



Inquiry into toll roads in Australia

Submission to Senate Economics References Committee

July 2017

1 Introduction

1.1 About WEstjustice

WEstjustice (the Western Community Legal Centre) was formed in July 2015 as a result of a merger between the Footscray Community Legal Centre, Western Suburbs Legal Service and the Wyndham Legal Service. WEstjustice is a community organisation that provides free legal assistance and financial counselling to people who live, work, study or access services in the western suburbs of Melbourne.

We have offices in Werribee and Footscray as well as a youth legal branch in Sunshine and outreach across the West. WEstjustice provides a range of legal services including: legal information; outreach and casework; duty lawyer services; community legal education; law reform; advocacy; and community projects.

1.2 The impact on disadvantaged communities of penalties for paid road use

WEstjustice provides legal assistance in a range of areas of law, including fines and infringements. Infringements have a significant and often harmful impact on vulnerable communities, including those experiencing economic marginalisation, disability, substance misuse, family violence and cultural or linguistic barriers to engaging with complex government systems.

Given the enormous toll infringements burden on vulnerable outer-suburban communities in Victoria (discussed further below), WEstjustice has prioritised policy and law reform work examining the systemic problems with Victoria's toll infringements system, which criminalises non-payment of tolls in contrast to the largely civil enforcement system in New South Wales. In this submission, we draw on our experience assisting vulnerable clients caught up in this punitive system which creates an unworkable volume of cases for Victoria's Magistrates' Courts and the legal assistance sector to manage.

We also draw on our observations and experience working with vulnerable clients living on the outskirts of Melbourne, who often have to drive long distances to access employment and whose participation in society is already impacted by poorly designed pricing mechanisms including a lack of concessions. We make recommendations in relation to pricing mechanisms and targeting of concessions or other arrangements to ensure deterrence measures are appropriate, based on this work.

We reiterate much of what is contained in our position paper, developed with a coalition of community legal centres and Victoria Legal Aid in 2017.¹

2 The failure of Victoria's toll infringements system

If further road pricing is to be introduced, we believe that the mechanism must be fair. However, in our view, the principles of equity, access and fairness must also extend to the regime chosen to enforce payment for road use.

Victoria's experience with toll roads and in particular the criminalisation of non-payment of toll fees is instructive.

2.1 The tolling infringement system

Many systemic problems plague the toll infringements system and disproportionately impact the most vulnerable.

Because of the limited information held by VicRoads and the toll operators, operators often struggle to effectively inform individuals who use Victoria's toll roads without a pre-existing account that they have unpaid toll invoices. Where the toll operators do communicate with people who have not paid for their travel, their correspondence is confusing, their websites are not easily navigated, interpreting options are not clearly identified, and hardship options are weak and not publicised.

These invoices then escalate in a disproportionate fashion to become infringements in excess of \$150 per day of unpaid travel on each toll network. Unlike in New South Wales where a cap means the toll operators can only refer a small number of matters to infringement and where therefore one infringement effectively penalises a large number of occasions of unpaid travel, Victoria Police automatically issues one infringement for each unpaid day of travel. This quickly accumulates to unmanageable levels of debt, with the addition of enforcement costs when infringements remain unpaid.

To deal with these infringements, many vulnerable people eventually plead guilty to the toll offences in the Special Circumstances List of the Magistrates' Court, or are placed on unsustainable payment plans by the Magistrates' Court where default leads to automatic imprisonment.

¹ WEstjustice, Moonee Valley Legal Service, Victoria Legal Aid, Brimbank Melton Community Legal Centre, Peninsula Community Legal Centre, "Our Plan for a Fairer and More Effective Toll Fines System for Victoria", http://www.westjustice.org.au/cms_uploads/docs/plan-for-a-fair-and-effective-toll-enforcement-system.pdf, 2017.

