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Preface

This study, which was funded by the Criminology Research Council, is the product of a long-standing interest in the law of sentencing. Previous research, also supported by the Criminology Research Council, led to the publication, with Arie Freiberg, of our book *Sentencing: State and Federal Law in Victoria* (Melbourne, Oxford University Press, 1985). This concentrated on sentencing as a judicial exercise and the law governing the use of imprisonment and other mainstream sanctions for serious crime. However, in preparing that text, it became apparent that there was a large unexamined world of administrative sentencing for lesser offences in which the sanction was monetary and in which offenders were punished without prosecution or trial.

The 'on-the-spot' fine for motoring offences is the commonplace manifestation of this phenomenon, but the use of 'infringement notices' (as the 'on-the-spot' ticket is more properly called) as a device for diverting offenders from court has been expanding into other areas. The revenue benefits of 'on-the-spot' tickets has not escaped the notice of government. Fiscal and correctional objectives in their use appear to be at odds with each other.

The issuing of infringement notices has become the most frequently used punitive measure in our criminal justice system. This form of sanction may not yet have produced the same level of philosophical debate as sentences for serious crime, but growing use, as spurred on by technological innovations in the detection of offenders, has produced a vision of an automated and depersonalised criminal justice system in a surveillance society that many may find disturbing. The legal model upon which the 'on-the-spot' ticket is based has already shifted from one of expiation and non-conviction, to one of conviction and supplementary forms of punishment. The levels at which fixed penalties are set have been rising, and public protests at inappropriate uses of the infringement notice system have given the area new political significance.

Despite the importance of this technique for dealing with offenders administratively, and its significance for the future of the criminal law as a means of social control, no statistical data has been gathered in this country on the full extent of its use. Nor has there been any sustained public examination of the relevant law or practice. Consideration of matters of principle and policy has been scant and the efficiencies or otherwise of the system are poorly understood. This study serves to provide a map of the territory. Though it focuses upon one Australian

jurisdiction, the issues raised are of significance for each of the others. The entire field is fertile for further study.

The project greatly benefited from the assistance of Gretchen Kewley, Ann McGarvie, Rowan Davis, Elizabeth Adeney and Margaret Duncan. Paul Hedger undertook the onerous responsibility of collating the diverse statistical material drawn upon in this study, assembling and refining the voluminous data into useable forms and presenting salient features in the figures and tables found in this report. His efforts and programming skills were central to the exercise. Ted Glasson prepared the legislative and subject indexes. Sheila Alley provided the efficient secretarial services which are behind the successful completion of this study.

The by-law and administrative staff of over 120 separate municipalities and other agencies supplied data upon which the larger view presented in this report relies. There are too many to list individually, but the following people made contributions which were crucial to the project's completion. I am indebted to all who cooperated so generously with their time, resources, and advice:

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Contents

Preface	<i>vii</i>
Table of Legislation and Cases	<i>xvii</i>
Chapter 1	
Background	1
1.1 Introduction	1
1.2 Expiation in South Australia	3
1.3 Expedition of summary proceedings	4
1.4 Growth in motor vehicle ownership	6
1.5 Technological advances	9
1.6 Revenue and other advantages	10
Chapter 2	
Overseas	15
2.1 United States	15
2.2 United Kingdom	21
Chapter 3	
Interstate and Federal	31
3.1 New South Wales	31
3.2 Queensland	35
3.3 South Australia	36
3.4 Tasmania	41
3.5 Western Australia	43
3.6 Federal	45
Chapter 4	
Victoria	49
4.1 History	49
4.2 Current authorising acts	54
4.3 Infringements and infringement notices	56
4.4 Owner-onus	60
4.5 Service of the notice	64
4.6 Conviction and loss of licence	65
4.7 Demerit points and loss of licence to drive	73
4.8 Loss of vehicle registration	76
4.9 PERIN enforcement procedure	77
4.10 Payment of penalty	86
4.11 Time to pay and payment by instalments	87
4.12 Withdrawal of notices	88

