

Attorney-General's annual report on the infringements system

2007–08

DEPARTMENT
OF JUSTICE

State Government
Victoria

Attorney-General's annual report on the infringements system

This is the second annual report on Victoria's new infringements system, which came into operation on 1 July 2006 with the commencement of the *Infringements Act 2006* (the Act).

The report provides an overview of the infringement system for the 2007–08 financial year, including data, process and policy developments.

It should be noted that because this report covers the 2007–08 financial year and we are only in the first two years operation of the new infringement system, it is too early to provide a statistical trend analysis. However, the data supports the view that the new system is achieving its objectives of improved infringements administration and fairer and firmer fines.

PRINCIPLES UNDERPINNING THE SYSTEM

The principles underpinning the infringements system are:

1. Recognition of the **authority of the state** to set minimum standards of civic behaviour
2. **Public awareness** of rights and responsibilities
3. **Rapid and certain response** – deterrence is dependent on people being aware that they are likely to be detected offending and then penalised swiftly
4. **Regular review** of the system
5. **Responsibilities on participating agencies** to observe the policies and principles of the system
6. **Fairness** as an aid to compliance, justice and system efficiency
7. **Interchangeable procedure** – the choice to have the matter dealt with in open court rather than through the infringement system
8. **Individualisation** – taking account of individual circumstances
9. Recognition of genuine **special circumstances**.

Through continued engagement across State Government and support of the Infringements Standing Advisory Committee (ISAC)¹, the Department of Justice has been working with representatives from community advocacy services, the courts and enforcement agencies to promote these principles across all facets of the infringements system.

¹ ISAC was established in 2006–07. Its members comprise agencies, community groups and other stakeholders of the infringements system. Committee members act as representatives for their respective organisations. It provides a forum for raising issues about the infringements system in a high-level policy context with diverse stakeholders present.

IMPROVED INFRINGEMENTS ADMINISTRATION

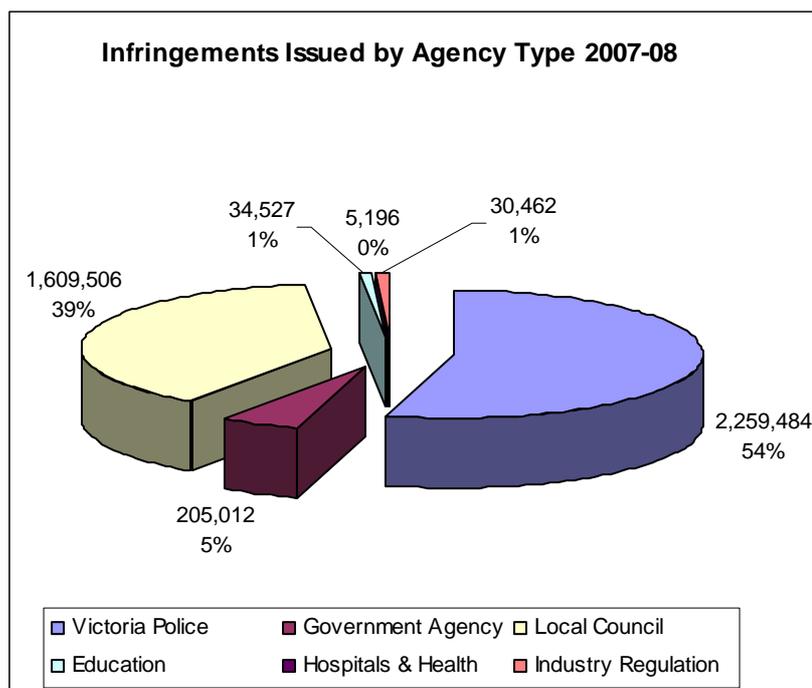
Infringement notices are an administrative method for dealing with minor criminal offences, where a person alleged to have committed an offence has the option of paying a fixed penalty rather than going to court.

The infringement process benefits offenders as it is a more convenient and less costly process than going to court. Importantly, it also offers the offender an opportunity to 'expiate' the offence by paying the penalty, which means that no conviction is recorded for the offence.