The toll infringements system places unsustainable pressure on Victoria's Magistrates' Courts, support services, communities and families, constituting the most common offence dealt with by the Court.² The system delivers a disproportionate blow to people who for a variety of legitimate reasons are unable to pay the toll at a particular time, but who want to do the right thing. Criminalising non-payment of road use unfairly and excessively punishes people who are unable to pay and who mostly reside in the outer suburbs, where roads are the only realistic transport option for access to many services and jobs. It is difficult to understand the rationale for such a punitive system, especially when it is far from certain that fines are effective in inducing compliance with toll fee payments.

Table 1 shows Local Government Areas with the highest infringement warrant debt in 2014-15. All of these are outer Melbourne areas where public transport is not readily available and residents usually travel significant distances to work.

Table 1: Local Government Area with highest infringement warrant debt 2014-15

| Local Government Area | Total Warrant Value (2015) (\$) | Population (2014) |
|-----------------------------------|---------------------------------|-------------------|
| Casey City Council | 123,039,614 | 283,415 |
| Hume City Council | 96,998,152 | 188,832 |
| Frankston City Council | 75,512,000 | 135,243 |
| Greater Dandenong City Council | 71,716,356 | 149,518 |
| Wyndham City Council | 70,285,630 | 199,715 |
| Moreland City Council | 69,245,087 | 163,488 |
| Melton City Council | 65,157,948 | 127,677 |
| Whittlesea City Council | 61,645,669 | 187,006 |
| Knox City Council | 57,851,348 | 155,508 |
| Brimbank City Council | 57,641,317 | 197,701 |
| Mornington Peninsula City Council | 55,653,933 | 153,800 |

The high rates of unpaid fines in outer-suburban areas signal two realities:

- (i) that outer-suburban communities rely more on the use of roads (where most infringements are incurred) because of the relative lack of public transport

² Magistrates' Court of Victoria, Annual Report 2014-15, p78
<https://www.magistratescourt.vic.gov.au/sites/default/files/Default/151130%20AR%202014-15%20%28PDF%20final%29.pdf>

infrastructure and the dispersed nature of urban planning in many growth corridors; and

- (ii) that outer-suburban communities experience high rates of disadvantage, meaning a higher proportion of infringements proceed to warrant stage and execution of infringement warrants.

These communities were mostly only sparsely populated when the toll roads were originally built. Now they are key areas of urban growth.

2.2 The accumulation of toll fine debt in Victoria

On 30 June 2015, Victoria's outstanding infringement warrant debt totalled \$1,686,597,696 – a 9.5% increase on the previous year's total.³ Warrants for toll fines made up \$686,924,234 of this figure or around 40% of the total debt.⁴ Outstanding toll warrant debt is rising exponentially, and increased 15% from 2013-14, and 80% since 2012.⁵

The outstanding infringement warrant debt is inflated on account of Victoria's toll fine system which adds between \$155 to \$342 to every day of unpaid travel on a toll road, the toll fee for which can cost as little as \$2.20. This is an increase of over 15,000%. A driver can be fined thousands of dollars for one week's use of a toll road.

