (or redirection) of funding. As a consequence, defendants will routinely be left unrepresented in these hearings. In addition, this default position will be more time intensive and onerous for judicial decision-makers who will have to enquire about a person's circumstances and deal with highly disadvantaged, unrepresented defendants.

Court is usually a stressful experience for most people. For those who are particularly vulnerable, attending court (especially outside of specialist therapeutic jurisdictions) can result in unfairness, unnecessary stress and trauma, and even cruelty. This is a sad indictment on our current system of justice, particularly in light of the inadequacies within our mental health services and early findings of the Royal Commission into Victoria's Mental Health System.²⁹

²⁹ Royal Commission into Victoria's Mental Health System (Interim Report, November 2019).

TOM

Acutely unwell client prosecuted in multiple hearings

Tom has chronic schizophrenia and has had a serious alcohol addiction for 14 years. He has suffered brain damage as a result of his alcohol abuse. He has also struggled with homelessness. Over a period of four years, Tom incurred seven fines for being drunk in a public place and two fines for being drunk and disorderly. Tom's fines were deregistered by Fines Victoria upon a special circumstances application, but Victoria Police elected to prosecute all the offences despite being aware of Tom's condition. Because the Special Circumstances List no longer sits, Tom's matters have been dispersed across six suburban Melbourne courts, due to the 'proper venue' rules according to which offences are listed in the court closest to the offending. Tom's lawyer is trying to have the matters consolidated but this is being stymied by challenging listing practices and police and court reluctance. Tom is likely to be sentenced to substantial fines at each hearing and the totality of the offending will not be considered because of the separation of the hearings. Tom's psychologist attested to the link between Tom's fines and his condition, and it is clear to everyone involved that Tom's fines stem from his alcohol addiction and mental health issues, but the system has not succeeded in diverting him away from the mainstream criminal justice system.

The Special Circumstances List can easily be reinstated via a Practice Direction issued by the Chief Magistrate pursuant to s 5A of the *Magistrates' Court Act 1989* (Vic), directing that charges laid after successful special circumstances enforcement review under s 38(1)(a)(iii) of the *Fines Reform Act* be filed at the Melbourne Magistrates' Court to be heard in the Special Circumstances List. We expect that there will be a sufficient volume of matters to justify the list, even if it sits less frequently than once per week.

If the Magistrates' Court refuses to reinstate the List, in our submission Parliament should legislate for the List in the same way it has for the Koori Court, the Drug Court and the Family Violence Division.

PROSECUTION FOLLOWING SUCCESSFUL SPECIAL CIRCUMSTANCES ENFORCEMENT REVIEW

As mentioned above, the *Fines Reform Act* changed the prosecution decision from an opt-out decision to an opt-in one, meaning enforcement agencies have to actively decide to prosecute. The Victorian Parliament's intention was to divert more special circumstances enforcement review matters away from proceeding to determination in the criminal jurisdiction.

In our experience, this positive intention is presently being undermined by inconsistent prosecutorial decision-making by a number of enforcement agencies, especially Victoria Police, which disregards the principle of diverting vulnerable people away from the courts. In many cases, we have observed Victoria Police opting not to prosecute tolling offences. Given the triviality and lack of public safety element to these offences, there is rarely justification for prosecuting these offences after successful special circumstances enforcement review. However, it appears that Victoria Police's approach to toll offences is changing, with senior police recently indicating that toll offences are not trivial and that there is a public interest in prosecuting these minor regulatory offences. This is despite the fact that Transurban—the company behind Citylink—has indicated their policy position not to prosecute vulnerable individuals for toll offences committed on their roads. They have also indicated their preference not to fine vulnerable people at all, however Transurban has no power over the imposition of fines by Victoria Police. Therefore, in the event that a person is fined and ultimately a decision is made by Victoria Police to prosecute, their preferred position is to introduce a mechanism to allow for the matter to be recalled and dealt with internally.

Victoria Police have also opted to prosecute many minor behavioural offences that are directly related to a person's special circumstances, such as drunk and disorderly offences, which we consider should be withdrawn in line with the purpose of the special circumstances scheme.

Further, there is inconsistency with respect to driving offences, with low-level speeding fines occasionally being withdrawn but more commonly being prosecuted, along with fines for driving unregistered and driving unlicensed. The combined effect of this prosecutorial inconsistency with the uncertainty of sentencing dispositions across the various local Magistrates' Courts (resulting from the removal of the centralised Special Circumstances List), heightens the risk of exacerbating mental health conditions.

In our view, enforcement agencies generally engage in more consistent decision-making when assessing internal review applications as compared to enforcement review (although this is not always the case), primarily because published Internal Review Guidelines exist to encourage consistent decision-making processes and assist enforcement agencies in identifying the legal and practical requirements of the process.³⁰

Given the legal criteria for making and determining internal and enforcement review applications are very similar,³¹ it would be highly beneficial for enforcement agencies to be required to consider similar guidelines when assessing both internal and enforcement review. This should include prosecutorial guidelines to ensure that people with special circumstances are subject to consistent decision-making regarding the filing or withdrawal of charges. In submissions to the Fines Reform Advisory Board ('FRAB'), WESTjustice advocated for a new system whereby enforcement agencies are required to justify their decision to prosecute to Fines Victoria, and Fines Victoria will have the ultimate decision-making role in terms of whether prosecutions are initiated.

Because of the significant risk of prosecution of Victoria Police fines after special circumstances enforcement review is successful, WESTjustice practices with respect to police fines have been revised. As stated above, applications for WDPs and/or prescribed costs waivers are preferred by clients with fines in many cases. These applications are onerous and often not fruitful. For example, there are not enough accredited WDP sponsors, fines debts are often too large for WDPs (especially given that the fine and additional costs must be 'worked off') and prescribed costs applications do not have legislative criteria to ensure consistency and predictable decision-making with respect to outcomes.

³⁰ See *Infringements Act 2006 (Vic)* s 53A; 'Internal Review Guidelines' in Victoria, *Victoria Government Gazette*, No 23, 8 June 2017, 1097–1114.

³¹ See *Infringements Act 2006 (Vic)* ss 22, 25; *Fines Reform Act 2014 (Vic)* ss 32, 37, 38.

Inconsistent prosecutorial decisions, together with the discontinuance of the Special Circumstances List, have had the combined effect of deterring vulnerable applicants from making special circumstances applications. This directly weakens the intent of minimising the impact of criminal prosecutions on vulnerable fines recipients. In our view, the Victorian Parliament has legislated for a system of limited prosecution by changing the system from opt-out to opt-in, and decisions to prosecute following special circumstances enforcement review should only be made where there are clear and significant factors that warrant it (e.g. serious risk to public safety). This is not the current practice.