4.13	Proof of prior convictions	89
4.14	Juveniles	90
4.15	Effect of infringement notices on corporations	91
4.16	Remission of penalties	92
 Chapter 5		
	Statistical Picture	95
5.1	Scope, sources and quality of the data	95
5.2	Case flow	103
5.3	Who issued infringement notices and for what offences?	105
5.4	What was their value?	110
5.5	What costs accrued?	111
5.6	Who registered unpaid infringement penalties with PERIN and for what offences?	113
5.7	What happened to the unpaid infringement penalties sent for enforcement?	115
5.8	Where do the defaulters live?	121
 Chapter 6		
	Costs and Benefits	123
6.1	An economic approach	123
6.2	Cost-benefit analysis	125
6.3	Efficiency v. equity	129
6.4	Clarity of aim	130
6.5	Causation	131
6.6	Problems in assessing the infringement notice system	132
6.7	Detection costs and benefits	135
6.8	Revenue v. reduction	140
6.9	Fiscal objectives	142
6.10	Correctional objectives	161
6.11	Other considerations	177
 Chapter 7		
	Sanctions	187
7.1	Warnings and interventions as sanctions	187
7.2	Objectives of punishment	189
7.3	Allocation of responsibility	191
7.4	Setting fixed penalty levels	193
7.5	Infringement penalties for corporations	199
7.6	Infringement penalties for juveniles	202
7.7	Relationship between fixed penalties and normal penalties	202
 Chapter 8		
	Surveillance and Detection	205
8.1	Introduction	205

8.2	Technological capacities	208
8.3	Entrapment	214
8.4	Threats to privacy	216
8.5	Controls on access	218
8.6	Expansion of social control	221

Chapter 9

Enforcement Threshold		225
9.1	Tolerance of wrongdoing	225
9.2	Warnings rather than infringements	228
9.3	Fairness as a factor	231
9.4	Technical tolerances and discretionary allowances	234
9.5	Tolerating recidivism	238

Chapter 10

A New Class of Offence?		245
10.1	Classifying offences	245
10.2	Devaluing the criminal law?	246
10.3	Early steps	250
10.4	Machinery for change	260
10.5	Degree of wrongdoing	264
10.6	Non-conviction	267
10.7	Limited punishment	269
10.8	Civil v. criminal enforcement	275
10.9	Strict liability	276
10.10	Recommendations	277

Chapter 11

Conclusions		279
11.1	A permanent feature of criminal justice	279
11.2	Liberal bureaucratic model	281
11.3	Rights v. expediency	283
11.4	Advantages and disadvantages	287
11.5	Net-widening	289
11.6	The Pareto principle	290
11.7	Model legislation	291

Chapter 12	
Bibliography	295
Chapter 13	
Infringement Offences	305
Subject Index	319

List of Figures

1.1	Infringement Notice Elements	14
4.1	The PERIN Enforcement System (Victoria)	79
5.1	Flow Chart: Infringement Notices issued 1 July 1990 to 30 June 1991, Victoria, Results as at 13 January 1993	104
5.2	Infringement Notices—Who and How Many? Notices Issued, 1990/91, Victoria	106
5.3	Who Uses PERIN? Use of PERIN by Agency Type, 1990/91, Victoria	113
5.4	What is PERIN Used For? Use of PERIN by Offence Type, 1990/91, Victoria	114
5.5	PERIN's Top Seven: Seven Offence Codes represented 70 per cent of all Referrals to PERIN, 1990/91, Victoria	116
5.6	Expiation of Referrals to PERIN—Summary as at 31 December 1992, Victoria	119
5.7	What Happened to Referrals to PERIN—Status as at December 1992, Victoria	119
6.1	Growth in Collected and Uncollected Fines 1986/1987 to 1992/1993, Victoria	153
6.2	Vehicle Speeds: Vehicles Travelling Above the Threshold, December 1989 to June 1994, Victoria	171
6.3	Vehicle Speeds: Percentage of Vehicles 30 km/h or More Above Limit, December 1989 to June 1994, Victoria	172
6.4	Collisions: Moving 12-Month Total, 1987-94, Victoria	173
6.5	Fatalities: Moving 12-Month Total, 1987-94, Victoria	174
6.6	Injuries: Moving 12-Month Total, 1987-94, Victoria	175