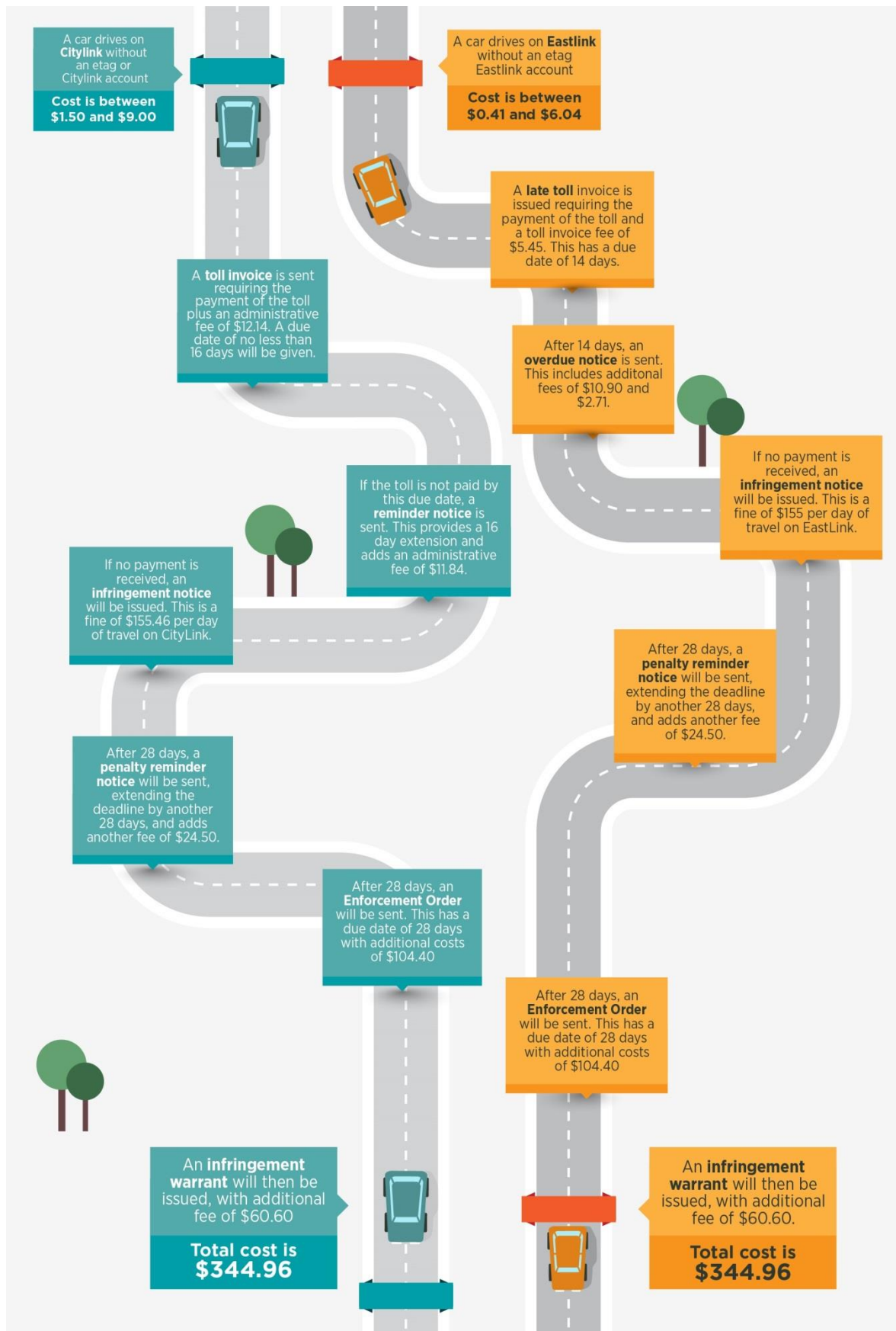
Figure 1 below illustrates the 'toll fine journey', showing the significant costs added to single toll fees throughout the process.

³ Department of Justice and Regulation, "Sheriff's LGA figures released today" Media Release, 23 December 2015.

⁴ Millar, R and Schneiders, B. <http://www.theage.com.au/victoria/toll-road-fines-ballooning-debt-turning-motorists-into-criminals-20160107-gm17wy.html>, published 7 January 2016.

⁵ Ibid.

Figure 1 – Toll Fine Journey



99 per cent of road users pay their toll fees⁶; it is a small fraction of people who are generating an enormous number of toll fines and the consequent burden on the government and community sectors. These infringement debts – which frequently range from \$50,000 to \$250,000 – are absurd and unmanageable for most people, especially those experiencing hardship or disadvantage who are overwhelmingly accumulating them.

We refer you to the case studies in our 2017 Position Paper for insights into how infringement debts these large are accrued and how they impact on vulnerable community members.