Photo by Jan Baborak

LACK OF SOCIAL WORK SUPPORT AND OTHER CHALLENGES WITH THE MODEL

THE NEED FOR CONSISTENT SOCIAL WORK SUPPORT

WEstjustice lawyers noted the significant difference between assisting clients who were supported by a social worker and those who were not. For example, in the CCU the HACP lawyer consulted with clients in the presence of their social worker (with consent), who was able to support the client from a place of understanding their individual circumstances, both in an appointment and on an ongoing basis. It was infinitely easier to obtain supporting documentation where needed. This meant that files were resolved in a timely fashion, and that the lawyer was not required to go beyond the legal remit of her role.

Where clients did not have social work support, WEstjustice was often the only consistent service contact. This meant that, amongst other impacts, the HACP lawyer spent significant amounts of time providing multi-disciplinary 'warm' referrals and broader case management. Referrals were usually complex and ranged from financial counselling, crisis housing support, Centrelink support, social work and mental health services, along with internal and external legal referrals.

For future models we recommend that the most effective model is to ensure clients have consistent social work/mental health support in place prior to referral to a lawyer for assistance with fines and other legal issues.

CAPACITY CHALLENGES

HACP is based predominantly in a psychiatric Inpatient Unit (although we also deliver services in a CCU). This site was chosen because it was anticipated that clients there would have clear and unarguable special circumstances. Thought was also given to ensuring capacity of clients, given they were receiving inpatient psychiatric treatment. Measures were introduced to ensure that only clients assessed as having capacity were referred to the clinic. This decision sat with the social workers. Over time, however, clients were referred to the clinic who struggled with capacity.

There were undoubtedly times when our involvement in the hospital setting provided relief to clients who may have been in the early stages of defaulting on a debt/felt stressed about escalating fines. At other times, it became apparent that discussing legal problems with a person at the peak of their mental health crisis was problematic. There were occasions when questioning about infringements increased anxiety levels of clients, and a small group of clients were too unwell to be making complex decisions about how they ought to best navigate the fines system.

Effective screening by medical staff and social workers was challenging; an attempt to make referrals for clients who seemed particularly capable of discussing their legal issues at any given moment would likely also result in many patients missing out on the service due to a misalignment of timing. With that said, the clients who were best equipped to discuss their legal problems were those who were about to be discharged from the Inpatient Unit. This demonstrates that this would also be the case in an outpatient setting. This challenge did not arise at all in the CCU, where clients were usually well enough to receive legal assistance due to not being in the acute phase of their illness. It is recommended that future attempts to work with this cohort again should be conducted in an outpatient setting, where clients are being actively case managed and where their mental health is improved somewhat. This would, in turn, empower clients with complex mental health issues to make decisions about their legal matters and would also enable efficiency with casework. In addition, social and case workers are better positioned in these settings to assist clients to gather information that may be necessary for the ongoing management of their file—a task that can be impossible for someone who is seriously unwell, transient and wholly unsupported.

FUTURE PROJECT CONSIDERATIONS

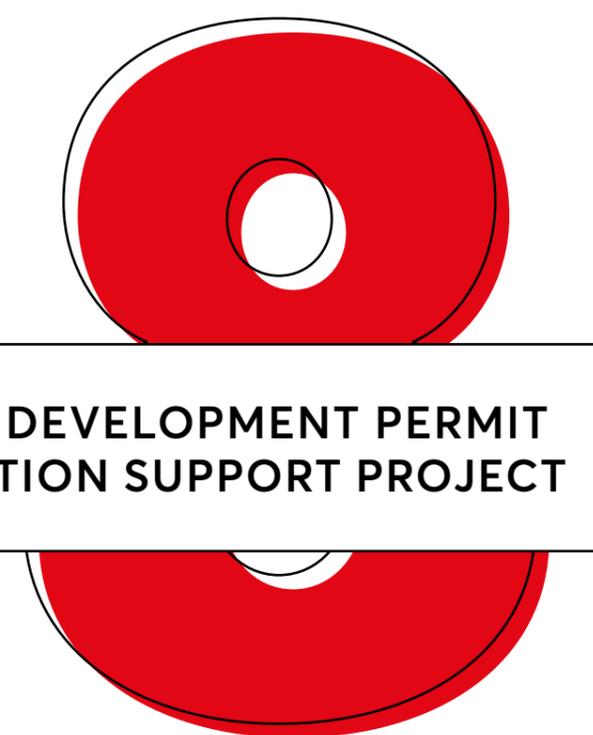
Overwhelmingly, this project revealed the extent to which our systems are failing people with mental health issues. It highlighted how inappropriate and punitive the fines system is for this cohort, and the extent to which they are frequently exploited by other factors (such as unethical businesses, from payday lenders to large banks). In this regard, the therapeutic role the hospital played in terms of treating clients focused on the management of acute symptomatology, while being able to do little to break or prevent the cycle of chaos and disadvantage. Many of the client responses to the systemic entrenchment of their disadvantage were reasonable reactions to circumstances that would be crippling for anyone. In short, an emergency medical response—recognised as severely under-resourced by the Royal Commission into Victoria's Mental Health System—can only do so much for people who are drowning in a system that punishes them for their disadvantage.

Further, this health justice partnership has demonstrated how important and valuable it is for vulnerable people to have someone they can trust, who can provide some form of assistance. At times this resulted in truly life-changing referrals and consumer law claims that yielded not only a release from debts, but also large sums in restitution and compensation. These outcomes were far more beneficial for the clients and more rewarding overall.

Future iterations of this project should consider the multiple complex legal needs of people with severe mental ill-health and should offer more holistic legal services beyond just fines and debt. The current project offered these additional services (including tenancy, mortgage stress, employment, family violence, crime etc) as internal referrals to WEstjustice lawyers and this could be streamlined.

It is also recommended that future iterations of the project consider embedding a financial counsellor. Clients with fines, debts and consumer legal problems would benefit from financial advice and support. Financial counsellors are better placed to manage straightforward debt matters, which then enables the lawyer to focus on the more complex legal issues.

Finally, because of the harsh and exploitative legal and financial systems clients find themselves in, legal casework can only achieve so much. The project should continue to undertake systemic advocacy and policy work.



**WORK AND DEVELOPMENT PERMIT
ACCREDITATION SUPPORT PROJECT**

Work and Development Permits emerged as a key initiative of Fines Reform and became increasingly important to our practice after the abolition of the Special Circumstances List and over-zealous prosecution policies by police and other agencies. WDPs are a key strategy to divert vulnerable people from the court system.