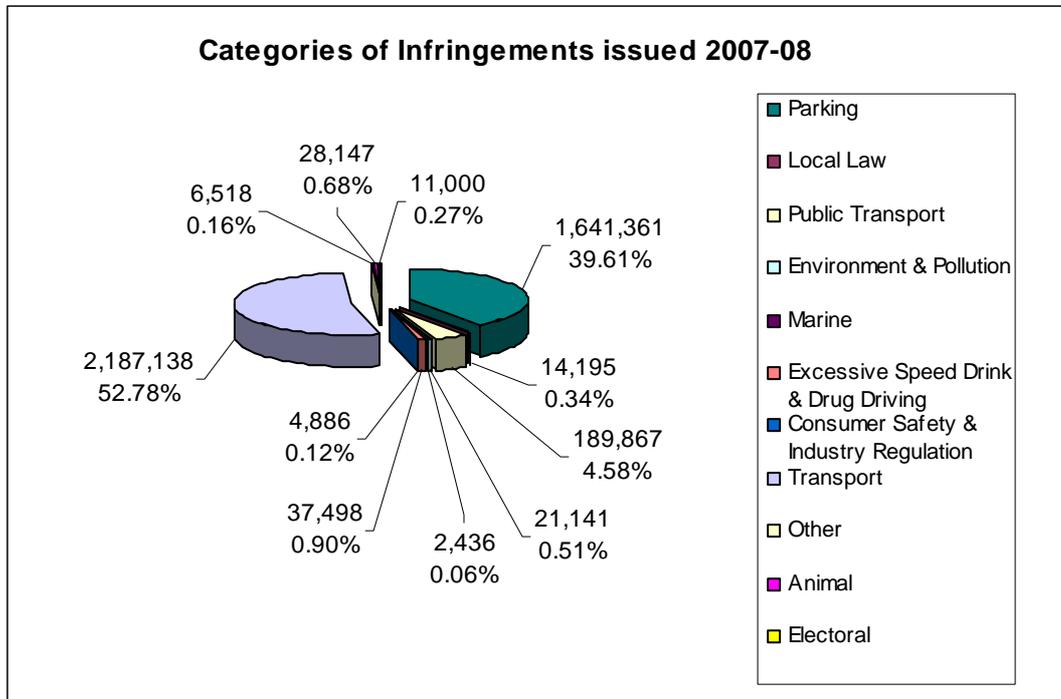
For the State, an infringements system streamlines the resolution of minor offences, and frees court time for more serious criminal matters.

In the 2007–08 financial year, just over 4.1 million infringement notices were issued in Victoria; approximately the same number as for the previous financial year. These infringement notices were issued by over 100 different enforcement agencies including state government, local government, and some non-government bodies, such as universities and hospitals.

As can be seen from the diagram below, Victoria Police issue the most infringement notices but local councils also issue a substantial percentage of the total infringements issued in Victoria.



Transport offences comprise the largest proportion of offences for which infringements were issued in 2007-08, particularly if one looks at all traffic-related offences: transport, parking and excessive speed / drink and drug driving together add up to 93 per cent of all infringements issued during this financial year.



INFRINGEMENTS SYSTEM OVERSIGHT UNIT

The Infringements System Oversight Unit (ISOU) is a unit within the Department of Justice. ISOU is responsible for:

- monitoring the operation of the infringements system and new infringements policy initiatives
- providing advice to the Attorney-General and government on infringements policy
- effecting necessary legislative instruments
- undertaking key system improvement projects
- promoting the objectives of the Act through community information and education, including regular 'regional roadshows' aimed at improving communication with regional infringements system stakeholders
- providing advice, as requested, to infringements system stakeholders on their rights and responsibilities.

AWARENESS AND INFORMATION

To increase the capacity of the infringements system to meet its objectives both in promoting compliance and protecting vulnerable Victorians, it is imperative that both members of the public and enforcement agencies are aware of their rights and responsibilities under the *Infringements Act 2006* (the Act) and associated regulations.

Public awareness of rights and responsibilities is one of the key principles underpinning the infringements system.