List of Tables

1.1	Victoria. Motor Vehicles per 1000 Population, 1925-92, Victoria	7
3.1	Main Legislative Developments in Australia, by Jurisdiction	31
4.1	Licence Loss on Automatic Conviction for Drink-driving Infringements under the <i>Road Safety Act</i> 1986 (Vic.)	66
4.2	Licence Loss on Automatic Conviction for Excessive Speed Infringements under the <i>Road Safety Act</i> 1986 (Vic.)	67
4.3	Number of Automatic Convictions for Drink-driving and Excessive Speed Infringements under the <i>Road Safety Act</i> 1986 (Vic.)	72
4.4	Growth in the Use of the PERIN System, 1987-92, Victoria	80
5.1	Review of Issuing Agency Data for Reliability, 1990/91, Victoria, First Round	100
5.2	Distribution of Agencies Categorised as Requiring Review, 1990/91, Victoria	101
5.3	Review of Agency Data for Reliability, 1990/91, Victoria, Second Round	103

5.4	Type of Infringement Notice issued by Local Government Authorities, 1990/91, Victoria	109
5.5	Average Value of Infringement Penalties by Type of Agency, 1990/91, Victoria	111
5.6	Top Ten Infringements by Value Sent to PERIN Court for Enforcement, 1990/91, Victoria	117
5.7	Warrants Issued by PERIN Court: Year of Warrant and Value of Unpaid Fines, 1988-92, Victoria	118
5.8	Referral to PERIN Court by Postcode Area, Victoria: Top Twenty Areas	122
6.1	Change in Enforcement Levels following increased Penalties introduced in 1987, Victoria	139
6.2	Parking Infringement Revenue and Expenditure 1992/93, Victoria	160
7.1	Fixed Penalty Levels, June 1992, Victoria	195
9.1	Speed Infringement Notices Issued by Traffic Camera Office, 1 July 1990 to 30 June 1991, Victoria	237
9.2	Traffic Infringement Notices: Recidivism, Number of Offences per Vehicle, December 1989 to 31 January 1992, Victoria	242
9.3	Traffic Infringement Notices: Recidivism, Number of Offences per Driver, December 1989 to 4 February 1992, Victoria	243
10.1	Victorian Penalty Scale: <i>Sentencing Act</i> 1991, s.109	267
10.2	Infringement Penalty, Maximum Statutory Penalty and Most Common Penalty Imposed in Court, 1991, Victoria	272-3

Table of Legislation and Cases

CANADA

Contraventions Act 1992: 10.3.6-10.3.9, 10.6.1, 10.7.3
s.4: 10.3.6
s.7: 10.3.8
s.8(3)-(5): 10.3.7
s.9: 10.3.7
s.12-14: 10.3.8
s.21(1)(a)-(c): 10.3.7
s.22-27: 10.3.7
s.29: 10.3.7
s.42(2): 10.3.8
s.43: 10.3.8
s.44: 10.3.7
s.37(2): 10.3.7
s.56: 10.3.8
s.58-60: 10.3.8
s.63: 10.3.7
s.65: 10.3.7
s.67: 10.3.7