Originally, WEstjustice planned to support members of the Wyndham Health Justice Network to accredit for WDP sponsorship. We changed this approach to youth-focused services because of:

- The greater vulnerability of young people;
- Our strong relationships with youth services through our multidisciplinary 'in situ' partnerships at the Visy Cares Youth Hub in Sunshine and Youth Resources Centre at Hoppers Crossing; and
- The greater need to divert young people away from the special circumstances system to avoid criminalising this type of behaviour and risking 'findings of guilt' and convictions which have a longer lasting impact on young people.



Photo by Elliott Reyna

ACCREDITED AGENCIES

In 2018–19, we assisted the following agencies and individuals to accredit to become WDP sponsors:
See table below.

Sponsor Organisations	Region and location/s	Service type/s	Clients
1. Youth Support and Advocacy Service ('YSAS')	Sunshine and Werribee	<ul style="list-style-type: none"> • Courses—educational, vocational or life skills. • Counselling, including financial and other counselling. • Drug and alcohol counselling. • Mentoring for people under 25 years of age. 	Young people
2. Wyndham Community and Education Centre	Werribee	<ul style="list-style-type: none"> • Courses—educational, vocational or life skills. 	Enrolled short course students
3. RMIT	Melbourne	<ul style="list-style-type: none"> • Courses—educational, vocational or life skills. • Includes TAFE and higher education. 	Enrolled students
4. Tarneit Senior College	Tarneit	<ul style="list-style-type: none"> • Courses—educational, vocational or life skills. 	Enrolled students
5. Anglicare Werribee	Werribee	<ul style="list-style-type: none"> • Counselling, including financial, AOD and other counselling. 	AOD and other counselling clients
6. Orygen	Sunshine	<ul style="list-style-type: none"> • Mental health counselling for young people. 	Young people 12–25
7. Youth Junction Inc	Sunshine	<ul style="list-style-type: none"> • Barista and Barber short courses. 	Young people 12–25
8. Sarah Tiong (psychologist)	Werribee	<ul style="list-style-type: none"> • Treatment given by an Accredited Health Practitioner—psychologist. 	
9. Kim Dowse (psychologist)	Melbourne	<ul style="list-style-type: none"> • Treatment given by an Accredited Health Practitioner—psychologist. 	
10. Deakin University Student Union	Melbourne	<ul style="list-style-type: none"> • Courses—educational, vocational or life skills. 	Enrolled students

11. Alison Mynard (psychologist)	Werribee	<ul style="list-style-type: none"> • Treatment given by an Accredited Health Practitioner—psychologist. 	
12. Headspace	Sunshine	<ul style="list-style-type: none"> • Mental health service for young people. 	Young people 12–25
13. Robyn Dwyer (psychologist)	Abbotsford	<ul style="list-style-type: none"> • Treatment given by an Accredited Health Practitioner—psychologist. 	
14. Silvia Rodriguez (psychologist)	Carlton North	<ul style="list-style-type: none"> • Treatment given by an Accredited Health Practitioner—psychologist. 	
15. Swinburne Institute of Technology	Hawthorn	<ul style="list-style-type: none"> • Tertiary courses. 	Enrolled students
16. Natalie O'Connor (psychologist)	Footscray	<ul style="list-style-type: none"> • Treatment given by an Accredited Health Practitioner—psychologist in a women's refuge. 	Women experiencing family violence

SUPPORT TO ACCREDIT AS A WDP SPONSOR

Accreditation as a sponsor agency can seem like a complicated and bureaucratic process. WEstjustice provided a range of tailored support to interested agencies to assist them to accredit. This has ranged from phone or email conversations, face-to-face meetings and formal presentations, to liaising with Fines Victoria on behalf of agencies. It has generally involved significant follow up and intensive support.

This gave us the opportunity to convince agencies of the benefits of access to WDPs for our mutual clients, to explain in plain language how the system works, and to offer follow up support if required.

Larger agencies with whom we have strong relationships with were surveyed in relation to their experiences trying to accredit as sponsors and the assistance that WEstjustice provided:

- 100% of respondents agreed or strongly agreed that they would not have accredited without WEstjustice's support;
- 100% of respondents agreed or strongly agreed that WDPs are a vital means of assisting their vulnerable clients;
- 100% of respondents agreed or strongly agreed that becoming a WDP sponsor improved their capacity to assist their clients;
- 100% of respondents would recommend becoming a sponsor to other agencies and services.

When asked about the most beneficial aspect of WEstjustice's support to become a sponsor, agencies focused on the value of providing WDPs to vulnerable clients. One respondent said:

- *"When vulnerable clients engage with [our] programs, and remain engaged with these programs after their fines have been finalised, these clients invariably tend to not need to be issued with another WDP afterwards, because they have been engaged in a positive experience."*

IMPACT OF ACCREDITATION FOR CLIENTS

Access to the WDP scheme is highly beneficial for clients. It enables clients to work off their fines while being connected with vital support and the opportunity to participate in employment, life skills, educational and other pro-social activities.

The following case studies highlight the benefits of access to the scheme:

REZA

Reza was a 19 year old refugee from Iran. He lived with his father who was frequently physically abusive to him. Reza had three outstanding infringements totalling approximately \$1,800. He had tried to keep the infringements secret from his father, but his father found out and physically assaulted Reza. Reza was receiving Centrelink and was unwilling to go on a payment plan where payments would come out of his social security payments, as this would anger his father. It became apparent that Reza also had substance misuse issues, so we arranged for him to go on a WDP with YSAS whereby he could work off his fines by engaging with their services. Reza successfully completed his WDP and all his fines were satisfied.

DOMINIC

Dominic was 20 years old and came to Australia from Kenya in 2009. He had fifteen outstanding fines totalling more than \$6,000. He had struggled with alcohol addiction for some years. He agreed to be linked in with YSAS for counselling, including AOD counselling and vocational courses. His application to work off his fines with YSAS was approved by Fines Victoria. At the time of writing, Dominic has not yet completed his WDP but is on track to complete it and has worked off a significant amount of his fines. He reports that he is benefiting from the support provided by YSAS.

IBRAHIM

Ibrahim is 24 years old and from Sri Lanka. He had incurred 22 driving-related fines totalling more than \$7,000. He was experiencing a major depressive disorder at the time the fines were incurred. Ibrahim's psychologist provided a letter of support confirming his mental health diagnosis and symptoms. Ibrahim had outstanding criminal, VOCAT, employment and student debt matters.

For eight fines that were unlikely to be prosecuted, we submitted an Application for Enforcement Review due to Special Circumstances (mental health) to Fines Victoria, including a psychologist's letter. The application is still pending as of writing.