During the 2007–08 financial year the Department of Justice initiated a number of activities to improve understanding among both the public and enforcement agencies about the infringements system.

Fines website

Over the 2007–08 financial year the Whole of Victorian Government Fines website (www.fines.vic.gov.au) was updated.

The Department of Justice first launched the Fines website in February 2006 as part of the ‘Fairer and Firmer Fines’ campaign. The site outlined the changes to the infringements system resulting from the launch of the *Infringements Act 2006* (for example the availability of payment plans upfront and new measures to enforce unpaid fines).

In the 2007-08 financial year the site was updated to provide more comprehensive information about the Victorian infringements system, how to pay a fine, and the rights and responsibilities of Victorians for expiating a fine.

Brochure: The Sheriff and warrants

During 2007–08, engagement with various members of the community suggested the need for improved communication about an individual’s rights, responsibilities and options when contacted by the Sheriff about an outstanding infringement warrant.

In response, the Department of Justice developed a new brochure ‘If the Sheriff contacts you’. This brochure succinctly and clearly explains what a warrant is, what the role of the Sheriff is, what to do when the Sheriff contacts you and what will happen if you do not address outstanding warrants.

In recognition of the needs of those members of Victoria’s culturally and linguistically diverse community who may face challenges in communicating in English and /or for whom the infringements system is unfamiliar, the brochure was published in 18 languages other than English: Amharic, Arabic, Bosnian, Croatian, Dinka, Greek, Italian, Khmer, Macedonian, Mandarin, Nuer, Serbian, Somali, Spanish, Sudanese Arabic, Tigrigna, Turkish, and Vietnamese.

These languages were selected as they are:

- spoken by new and emerging communities (Amharic, Dinka, Nuer, Somali and Tigrigna);
- a mixture of languages spoken by new and existing refugee communities (Bosnian, Croatian, Khmer, Macedonian, Serbian and Vietnamese)
- major languages spoken in Australia. The Australian Bureau of Statistics 2006 Census data lists Italian, Greek, Vietnamese, Macedonian, Arabic, Mandarin, Spanish, Turkish and Croatian as the languages other than English most commonly spoken in Victoria.

Addressing the needs of Indigenous Victorians

Currently it is not possible to determine Koori representations at the various stages throughout the infringement process. However, the Department of Justice is continuing to work in partnership with Koori communities across Victoria to respond to the current over-representation of Koories in the criminal justice system.

In June 2008, Enforcement Operations published a Koori Strategy: 2008–2010 to develop a new way of engaging Koories that aims to provide accessible information at all levels of the enforcement process including the Sheriff's Operations and the Infringements Court. The Enforcement Operations Koori Strategy is available on the Department of Justice website.

Education

During 2007–08, the Department of Justice identified a need to assist enforcement agencies in particular, as well as individuals, to better understand the grounds for internal review and processes for conducting a review. As a result the Department developed a paper addressing these issues and providing a number of case studies as examples. The paper is available on the Department of Justice website or by contacting the Infringements System Oversight Unit. The paper sets out:

- the defendant's rights and obligations
- the agency's powers and obligations
- the grounds for requesting an internal review and
- possible outcomes of internal review.

The Department of Justice also produced an information paper to assist enforcement agencies in assessing financial hardship cases. The paper, which is available on the Department of Justice website:

- sets out the elements of financial hardship, and details existing financial hardship tests; and
- discusses the extent to which an enforcement agency could or should consider the applicant's financial hardship when determining what fine enforcement action is to be taken.

FAIRER INFRINGEMENTS SYSTEM

Although the infringements system is highly automated, the Victorian system has inbuilt checks and balances that promote fairness by recognising relevant individual circumstances. In addition, preserving the fundamental right to have any alleged offence determined in open court, the Act also provides for payment plans, and a legislative right to internal review by the enforcement agency in certain circumstances at the earlier stages of enforcement. It also provides for payment orders and revocation of enforcement orders, once the matter has been lodged with the Infringements Court.