COMMONWEALTH OF AUSTRALIA

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987
s.23(4): 3.6.1
Airports (Surface Traffic) Act 1960: 3.6.1
s.13: 3.6.1, 4.3.2
Child Support Act 1988
s.56: 3.6.1
Civil Aviation Act 1988
s.98(3)(p): 3.6.1
Close Corporations Act 1989
s.164: 3.6.1, 4.2.2
Commonwealth Electoral Act 1918
s.245: 3.6.1
Constitution 1901
s.71: 4.6.8, 10.6.1
Corporations Act 1989
s.31: 3.6.1, 4.2.2
Corporations Law
s.1313: 3.6.1, 4.2.2
s.1313(1)(c): 4.15.2
s.1314: 4.15.2
s.1316: 4.15.2
Crimes Act 1914
s.4B(3): 7.5.2
s.15A: 3.6.2
Crimes (Criminal Trials) Act 1993: 11.3.1
Customs Act 1901
Pt.XIII, Div.4: 10.3.4

Defence Act 1903
s.116ZD(2)(r): 3.6.1
Great Barrier Reef Marine Park Act 1975
s.66(1)(n): 3.6.1
Income Tax Assessment Act 1936
s.221NB: 3.6.1
s.221YHLA: 3.6.1
s.221ZDB: 3.6.1
s.221ZQA: 3.6.1
s.221YHZG: 3.6.1
Pt.VII: 10.3.4
Interstate Road Transport Act 1985
s.56(2)(b): 3.6.1
Judiciary Act 1903
s.68: 3.6.2
Migration Act 1958
s.181(1)(j): 3.6.1
National Parks and Wildlife Conservation Act 1975
s.71(2)(r): 3.6.1
Radiocommunications Act 1983
s.93(2)(d): 3.6.1, 10.7.2
Referendum (Machinery Provisions) Act 1984
s.45: 3.6.1
Service and Execution of Process Act 1992
Part 7: 4.9.7
Taxation Administration Act 1953
s.8ZE: 3.6.1

NEW SOUTH WALES

Insurance Act 1902
s.18B: 4.8.3
Justices Act 1902
Part IVB: 3.1.5
Local Government Act 1919: 3.1.1
s.270O: 3.1.1
Division 13B: 3.1.4
Local Government, Motor Traffic and Transport (Amendment) Act 1955: 3.1.1
Motor Traffic Act 1909
s.18A: 3.1.1
Motor Traffic (Amendment) Act 1961: 3.2.1, 3.2.2
Traffic Act 1909: 3.1.2
s.18(B)7: 3.1.3
Transport Act 1930
s.265: 3.1.1
Transport Administration Act 1988
s.117: 3.1.4
Transport Legislation (Repeal and Amendment) Act 1988: 3.1.4

NORTHERN TERRITORY

Criminal Code Act 1983
s.3: 10.3.10
s.20: 10.3.10
Pt.II: 10.3.10
Criminal Law (Regulatory Offences) Act 1983:
10.3.10

QUEENSLAND

Criminal Code Act 1899
s.3(1): 10.3.10
s.10: 10.3.10
s.22(3): 10.3.10
s.29: 10.3.10
s.31: 10.3.10
Justices Act 1886
Part IVA: 3.2.3
Regulatory Offences Act 1985: 10.3.10
s.5-7: 10.3.10
s.10: 10.3.10
Traffic Act 1949: 3.2.1
Pt.VIB: 3.2.3
s.44F: 3.2.3
s.44R: 3.2.3
s.44T: 3.2.3
Regulations
Traffic Regulations 1962: 3.2.1
Traffic Act (Amendment) Act 1960: 3.2.2
Traffic Act (Amendment) Act 1990: 3.2.3
Traffic Acts and Another Act Amendment
Act 1956: 3.2.1