For the remaining 16 fines, we submitted an Application to Vary Costs to Fines Victoria due to Exceptional Circumstances (victim of assault; mental health; known difficulty for Sri Lankan licence holders to have their licences recognised in Victoria), including a psychologist's letter. We attempted to get Ibrahim on a WDP with Youth Junction for the 16 fines included in this application, to start working them off while Fines Victoria made a decision on the application, but Fines Victoria informed us that fines that are subject to a pending application to vary are not eligible for a WDP. Fines Victoria eventually approved a WDP application for 5 specific fines totalling \$3,205, to be administered by Youth junction with Ibrahim to engage with Headspace and Orygen Youth Health for mental health treatment. To date, Ibrahim is doing well and has worked off over \$800 of his fines. His mental health has also stabilised with the intensive support he has received. WEstjustice has also assisted him with his other legal issues.



BROADER ADVOCACY AND LAW REFORM

Advocacy, policy and law reform work make up a substantial component of the Health Agency to Court program. The project has two objectives that relate to advocacy, policy and law reform:

- To reduce the burden of toll infringements on outer-suburban disadvantaged communities.
- To improve the effectiveness and fairness of the infringements system for vulnerable groups.

The project manager, together with WEstjustice's CEO, has undertaken substantial advocacy work on the effectiveness of the fines system for people experiencing disadvantage, as well as some work in the debt sphere. The program manager is also the co-convenor of the Infringements Working Group ('IWG'), a working group of the Federation of Community Legal Centres, Victoria Legal Aid and the Financial Counselling Victoria, and is committed to advocating for reforms to laws, policies and practices to improve the infringement system's operation for individuals, services, governments and courts.

The program's advocacy work, including the key work of the IWG, is summarised in the following sections.

FINES REFORM

In late 2019, the Victorian government appointed the FRAB to advise the Attorney-General on the problems associated with the introduction of Fines Reform. This was a major opportunity to advocate for systemic and legislative improvements to the fines system as a whole. WEstjustice made a detailed submission and contributed to preparing the Infringements Working Group's FRAB submission.

These submissions called for broad reform of the fines system, including to:

- Reform the special circumstances nexus requirement and introduce a prognosis test to overcome barriers that extremely disadvantaged people face when applying for special circumstances enforcement review;
- Return to the special circumstances standard of proof, being the balance of probabilities rather than 'likely to';
- Urgently reinstate the Special Circumstances List or amend the Magistrates' Court Act to legislate for a therapeutic fines list for the hearing of fines matters;
- Reduce prosecution rates through the decoupling of demerit points from findings of guilt, so that demerit points can appropriately be imposed even where the charge and financial penalty are withdrawn;
- Introduce a limitation period within which enforcement review decisions must be made;

- Strengthen the Work and Development Permit scheme so it more effectively services vulnerable Victorians. To be accessible to more marginalised fines recipients, we recommend that:
 - WDP participants should only be required to work off the original fine amount, with prescribed costs waived at the conclusion of the working off of each fine;
 - The range of eligible activities is expanded so that it more accurately captures the range of therapeutic pro-social activities that a person engaged with community services might undertake, including case management and engagement with a social worker;
 - The hourly work-off rate for financial counselling and other counselling is changed to a monthly work-off rate;
 - The Director's power under s 10F of the *Fines Reform Act* is utilised more widely to mean that where participants demonstrate genuine compliance with the WDP, the Director waives the outstanding amount owing. This would result in WDPs constituting a more viable option in cases where currently the fines debt is too large. This would also mean that engagement with a service once the therapeutic benefit has been realised is not necessary, thereby reducing the burden on services;
- Operationalise the toll fines recall protocol by removing barriers to the scheme (discussed further below);
- Introduce concession-based fines of 20% of the value of a fine for Centrelink recipients, a more proportionate system for penalising minor conduct. We have since reconsidered the proportionality of this recommendation and have revised our call to set concession-based fines at 5% of the value of a full fine for both Centrelink recipients and others on equivalent incomes;
- Abolish fines as sanctions for children and replace these with innovative, non-fiscal responses to minor offending;
- Strengthen the Family Violence Scheme for family violence-related fines by implementing consistent and transparent Fines Victoria policies and practices to prevent the current interpretation of s 10T of the *Fines Reform Act*, where victim-survivors are being required to prove a direct causal or temporal nexus between individual fines and the family violence in question to be eligible for the Family Violence Scheme;
- Introduce an Enforcement Review Guideline to guide the exercise of Fines Victoria's enforcement review discretion. This Guideline should be sufficiently prescriptive and publicly available to ensure the accountability and transparency of this decision-making;
- Develop a new process for initiating prosecutions whereby enforcement agencies must justify their decision to prosecute to Fines Victoria, and Fines Victoria (or another independent agency) must sign off on the prosecution. This should be coupled with prosecution guidelines for enforcement agencies, so that people with special circumstances are subject to consistent, principled decision-making regarding the filing or withdrawal of charges;
- Require a proposed 'pocket resource' to be provided by Sheriff's Officers when issuing all seven-day notices. This could offer a clear, practical and direct way for people with complex needs to understand their options and to know the importance of taking prompt action to address their fines;
- Implement legislative change to extend the seven-day warrant execution notice period to 28 days, or in the alternative if this is not possible, revert to the pre-*Fines Reform Act* system, so that access to different options to address fines is only extinguished after an enforcement warrant has been executed;
- Reintroduce the ability for Victorians to proactively have their warrants executed in a supported, efficient and orderly manner, including through the administrative execution of arrest and enforcement warrants at Sheriff's offices;
- Support Sheriff's Officers to appropriately exercise discretion regarding the execution of warrants involving people with disadvantaged circumstances, including through tailored training and the development of clear, consistent and transparent guidelines;
- Redesign the fines system using a human-centred design thinking approach.

SPECIAL CIRCUMSTANCES LIST

One major focus of Infringements Working Group and WEstjustice advocacy has been the reinstatement the Special Circumstances List. As part of its advocacy on this subject, the Infringements Working Group wrote four letters to the Magistrates' Court including to the Chief Magistrate, and held four meetings with the Magistrates' Court, the Attorney-General's Department and the Department of Justice and Community Safety.

WEstjustice also briefed local upper house MP Catherine Cumming, who asked a question in the Legislative Council about the need to reinstate the Special Circumstances List, and WEstjustice CEO Denis Nelthorpe appeared on Jon Faine's ABC morning radio show to discuss the importance of the Special Circumstances List and the need for it to be reinstated. At this stage, government has only listened; they say that the decision remains one for the Magistrates' Court.

Following the appointment of a new Chief Magistrate, we wrote again to the Court, urging it to reverse the harmful decision to abolish the List. Her Honour responded that the Court could not consider this demand in the current circumstances of the COVID-19 crisis. We intend to undertake media advocacy to raise awareness of the need for the reinstatement of the List and to put further pressure on the Court to do so.