Electing to go to court

Any person who receives an infringement notice may elect to have the matter heard in open court by following the processes and timelines in the *Infringements Act 2006*. While the vast majority of infringement offences are strict liability, straightforward offences, the right to have the matter heard in court if the defendant does not accept liability for the alleged offence is fundamental. This allows for those situations where there are extenuating circumstances, disagreements about evidence or where new evidence comes to light and the person prefers to raise these matters before a Magistrate.

In the 2007–08 financial year, 25,898 people elected to have their offence determined in open court. This is about the same as the previous financial year; as it is 0.6 per cent of all infringements issued in the period, a statistically non-significant increase from the 2006-07 where under 0.5 per cent elected to go to court.

Internal review

The *Infringements Act* introduced for the first time a formal legislative right to internal review of a decision to issue an infringement notice at agency stage. This process introduces flexibility to prevent those cases in which the original decision to issue the notice was flawed (or where enforcement would be unjust) from proceeding through the system.

Internal Review

A person or someone acting on their behalf is entitled to apply for review of an infringement notice on one of the following grounds:

1. There was a defect or mistake made in the decision to serve the notice (contrary to law or mistake of identity)
2. There are special circumstances. That is, where the person suffers from:
 - a. A mental or intellectual disability, disorder, disease or illness resulting in the person being unable to understand or control the conduct that constitutes the offence;
 - b. A serious addiction to drugs, alcohol or a volatile substance (eg: chroming) resulting in the person being unable to understand or control the conduct that constitutes the offence; or
 - c. Homelessness, where this results in the person being unable to control the conduct that constitutes the offence.
3. There are exceptional circumstances that justify withdrawing the infringement notice.

In the 2007–08 financial year, around 350,000 (354,234) infringement notices were reviewed under the internal review provisions. This represents around 8 (8.6) per cent (or roughly 1 in 12) of all infringement notices issued during the period, and includes all available types of internal review applications: contrary to law (31.9%), mistake of identity (1.6%), special circumstances (2.7%) and exceptional circumstances (63.9%). In 2006–07, some 260,000 infringement notices were reviewed by agencies (that is, more than 6 per cent or 1 in 16 of all notices issued in that financial year).

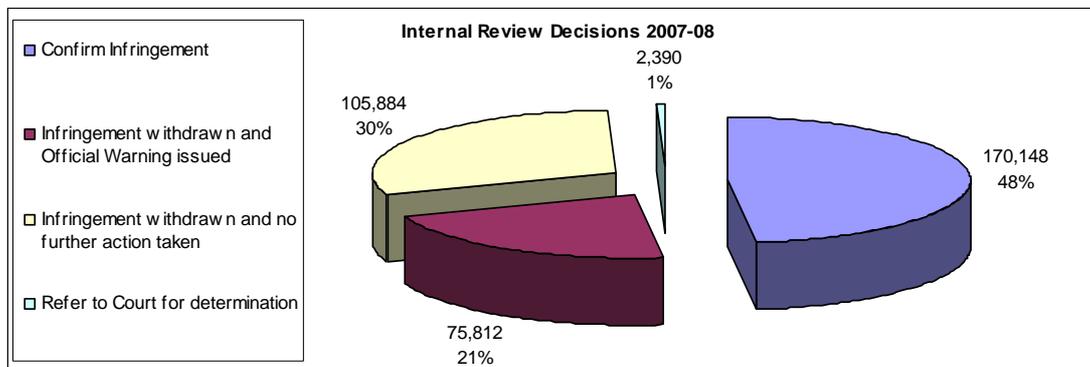
The number of infringement notices reviewed increased from the previous financial year. This increase is consistent with expectations, based on the reasoning that it takes time for both individuals and agencies who may advocate on behalf of people with disabilities or special circumstances to become familiar with the process and fully utilise the internal review provisions.

Available internal review decisions:

- **Confirm** – confirm the decision to issue an infringement notice
- **Official warning** – withdraw the infringement notice and serve an official warning in its place
- **Withdraw** – withdraw the infringement notice and take no further action
- **Refer to Court** – refer the matter to Court under s17 of the Act

As shown in the diagram below, of the infringements reviewed in 2007–08, almost half (48 per cent) were confirmed and the other half were withdrawn by the enforcement agency. Of those withdrawn (51 per cent), 42 per cent were replaced with official warnings. A very small proportion (less than 1 per cent) were referred to court for determination.