2.3 Few benefits but significant costs across the system

The toll operators do not obtain a significant economic benefit from this system, particularly in the absence of evidence that the punitive system is driving high rates of compliance. Both Victorian toll operators have recently implemented a range of measures, including debt collection activities, to prevent referring unpaid toll road use to Victoria Police for the issuing of infringements. Unfortunately these measures are not able to prevent infringements being issued for many road users.

The Victorian Ombudsman's recent investigation into public transport fare evasion enforcement specifically cited the complete lack of available data on the cost of the fines enforcement system.⁷ The report shows that the impact of fines on Victoria's justice system and the amounts recovered by government are not well-known or understood. It is generally accepted that the cost to the State is significant and may well exceed what is recovered, particularly taking into account the costs of imprisoning those who default on 'imprisonment in lieu orders' and the quantum of infringement debt that is revoked or discharged through the courts.

Cost to the state can also be conceptualised by reference to the impact that toll infringements have on the capacity of the Magistrates' Court to conduct its ordinary business, including considering family violence intervention order applications. Recommendation 62 of the Final Report of the Royal Commission into Family Violence suggested that the state government investigate removing minor traffic matters from overburdened Magistrates. This would also free up community sector resources to assist clients with urgent housing and family violence needs.

⁶ WEstjustice, Moonee Valley Legal Service, Victoria Legal Aid, Brimbank Melton Community Legal Centre, Peninsula Community Legal Centre, above n1, p9

⁷ Glass, D. "Investigation into public transport fare evasion enforcement", May 2016, page 56, available at: <https://www.ombudsman.vic.gov.au/Investigations/Recent-Investigations/Investigation-into-public-transport-fare-evasion-e>

3 Penalty regime must be fair, proportionate and effective

3.1 A civil debt recovery regime is more effective to enforce unpaid road use fees

Failure to pay for road use should not be a criminal offence.

We recommend that careful consideration is given to the mechanism used to enforce payments for road use. A civil debt recovery mechanism is one option, which would ensure Victoria is more aligned with effective jurisdictions like New South Wales.⁸ A civil debt model would also enable strong consumer protections to be embedded.

We recommend that the debt for unpaid road use is limited to the original price of the usage plus a reasonable administrative fee charged as a lump figure over a group of debts enforced at the same time, such as quarterly. This would make debt recovery more effective for both road users (many of whom could realistically pay) and toll operators (who would actually recover a significant portion of the debt).

A civil debt recovery system would also mean road users would avoid criminal findings of guilt for mere non-payment of small debts, preventing exclusion from the workforce and stigma that results from interference with one's criminal record.

Equally, a system to deduct road use fees (as distinct from infringement debts) from wages above a certain threshold, similar to HECS/HELP fees, for those not covered by other schemes may be desirable.

However, any recovery mechanism must take account of the inequities arising from the registered operator provisions of the Road Safety Act (Vic) and similar legislation in other jurisdictions. Depending on the model adopted, legislative amendment may be required to ensure that legal liability for road use fees sits with the actual driver not the registered operator. This is particularly important to avoid entrenching further economic exclusion and dependence for victims of family violence given that perpetrators of violence frequently drive vehicles registered to a victim and accumulating significant debt in her name and it is unsafe for her to nominate the perpetrator. Strengthened VicRoads processes for effecting transfer of registration would also be beneficial, given the impact on vendors where purchasers do not lodge transfer documentation.

3.2 The need for strong protections to prevent debt

In addition to a fair and effective mechanism for enforcing payment, preventative measures should be introduced to enhance access to travel for those who cannot pay and to avoid the pitfalls of a pure user-pays model that does not account for unequal access to resources, employment and housing.