FAIRER TOLLS CAMPAIGN

One major advocacy campaign that began in the 2016–17 period of the project was the campaign to reform the toll fines system to alleviate the disproportionate impact it has on disadvantaged outer-suburban communities.

LEGISLATIVE CHANGE

Following the 'stakeholder engagement' and 'design thinking ideas generation' phases of the project in 2016–17, the 2018–19 phase of the project focused on advocating to decision-makers in the interests of much-needed legislative reform. This included two meetings with Treasurer Tim Pallas, where we outlined the need for reform. Advocacy directed at the Treasurer's office was successful in having major toll system reforms included in the **West Gate Tunnel Project Bill 2017³²** (Vic) (which meant reforms were contingent on the building of the West Gate Tunnel). These reforms included:

- Making tolling fines more proportionate to the conduct of driving unauthorised on a toll road by limiting the issuing of fines to one per week rather than one per day, notwithstanding the amount of unauthorised travel in that period (this is still more frequent than what we advocated for);
- Doubling the time toll road operators have to identify and engage with a driver before referring unauthorised road use to the government to issue a fine from 3 months to 6 months;
- Providing toll road operators with more data from VicRoads to enable the companies to identify and communicate with the driver of the vehicle. Combined with improved hardship policies by the road operators, this should enable assessment of hardship at an earlier stage, and prevent people going before Magistrates to have their personal circumstances considered.

WEstjustice undertook a campaign with the Victorian Greens to convert the toll system reforms in the *West Gate Tunnel Project Bill 2017* (Vic) into a private members' bill to decouple the reforms from the West Gate Tunnel road building project. This involved meetings and advocacy over a number of months, culminating in the Greens introducing the Bill to Parliament in June 2018, which was covered by The Age, A Current Affair and Jon Faine's ABC morning radio program on 20 June 2018. The private members' bill did not pass but eventually the *West Gate Tunnel Project Bill 2017* (Vic) passed Parliament, enacting the toll system reforms we had advocated for.

³² <https://www.dtf.vic.gov.au/sites/default/files/2018-01/West-Gate-Tunnel-Project-Bill.pdf>

TOLL FINES RECALL PROTOCOL

Another major limb of the toll system advocacy has been the push for the toll fines recall protocol. This protocol between Victoria Police, the Department of Justice and Regulation and toll road operators ('TROs') would enable the withdrawal of toll fines where hardship is identified, and matters could then be referred back to the TRO for a toll debt hardship response. All parties provided in principle support for the protocol and a working group was established in 2018 to progress towards implementation, but since then obstacles to implementation have emerged.

This protocol is critical to a fair toll enforcement system. Despite improved timeframes introduced by recent reform, hardship is usually not identified by the TRO and instead a person's circumstances only come to light once a Sheriff has intervened and the person has sought assistance from a community legal centre or other service. The implementation of this protocol would mean that people whose hardship is identified late will face equitable outcomes with those whose hardship is identified before toll debts become fines. The protocol also represents a fair and simple way to deal with historical toll offending, to ensure that people who committed toll offences in the past are not punished more harshly than recent toll road users who will have the benefit of the reforms that government has introduced. To encourage deterrence and behaviour change, it is likely that an official warning will be issued where toll fines are withdrawn under the protocol.

Despite providing in principle support, Victoria Police is keen to avoid unintentional political repercussions in creating the protocol. They seem to be concerned that a toll enforcement regime was devised in 1995 when the *Melbourne City Link Act 1995* (Vic) was introduced and that they therefore remain under a directive to enforce the offence of driving unregistered in a toll zone. Victoria Police have not been part of the discussions between government, the legal assistance sector and the TROs that have seen substantial changes to the toll enforcement landscape, for example, by reducing the frequency of offences to one per week from one per day of unauthorised travel. For its part, Transurban has been strident in declaring that it would like Victoria Police to be able to withdraw toll fines for people experiencing certain types of hardship. The Department of Treasury and Finance has been supportive of the need for the protocol, but to date has not been able to persuade Victoria Police to adopt it.

Government has acknowledged the impact that toll fines have on courts, the legal assistance sector and individuals, and that there is therefore no obligation to enforce all toll fines if parties reach an agreement that would enable withdrawal in certain circumstances. In our submission, there is a need to urgently operationalise the protocol so that cases of hardship can be appropriately responded to by TROs outside the punitive and difficult to exit fines system. Both WEstjustice and Transurban prioritised their call for the protocol in their FRAB submission.

The *Fines Reform Act* and the *Infringements Act* enable withdrawal of fines up to the point that a seven-day notice expires or certain other events occur. This means that once infringement warrants are executed and court hearings are scheduled, the protocol cannot have any effect.

Legal assistance services often first meet people with substantial toll fines who are experiencing hardship at Penalty Enforcement Warrant hearings under s 165 of the *Fines Reform Act*, following execution of the warrants and arrest. Without legislative amendment, these clients will not be eligible for withdrawals under the protocol. This will produce significant unfairness because clients with matters pre-and post-expiry of the seven-day notice will face starkly different outcomes. To holistically deal with historical toll offending and to mitigate the need for an amnesty, the protocol needs to be able to deal with toll fines throughout the entire infringement lifecycle, including after expiry of the seven-day notice or other events under s 20 of the *Fines Reform Act*.

To ameliorate this inequity, we recommend legislative amendment to make toll fines exempt from the limitations set out in s 20(2) of the *Fines Reform Act*. This would enable the Director of Fines Victoria to deregister toll fines at any point in the infringement lifecycle, meaning the TRO could deliver a tailored hardship response to all toll road users, irrespective of where in the system their matters are. In addition to significantly improving outcomes for clients, this measure would crucially relieve pressure on our courts and the legal assistance sector by reducing the number of fines requiring court determination.

The recall protocol development process involved a number of high-level meetings with the Director of Fines Victoria and senior representatives from Victoria Police, the Department of Justice and Transurban, and the development of a number of briefing papers to guide the working group. The recall protocol hit a barrier when Victoria Police indicated they were unable to move the process forward. WEstjustice, Victoria Legal Aid and Transurban worked closely together to try to progress the protocol but it was unworkable without police cooperation.

The toll fines recall protocol is the major remaining aspect of the toll campaign, and WEstjustice and Transurban remain committed to seeing it introduced. We have had a number of meetings with the Treasurer's office to explain the blockage and advocate for the need for a change in police policy, but so far the process remains obstructed.

TRANSURBAN HARDSHIP SCHEME

Another aspect of the tolls campaign has been the pressure applied to Transurban to convince them to implement a fairer and more robust hardship process. This began in the 2016–17 project with discussions between WEstjustice and Transurban about a hardship project. Eventually, Transurban decided to design and implement this project on its own, in consultation with WEstjustice and other community agencies. The pilot project was initiated in line with discussions over three years with WEstjustice to look at improving what was a very weak hardship scheme. The project established dedicated hardship and practitioner hardship telephone lines, with welfare agency contact viewed as evidence of hardship. Specialist hardship training was provided to customer relations staff, leading to positive hardship outcomes for vulnerable customers.