Please see the section entitled ‘Special Circumstances’ for further information about internal review on the basis of special circumstances.



Revocation of enforcement orders

A person who has an enforcement order made against them may apply to the Infringements Court for the order to be revoked. If there are sufficient grounds the Court must revoke the order, which then ceases to apply. The infringement matter is then referred to open court for hearing, unless the enforcement agency elects, at that stage, not to prosecute. The right to seek revocation is detailed on enforcement order notices and infringement warrant seven-day notices.

The enforcement order can be revoked by the Infringements Court any time prior to an infringement warrant being executed. For example, prior to seizure of goods or arrest of the person.

If the Infringements Court decides not to revoke an enforcement order, the applicant may lodge an objection within the timeframes under the Act and have their matter referred to open court for hearing as to whether revocation should be granted.

In the 2007–08 financial year 50,265 enforcement orders were revoked. In 2006-07 33,486 enforcement orders were revoked. For both financial years, this represents around 4 per cent of the total enforcement orders made.

Financial Hardship

Payment plans

A key objective of the 2006 changes to the infringements system has been to make it easier for people to pay their fines. One way of accommodating people experiencing financial hardship is by providing that an eligible person must be offered a payment plan.

A payment plan makes it easier to pay by allowing the person extra time to pay their fine or fines, and / or by enabling them to sign up to pay the outstanding amount in instalments over a period of time. Payment of the fine at the earliest opportunity means people with outstanding fines are less likely to experience further enforcement actions and costs.

Just over half of all enforcement agencies offered formal instalment payment plans over the 2007–08 financial year. Together, these agencies issued a significant proportion of all infringement notices in Victoria for 2007–08.

In the 2007–08 financial year, over 330,000 payment plans were commenced. Under the *Infringements Act 2006* a payment plan may be an extension of time, a formal instalment payment arrangement, or a combination of the two types of arrangements.

Extensions of time were more commonly offered than instalment payment plans in both 2006–07 and 2007–08. In many cases, an extension is all that is required by the applicant. In others, particularly for smaller enforcement agencies, the administrative cost of offering instalment plans may be prohibitive.

The Attorney-General's Guidelines to the *Infringements Act 2006* require that any individual who has a Centrelink Health Care Card, Pensioner Concession Card or Department of Veterans' Affairs Pensioner Concession Card must be offered a payment plan upon application. In addition, an agency may offer a payment plan to any individual, taking into account a range of factors, including financial hardship.

The vast majority of instalment plans are managed via the central instalment payment plan scheme managed by the Department of Justice. Because the scheme enables people with outstanding infringement penalties to bundle different payments into one instalment plan it reduces complexity and makes it easier for people to pay their fines. The scheme also benefits agencies by streamlining administrative processes.

The central instalment payment plan scheme is open to all enforcement agencies, including local government and non-government bodies. The agencies who currently participate in the scheme collectively issue the majority of infringement notices. The Department of Justice has been working with key stakeholders to increase the number of enforcement agencies using the scheme. The Department of Transport joined the scheme after it had commenced and was a welcome addition to the scheme.

Payment orders

When a person fails to pay their fine and fails to take action in response to a penalty reminder notice issued by the enforcement agency, the matter may be lodged with the Infringements Court, which will make an enforcement order requiring the person to pay the penalty and any associated costs. This is deemed to be an order of the Magistrates' Court of Victoria.

A person who has an enforcement order made against them may apply to the Infringements Court for a payment order. A payment order is an order of the court allowing additional time for payment or payment by instalments. A payment order can be made by the Infringements Court any time prior to an infringement warrant being executed (this generally means prior to payment of money, seizure of goods or arrest of the person).

In the 2007–2008 financial year, over 159,639 payment orders were made by the Infringements Court and almost 72,000 (45 per cent) of these were instalment payment plans.