We recommend consideration be given to:

- Concession rates of travel for those on incomes below a certain threshold (e.g. \$55,000 per annum);

⁸ Roads and Maritime Services, "Toll Notices", <http://www.rms.nsw.gov.au/sydney-motorways/toll-notice/>

- Tax concessions or other rebates for those who live in the outer suburbs;
- Free off-peak travel for those who are reliant on a social security income as well as those with even lower levels of income such as asylum seekers;
- A robust hardship program similar to that used in utility industries;
- The adoption of policies to waive debts in full where a person is experiencing financial hardship, similar to the approaches in the finance and insurance industries;
- Provision of grants similar to the Utility Relief Grant Scheme.

4 Fairness and equity should also be major considerations for the road pricing system adopted

Based on our work with disadvantaged outer-suburban communities, we make the following observations in relation to road pricing mechanisms, based on those discussed in Infrastructure Victoria's recent paper:⁹

- Location and corridor pricing are preferable to whole of network pricing options, as they better protect consumer choice and control, rather than applying blanket costs for any road use;
- Dynamic pricing is likely to be confusing for road users and makes it difficult for users to predict the cost of travel, which is likely to lead to greater rates of non-payment and hardship. This will disproportionately be the case for road users from newly arrived communities and communities experiencing disadvantage;
- Distance-based pricing disproportionately impacts on the most disadvantaged communities who live on the outskirts of cities. We recommend this mechanism is not adopted; instead pricing mechanisms which differentiate between less reliant road users in the inner city who should be charged more and road users with little choice but to use toll roads who should be charged lower rates;
- Premium pricing is inherently unfair and grants inequitable levels of privilege to affluent road users. This option is likely to be offensive to the community and is not reflective of a fair and equitable system;
- In our view, time-based and/or location-based pricing are the most equitable options proposed. However, time-based pricing is premised on the notion that travel in peak hour is for those travelling to work. We note that other essential travel also occurs during morning peak, including taking children to school and travel to homelessness services (which often ask users to arrive before 9am);
- A fairer model would impose a sliding scale of road use fees based on the person's taxable income for the previous year, so that the deterrence impact of road use fees were specifically targeted to a person's means. This could be imposed in combination with time or location-based fees. Failure to ensure the fees are means-tested will result in road pricing deterring the poorest road users (who may rely on roads more as they are more likely to live further from the city), while the

⁹ Infrastructure Victoria, 'The Road Ahead: How an Efficient, Fair and Sustainable Pricing Regime Can Help Tackle Congestion', November 2016.

most affluent road users will not be meaningfully impacted or deterred by the imposition of fees;

- Public transport infrastructure in urban growth corridors must be a priority for governments – toll roads should not be a replacement for accessible public transport.

5 Monopoly industries fail to innovate

Australia's toll roads are monopolies run by a small number of companies. In the Victorian case, Transurban has been generating huge profits for more than 20 years, but has failed to innovate.

We note particularly that no attempts have been made to introduce concession priced products for those on low incomes reliant on toll roads. Victoria's toll operators have adopted a position that such products are untenable because vehicles rather than individuals are identified as utilising the roads. Although slightly more complex to design than for public transport, we maintain that feasible concession products can be introduced and regulated for toll roads. For example, utility concessions are applied based on one person in the household holding a Health Care Card, Pensioner Concession Card or DVA Gold Card. Toll operators could send invoices with a concession option that could be utilised by concession card holders, or – if this is too open to abuse – then an app could be developed that is capable of identifying who is in the vehicle in relation to the etag and concessions could be applied on that basis.

It would be critical for VicRoads rather than the toll operators to hold and manage this sensitive location information to ensure it is not sold on or misused.

6 Conclusion

Road pricing and toll roads may be necessary to address long-term congestion and sustainability of roads given Australia's rapidly growing cities. However, it is critical that the policy approach to this issue overcomes inequities built into existing systems including regarding outer-suburban communities and others with particular reliance on paid roads. Concessions or other measures to ensure the system deters the right drivers will be critical to its effectiveness.

In addition, the state enforcement regimes should be reviewed and aligned to ensure they are fair, proportionate, appropriately protect consumers and do not have unintended consequences for our overburdened courts and community agencies.