WEstjustice attended two project workshops facilitated by Transurban. WEstjustice worked with Transurban to produce collateral materials, distribute postcards and promote the hardship line, trialled the dedicated practitioner hardship line and successfully had debts for clients waived. Transurban's project has seen massive cultural changes implemented, with WEstjustice's engagement and advocacy over a number of years having a critical impact on Transurban's priorities and approach.

As a result of the findings of the pilot project, Transurban has committed to:

- Retaining the dedicated hardship and practitioner hardship telephone line;
- Recruiting specialist hardship staff;
- Continuing the approach to evidence of hardship (whereby contact from a welfare worker, community lawyer or financial counsellor is accepted as evidence of hardship);
- Reviewing all processes and guidelines;
- Building the Linkt Assist online info hub;
- Liaising with VicRoads to include how to drive compliantly on a toll road in driver education and testing;
- The development of a tailored product for eligible hardship customers—this will not be a product for low-income earners but rather for people experiencing financial hardship or special circumstances. This will be the first product of its kind in the world for a toll road.

Transurban has come an incredibly long way in the three years or so that WEstjustice has engaged with it.

TOLLING CUSTOMER OMBUDSMAN

Another arena where significant progress has been made is with the Tolling Customer Ombudsman ('TCO'). The Ombudsman scheme had always been weak, with poor community awareness of the Scheme, limited jurisdiction, lack of Australian and New Zealand Ombudsman Association ('ANZOA') accreditation and only a very small number of complaints being resolved each year. In 2019, WEstjustice convened a meeting of consumer advocates from around the country including community lawyers, legal aid lawyers and financial counsellors together with the TCO. The consumer advocates raised a number of issues including:

- Expansion of cl 12(c)(ii) of the Ombudsman Terms of Reference so that the provision captures any person who is made liable for tolling debt, which would include the registered owner/operator of the vehicle who becomes liable for the toll debt when another person drives a vehicle registered in their name. This is particularly relevant in family violence cases where a perpetrator of violence may deliberately accrue tolling debt to harm or control the victim-survivor. It is also relevant in cases involving stolen vehicles, sale of vehicles where registration has not been transferred to the purchaser, and situations where someone borrows the registered owner's vehicle;
- Stay on proceedings while a complaint is on foot;
- Right to a support person;
- Because of its total reliance on written complaints, accessibility improvements for people who do not read/write English or who have other vulnerabilities;

- The Ombudsman should support all TROs to develop and implement robust and consistent financial hardship policies and systems to support people with tolling debt who are experiencing disadvantage. It is also necessary that TROs ensure that the debt collection agencies they utilise are bound by appropriate hardship policies;
- Introduction of an Industry Code of Practice to define good practice in the tolling industry. A Code would enhance consistency of practice between TROs and more clearly define the circumstances in which the Ombudsman's oversight is enabled. The Code should include financial hardship provisions to ensure these apply consistently across the industry to an appropriate standard.

Following the meeting, the TCO has committed to and begun the process of becoming ANZOA accredited, which will go a long way towards making the Scheme more robust and useable.

MARIBYRNONG COUNCIL COMPLAINT

In 2016, WEstjustice coordinated a joint complaint to the Victorian Ombudsman on behalf of WEstjustice, Inner Melbourne Community Legal, Moonee Valley Legal Service, Brimbank Melton Community Legal Centre and Victoria Legal Aid (Sunshine office). The complaint was upheld and in 2018 the Ombudsman published its [report](#)³³ calling on Maribyrnong City Council to:

1. Review its internal review guidelines;
2. Provide training to its staff on the exercise of discretion;
3. Provide ex gratia payments to five clients whose stories were detailed in the report.

Council only agreed to comply with the first two recommendations.

WEstjustice coordinated media stories in [The Age](#)³⁴, the [Herald Sun](#)³⁵, the Maribyrnong Leader, the [Star Weekly](#)³⁶ and ABC radio, and WEstjustice's CEO Denis Nelthorpe was featured on Neil Mitchell's morning radio show to discuss the Council's approach to fines. WEstjustice wrote to all Maribyrnong City Council councillors to put pressure on the Council to comply with the ex gratia payment recommendation and met with the Mayor and Director of Corporate Services to discuss infringements practices and the need for urgent change.

Maribyrnong made only one payment but refused to make the others on the grounds it would 'open the floodgates'. However, subsequent to the media coverage of the Maribyrnong Council investigation, the two clients who spoke to the media received donations to cover the cost of their infringements. One client received a \$150 donation from an anonymous donor and \$150 from Highpoint Shopping Centre. Another received \$150 from the same anonymous donor.

We also wrote to Fines Victoria, calling on the agency to make a recommendation to Maribyrnong Council under s 53C(1) of the *Infringements Act* (its power to make recommendations to enforcement agencies) to comply with the Ombudsman recommendation and make the remaining four ex gratia payments. Fines Victoria declined to make this recommendation but said it had contacted the Council to commence work on reviewing the Council's Internal Review Withdrawal Guidelines to ensure that they included guidance on the appropriate exercise of discretion, to support the implementation of recommendation one of the Report.

FAMILY VIOLENCE SCHEME

The Family Violence Scheme for family violence-related infringements was a major win for the Infringements Working Group and the broader sector in 2017. It introduced a proportionate, fair and balanced system for dealing with infringements incurred in the context of family violence. Importantly, applicants to the scheme can have infringements withdrawn without the need to attend court or transfer liability to the alleged perpetrator. The scheme can deal with fines incurred by the victim-survivor in circumstances of family violence or fines incurred by the alleged perpetrator in the victim-survivor's vehicle.

Despite the value of the scheme, it has confronted some barriers to effective operation. This principally concerns the interpretation of the test which says that the family violence must have 'substantially contributed to' the fines. Fines Victoria has taken an overly prescriptive interpretation of this requirement: victim-survivors are being required to prove a direct causal or temporal nexus to every fine to be eligible for the Family Violence Scheme. This is clearly in error—a view which has been confirmed by advice from counsel.

The Infringements Working Group has advocated strongly to Fines Victoria urging them to use the ordinary meaning of 'substantially contributed to' instead of refusing applications that do not prove a direct causal and temporal link between the family violence and the fines. We are also looking for a test case for judicial review of Fines Victoria's application of the scheme in the Supreme Court, so that the interpretation of the nexus requirement can be clarified. WEstjustice has contributed two clients' stories but due to their circumstances neither were suitable for a test case.