Special Circumstances

Under the Act ‘special circumstances’ are mental or intellectual disabilities, disorders, diseases or illnesses, or serious addictions that result in a person being unable to understand or control their offending behaviour, or homelessness that results in the person being unable to control the conduct.

In recognition that the automated infringements system is not the most appropriate way to regulate behaviour that is the result of special circumstances, the Act creates mechanisms to address these cases in alternate ways.

There are a number of stages at which people with special circumstances can be diverted out of the infringements system. These are:

- by discretion at the point of issue of the infringement notice
- via internal review at enforcement agency stage
- by the Infringements Court on an application for revocation of an enforcement order
- by cases being referred to open court for consideration of individual circumstances.

Enforcement agency reviews based on special circumstances

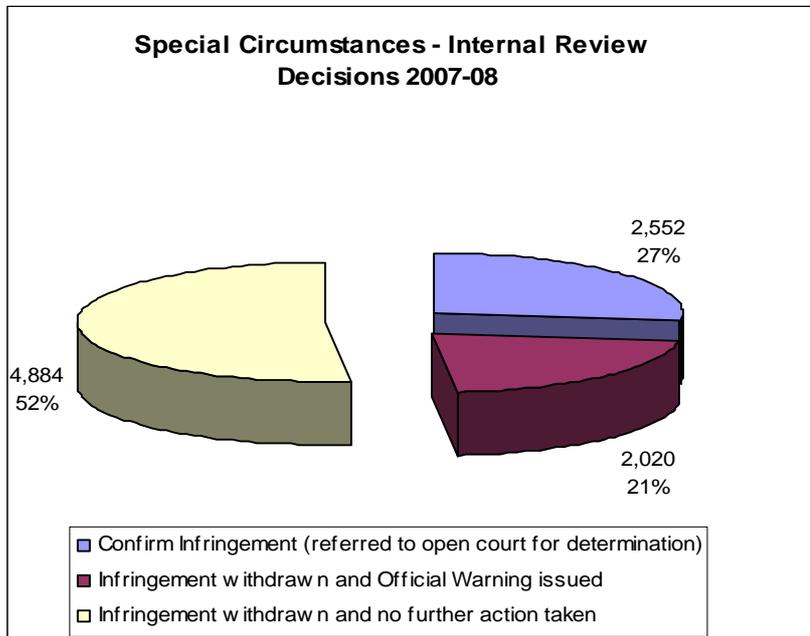
In the 2007–08 financial year, enforcement agencies conducted 9,456 ‘special circumstances’ reviews. This is a 56 per cent increase from the 6,060 ‘special circumstances’ reviews conducted in the previous financial year. The Department of Justice will continue to work with agencies to educate about the categorisation of special circumstances applications.

The outcome of a review on the basis of special circumstances may be that the infringement notice is withdrawn with no further action taken, the infringement notice is withdrawn and an official warning issued in its place, or the infringement notice is confirmed. Unlike other internal reviews, if the enforcement agency confirms the infringement notice (that is, rejects the application), the agency must refer the matter to open Court for determination.

In 2007–08, enforcement agencies responded to internal review applications based on special circumstances by withdrawing with no further action taken in 52 per cent of cases (up 8 per cent from 44 per cent last year), withdrawing the notice and issuing an official warning in 27 per cent of cases (up 17 per cent from 10 per cent last year) and confirming the notice and referring the matter to open court in 27 per cent of cases (down 19 per cent from 46 per cent last year).

While the underlying reasons for the increase in matters being withdrawn as a result of an application for internal review on the grounds of special circumstances have not been quantified, this result suggests that the internal review provisions are working as