In the first half of 2020, the Family Violence Scheme is being reviewed. The Infringements Working Group will be making a submission, focusing on the 'substantially contributed to' nexus and the need for excessive speeding offences to be included in the scheme. These were originally excluded from the scheme on the grounds that they were considered too serious. As a result, we have seen many victim-survivors unfairly saddled with these fines and licence cancellations for offences not committed by them.

“If a person leaves a violent relationship, they may continue to receive fines despite having no access to the vehicle.”

³³ https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/VO-Parliamentary-Report_Maribyrnong-council_April-2018.pdf?mtime=20191104145121

³⁴ <https://www.theage.com.au/national/victoria/too-rigid-ombudsman-s-rage-against-one-council-s-parking-machine-20180430-p4zcek.html>

³⁵ <https://www.heraldsun.com.au/leader/north-west/maribyrnong-council-has-been-described-as-heartless-for-refusing-to-withdraw-parking-fines-for-people-with-a-disability/news-story/a1c79ad3ffc85f65a2529d5c132c78a>

³⁶ <https://issuu.com/starweekly/docs/hsw-20180502>

VICROADS

Victims of family violence often bear responsibility for driving fines incurred by their violent partners. Due to the operator onus provisions in the *Road Safety Act 1986* (Vic), the registered owner will be held responsible for the conduct of other people where the owner does not or cannot nominate the driver within the prescribed time.

If a person leaves a violent relationship, they may continue to receive fines despite having no access to the vehicle. Incurring the fines may even be a way for the perpetrator to continue to exert control over and inflict further violence upon the victim.

Victims of family violence are often fearful of nominating the perpetrator due to the risks to their safety in doing so. As part of the nomination process, victims are required to complete a statement describing either the personal details of the nominated driver or, if the driver is unknown, the details of efforts undertaken to try to identify who was driving at the time of the offence.³⁷

Nominations must also be completed for each fine received and can be rejected by the nominee.

In this situation, it is necessary for victims of family violence to have the ability to cancel or transfer the registration of the vehicle or otherwise prevent the accumulation of fines in their name where they no longer have access to or control of the vehicle.

Survivors also need the ability to transfer registration of a vehicle into their name where their vehicle has been registered in the perpetrator's name but is in possession of the victim-survivor. This is because this leaves the victim-survivor unable to renew the registration, leaving them without the ability to use the vehicle without the risk of large fines.



Barriers to transferring registration leave victim bearing the brunt of perpetrator's fines indefinitely

When Cathy and her ex-husband, Tom, were living together he asked her to register a vehicle in her name. When purchasing the car, Tom promised to give Cathy driving lessons as she only had an international license and wanted to obtain a Victorian license before she drove the vehicle in Melbourne. After the vehicle was purchased, Tom took exclusive possession of the vehicle.

Tom was the only driver and incurred over \$10,000 of driving related infringements while driving the vehicle.

After a police intervention order excluded Tom from the house, Tom took the vehicle even though it was registered in Cathy's name. Cathy eventually became aware of the infringements and contacted VicRoads to discuss de-registering the car or otherwise transferring the registration.

Cathy was told that she needed to remove the license plates from the vehicle to ensure no further fines could be incurred in her name. Simply de-registering the vehicle would not prevent any further infringements incurred by Tom being attributed to her.

Cathy then contacted the police who advised her that they could not assist because the vehicle was not 'stolen' and it was a family law property issue. Cathy's community lawyer advised her that they are unable to assist her with property matters and she could not afford private representation. Cathy will likely incur further fines for the vehicle as it is unsafe for her to locate Tom to remove the license plates from the vehicle.

The Infringements Working Group wrote to VicRoads in 2018 with a set of recommendations for reform, including recommendations for the benefit of family violence victim-survivors and people experiencing homelessness. After a substantial passage of time and persistent follow up, VicRoads eventually engaged with this letter and a meeting was coordinated.

The Infringements Working Group worked in partnership with the Economic Abuse Reference Group to progress work with VicRoads. This work focussed on the difficulties victim-survivors of family violence experience when trying to transfer registration into or out of their name where the perpetrator of violence has possession of the victim-survivor's vehicle and is incurring infringements in their name, or where the perpetrator is the registered operator but the vehicle is being used by the victim-survivor.

After initial apprehension, VicRoads became highly engaged and we worked productively with them to develop a scheme whereby victim-survivors could transfer registration into or out of their name without the usual transfer documents signed by both parties. We are currently in the process of developing evidentiary requirements for applications to the scheme. This is a complex problem because we do not want perpetrators to be able to abuse the scheme by making fraudulent applications, but we want the scheme to be accessible to the victim-survivors who need it.

SUBMISSION TO THE ROYAL COMMISSION INTO VICTORIA'S MENTAL HEALTH SYSTEM

In 2019, WEstjustice made a submission to the Royal Commission, recommending:

- Screening people with serious mental health conditions out of the mainstream courts system, including by increasing access to the Assessment and Referral List, Drug Court and Special Circumstances List (on the condition of reinstatement);
- Reinstating the Special Circumstances List so that people with mental health issues have a therapeutic jurisdiction to hear their fines matters;
- More consistent and principled exercise of discretion by frontline decision-makers;
- The need for targeted services including health-justice partnerships similar to the Health Agency to Court Program which focus on assisting clients with psychosocial disability.

VULNERABLE PERSON'S PRODUCT

In 2017, the Infringements Working Group made a **major submission**³⁸ to the Department of Transport's Concession Review, calling for the development of a new travel product for people experiencing special circumstances and poverty, to prevent them accumulating public transport fines.

The Department considered the submission but developed a different travel product, dubbed the 'vulnerable persons pass' or simply the 'travel pass'. Instead of entitling the holder to free public transport for a period of one or two years as the Infringements Working Group had recommended, the travel pass was a product that welfare agencies could purchase at reduced cost and provide to clients to provide them with free public transport for one, seven or thirty days. Although significantly less helpful than the product recommended by the Infringements Working Group, this product was still a win for the community sector. We are aware that many welfare agencies have purchased the passes and distributed them to their clients. However, this relies on welfare agencies using their meagre funds for this purpose and diverting funds away from other important uses. This is far from ideal. We maintain that the Department should develop a travel product similar to the Access Travel Pass, but temporary for people who have special circumstances or who cannot afford to pay for travel, such as asylum seekers. Without this, vulnerable people will continue to bear the brunt of poor training of Authorised Officers, resulting in negative interactions with customers and consequent trauma.

³⁷ *Road Safety Act 1986* (Vic) pt 6AA.