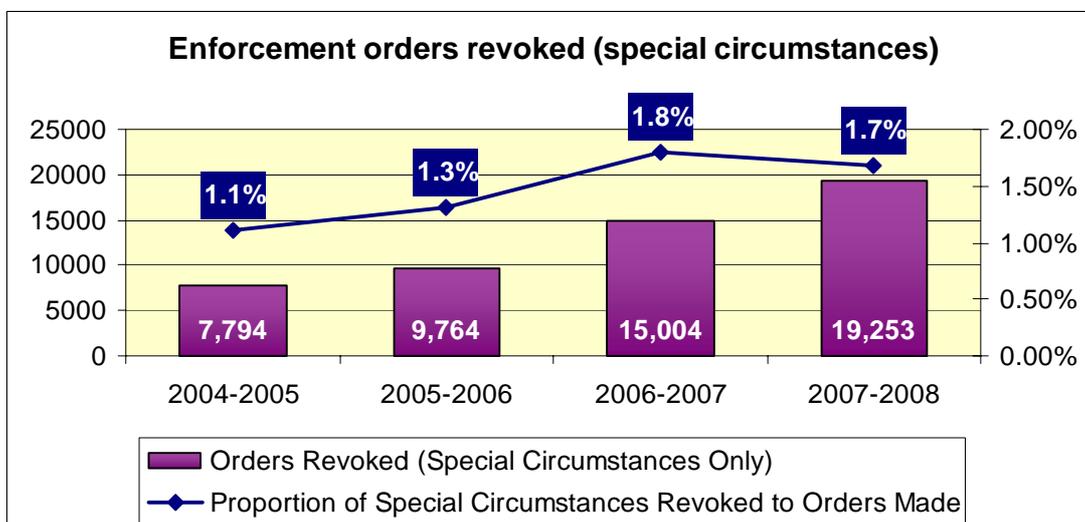
intended. That is, as applicants gain a better understanding of what will constitute special circumstances, a smaller number of applications which are not supported by appropriate evidence are being made.



Revocation on the grounds of special circumstances

Although the Infringements Court’s discretion to entertain any revocation application is not limited by the Act’s definition of special circumstances, the formalisation of ‘special circumstances’ by the 2006 Act appears to have increased awareness of the right to seek revocation on this basis.

In the 2007–08 financial year, of the 50,265 enforcement orders revoked, 19,253 were revoked on the grounds of special circumstances. This represents a 28 per cent increase from last year. In 2006–07, 15,004 enforcement orders were revoked on the grounds of special circumstances.



FIRMER INFRINGEMENTS SYSTEM

The majority of Victorians pay their infringement penalties on time or upon receiving a penalty reminder notice. For the small group of people who ignore reminders and court enforcement orders, the *Infringements Act 2006* provides a uniform process for enforcement.

Enforcement Orders and Infringement Warrants

If an infringement notice remains unpaid, the relevant enforcement agency can lodge the infringement notice with the Infringements Court. The Infringements Court can then make an enforcement order requiring the person who received the infringement notice to pay to the Court the outstanding amount of the infringement penalty, as well as additional costs associated with the making of the order.

If the enforcement order remains unpaid, the Infringements Court may issue an infringement warrant, authorising the Sheriff to use enforcement actions to recover the outstanding amount.

In 2007–08, over 1,148,292 enforcement orders were made, representing a 38 per cent increase from the 2006–07 financial year's figure (where over 830,000 enforcement orders were made). The reason for this increase has not been quantified, although it may be a result of enforcement agencies being more inclined to take enforcement action by lodging matters with the Infringements Court than in the past.

The *Infringements Act* provides for a range of enforcement sanctions, including wheel clamping, suspension of driver licences and vehicle registrations and Community Work Permits. These sanctions, which have been gradually rolled out over the last two years have proved very successful in prompting people to take action to resolve their outstanding fines.

Because the sanctions have been progressively implemented since the introduction of the *Infringements Act* on 1 July 2006, it is not meaningful to compare the volume of sanctions applied in 2006–07 with the volume in 2007–08. However, it is clear that wheel clamping and suspension remains an extremely effective means of prompting people to address their outstanding warrants.

Wheel Clamping

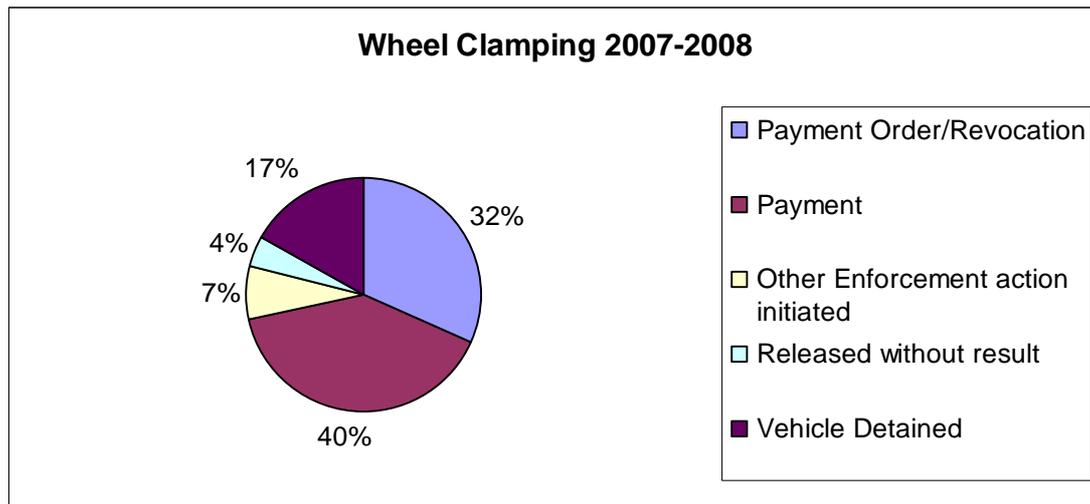
The primary role of this sanction is to bring fine defaulters into contact with sheriff's officers. Sheriff's officers can then discuss with the person the options that are available to finalise their outstanding fines.

A fine defaulter whose car has been immobilised by a wheel clamp has a number of options to deal with their warrant, including paying in full, obtaining a payment order, or obtaining revocation.

During the 2007–08 financial year, 2,138 motor vehicles were wheel clamped, compared to 324 motor vehicles in the 2006–07 financial year. The infringement warrants issued against the registered operators of the vehicles wheel clamped in

2007–08 totalled just under 17 million dollars. Importantly, following the application of a wheel clamp, the person took action to finalise the matter in just over 80 per cent of cases.

Notably, in 2007–08, the percentage of people paying their outstanding penalty and costs off in full in response to a wheel clamp increased from 27 per cent in 2006–07 to 40 per cent in 2007–08, which demonstrates the growing success of this sanction in dealing with recalcitrant fine defaulters.



Suspension powers

Where a warrant has been issued against a fine defaulter, the *Infringements Act 2006* provides that the Sheriff may direct VicRoads to suspend the person’s driver licence or vehicle registration unless or until the warrant is finalised. Suspensions can be made seven days after a notice of intention has been personally served on the defaulter.

This sanction has been extremely successful since it was introduced. During 2007–08 alone, it resulted in 94 per cent of people taking action to clear their outstanding infringement warrants (compared to 89 per cent of people in the 2006–07 financial year). Notably, in around 70 per cent of cases (63 per cent in 2006–07), the notification of an intention to apply the sanction resulted in the person taking action to clear associated infringement warrants, making actual suspension unnecessary.

Community Work Permits

One of the features of the new infringements system is that when the Sheriff arrests a fine defaulter under an infringements warrant, the Sheriff may sign that person up to a Community Work Permit. This is an arrangement, similar to a Community Based Order, where the person can agree to undertake community work in lieu of payment of the fine.

The Community Work Permit allows the person to undertake the work at intervals, providing the flexibility necessary for most people to complete the Permit requirements. In the 2007–08 financial year, 1,050 people commenced Community Work Permits, compared to 579 people in the 2006–07 financial year.

CONCLUSION

The second year of operation of the new Victorian infringements system has consolidated and built upon progress made towards a fairer and firmer infringement system.

While the best results come from people paying their fines as early as possible, the progressive implementation of new sanctions provides a greater range of enforcement options against those who do not take action to clear their fines.

The total number of infringement notices issued remained roughly the same as the previous financial year, however, there was a significant increase in the number of official warnings issued, internal reviews decided and payment plans commenced. This suggests that enforcement agencies are adapting to the new system effectively and the system is becoming both fairer and firmer.