³⁸ https://www.westjustice.org.au/cms_uploads/docs/iwg-submission--temporary-travel-product.pdf

CIVIL DEBT ADVOCACY

PAYDAY LOANS

In the course of delivering services to clients in the Clare Moore Building psychiatric inpatient unit, we came across many debts to payday lenders and other creditors. Often clients were being chased for debts that were years old that could never be enforced against them because they were judgment proof or because the creditors had engaged in irresponsible lending.

To address these issues, we met with Federal Labor MP Joanne Ryan regarding payday lending to vulnerable mental health patients. Ryan is a key MP calling for major reform of the payday lending regulatory landscape to protect vulnerable customers. This meeting generated some **media coverage**³⁹ of the issue.

HELEN

Payday lenders preying on the vulnerable

When we met our client Helen she was experiencing schizophrenia, which was aggravated by ongoing financial hardship. Helen was continuing to experience family violence perpetrated by her ex-husband and was struggling to make ends meet for herself and her four children. Due to her mental health and caring responsibilities, Helen was surviving on Newstart and living in over cramped and unsuitable housing.

Because Newstart (now known as the JobSeeker payment) is far from sufficient and pays out at a rate well below the poverty line, it is unsurprising that Helen had taken out nine payday loans so that she could support herself and her family to pay for basic necessities. Helen did not realise that these payday loans were associated with so many high fees when she signed up.

The fact that Helen had been signed up to so many loans in her circumstances made us concerned about irresponsible lending. We intervened by putting a halt to the multiple direct debits coming out of Helen's Centrepay and requesting all documentation in relation to the payday loans, so as to make an assessment of this.

We were then able to craft an argument stating that the payday lender had not met its responsible lending obligations and taken into account our client's hardship and therefore our client should be entitled to a waiver of all amounts outstanding and a refund of the fees and charges paid.

We were successful in our demands, which resulted in not only our client having no more debts, but also having approximately \$1,000 put back in her bank account, putting her in a far better financial position to support her children and move on from the family violence of her past.

Finally, we linked Helen in with a specialised family violence social work service, so that she could access a support network tailored for her specific circumstances. When Helen reached the stage that she felt supported and safe enough to apply for an intervention order, we assisted her with this through our family violence duty lawyer service. We also referred Helen internally for assistance with completing a Victims of Crime Assistance Tribunal application.

We also became aware of the Magistrates' Court and police using outdated debt enforcement processes to pursue people with civil debts.

NADIA

Treating debtors like criminals

WEstjustice assisted a highly vulnerable young woman called Nadia, who was living in her car with her pets and had mental health, family violence and alcohol and drug dependency issues. She reported a crime at her local police station only to be told there was a warrant for her arrest for non-appearance on a Summons for Oral Examination for a civil debt. She was arrested and bailed to appear at the Magistrates' Court and advised that failure to appear would be a breach of bail and a criminal offence.

Under current processes, someone who is unable to pay a debt can be required to attend court for a financial examination. Failure to attend court can result in arrest for non-appearance. In many cases a financial examination is unnecessary because the creditor knows the person's financial circumstances. Therefore, the process appears to have the perverse effect of pressuring vulnerable individuals (without means) into paying. When the person attends court, they face an administrative process whereby a form outlining their financial circumstances is presented to a clerk at the court. However, if they fail to appear, they are subject to the same rules for non-appearance as people charged with serious criminal offences.

People who are unable to pay civil debts can therefore face arrest, custody or bail if they fail to appear for a financial examination in the Magistrates' Court, sometimes for debts as low as a few hundred dollars. WEstjustice is concerned that arrest and bail processes, as well as the power to imprison in relation to civil debts, are still utilised. This poses a serious issue of harshness and disproportionality, as well as a severe drain on limited police resources.

The law governing Summonses for Oral Examination has its origins in the nineteenth century. These laws predate the modern credit-based economy and were designed for a cash economy when consumers and small business rarely had access to credit and failure to pay debts, for any reason, was regarded as immoral. These days many people routinely owe money on credit cards, personal loans, utilities and phone bills, and some find themselves in financial hardship.

We wrote to the Attorney-General urging her to consider a review of these laws, which treat debtors as criminals and bring the law into disrepute. To date, we have not heard back from the Attorney-General's Department.

ALCOHOL INTERLOCK DEVICES AND DEBTS

Alcohol interlock devices, which prevent a car from being started without an alcohol-free sample of breath being provided, are frequently required for people with fines or court outcomes for drink driving. They are expensive and administered by private companies. We had a number of clients who could not pay for the interlock and also could not return the device because, for example, the vehicle had been sold by the Sheriff to recoup unpaid fines.

We wrote to two alcohol interlock providers calling on them to establish financial hardship policies in line with other industries, so that debts for these products could be waived for people who are judgment proof.

Our correspondence prompted a response from one company, who was outraged that we had asserted they were not keeping pace with other creditors. Suffice to say, no change eventuated from this exchange.

³⁹ <https://www.smh.com.au/business/consumer-affairs/payday-loans-our-hidden-debt-crisis-20180917-p50485.html>

A large, stylized number '10' in red with a white outline. A white horizontal banner with a thin black border is positioned across the middle of the '0'.

LEARNINGS FROM THE EVALUATION

CONCLUSION

In view of the number of people impacted by the infringements system and the negative effect fines and debts can have on vulnerable and disadvantaged individuals, there is a clear case for early intervention and systemic advocacy in this area. With evidence suggesting that people with acute mental health conditions are disproportionately impacted by fines and debts, programs such as the HACP can help to alleviate psychological and financial harm and contribute to the creation of a fairer society.

This evaluation found that the HACP was successful in its aim of identifying and providing legal assistance to clients with acute mental health conditions caught up in the fines system. The program also aimed to alleviate the significant burden that infringements constitute for vulnerable community members by advocating for legal and systemic reform. Many findings from this evaluation, including the alleviation of clients' financial burden and the self-reporting of former clients' improved wellbeing, support the achievement of this aim.

The HACP achieved many significant client and policy outcomes. We reached twice the number of clients forecast and intervened to secure clients favourable outcomes on their fines and debts, including through successful enforcement reviews, successful outcomes at court, participation in Work and Development Permits, and waivers of debt and compensation. Clients and the social workers who supported them attested to the substantial impact this assistance had in alleviating major financial stressors and barriers to recovery.

The project also achieved significant and lasting legislative and systemic change, by successfully lobbying for the reform of the toll fines enforcement system, forcing an Ombudsman review into the recalcitrant practices of a local council, advocating for changes to court listing practices in the aftermath of the abolition of the Special Circumstances List, supporting VicRoads to introduce family violence processes for transfers of registration and more.

The partnership with Mercy Mental Health grew into a strong connection and we are committed to working together to support vulnerable clients. We will continue to explore funding opportunities to do so.



Photo by Christina wocintechchat.com