SOUTH AUSTRALIA

Acts Interpretation Act 1915
s.28a: 10.7.2
Commercial Motor Vehicles (Hours of
Driving) Act 1973: 3.3.5
Controlled Substances Act 1984
s.45a(2): 3.3.4
s.45a(5): 3.3.5
Regulations
Controlled Substances Act Regulations
1984: 3.3.4
Controlled Substances Act Amendment Act
1986: 3.3.4
Dangerous Substances Act 1979: 3.3.5
Dog Control Act 1964
s.64: 3.3.5
Dog Control Act 1979
s.64: 3.3.3
Education Act 1972: 3.3.5
Enfield General Cemetery Act 1944: 3.3.5
Expiation of Offences Act 1987: 3.3.5
s.6(5): 3.3.6
s.7: 3.3.6

Explosives Act 1936: 3.3.5
Fair Trading Act 1987
s.89: 3.3.5
Financial Institutions Duty Act 1983: 3.3.5
Industrial Conciliation and Arbitration Act
1972: 3.3.5
Land Tax Act 1936: 3.3.5
Lifts and Cranes Act 1985: 3.3.5
Local Government Act 1934
s.794a: 3.3.1, 3.3.7
Regulations
Local Government (Expiation of Offences)
Regulations 1991: 3.3.1
Local Government Act Amendment Act 1957:
3.3.1
Local Government Act Amendment Act
(No.2) 1978: 3.3.1
Motor Vehicles Act 1959
s.64: 3.3.3
Pastoral Land Management and
Conservation Act 1989: 3.3.5
Payroll Tax Act 1971: 3.3.5
Police Act 1936
s.149a: 3.3.1
Police Act Amendment Act 1938: 3.3.1, 3.3.2
Police Offences Act 1953
s.64: 3.3.1
Police Offences Act Amendment Act 1981:
3.3.3
Regulations
Summary Offences (Traffic Infringement
Notice) Regulations 1981: 3.3.3
Public and Environmental Health Act 1987:
3.3.5
Road Traffic Act 1961
s.79b: 9.2.4
South Australian Metropolitan Fire Services
Act 1936: 3.3.5
Stamp Duties Act 1923: 3.3.5
Summary Offences Act 1953
s.64: 3.3.3
Tobacco Products Control Act 1986: 3.3.5
Unclaimed Moneys Act 1891: 3.3.5
Valuation of Land Act 1971: 3.3.5
Waste Management Act 1987
s.43: 3.3.5
West Terrace Cemetery Act 1976: 3.3.5

TASMANIA

Dog Control Act 1987
s.67(b): 3.4.4
Hobart Corporation Act 1954: 3.4.1
s.201A: 3.4.1
Local Government Act 1962
s.703-708: 3.4.1
Local Government (Highways) Act 1982

s.97(4): 3.4.2
 s.100: 3.4.2
 s.101: 3.4.2
 Metropolitan Transport Act 1954: 3.4.4
 s.43C(8): 3.4.4, 4.6.10
 Metropolitan Transport Amendment Act
 1988: 3.4.4
 Traffic Act 1925: 3.4.3
 s.43H(6): 3.4.4
 Traffic Act 1971
 Pts. IVA, IVB: 3.4.3
 s.43H(6): 3.4.3, 4.6.10
 s.43H(7): 3.4.3
 Traffic (Infringement) Notices Act 1978: 3.4.4

UK

Imperial Acts Application Act 1980
 Pt.II, Div.3: 4.16.2
 Motor Car Act 1903
 s.9 :1.3.2, 1.5.1
 Road Traffic Act 1974: 2.2.3
 Road Traffic Act 1991: 2.2.13,
 2.2.14, 10.2.3
 Pt.II: 10.2.3
 Road Traffic and Roads Improvement Act
 1960: 2.2.1-2.2.2
 Road Traffic Offenders Act 1988:
 2.2.10
 s.75-77: 2.2.14
 Road Traffic Regulation Act 1967: 8.5.3
 Transport Act 1982: 2.2.10

USA

Constitution
 Fifth Amendment: 2.1.9
 Model Penal Code (Proposed Official Draft),
 1962
 s.1.04: 2.1.4, 10.3.2
 s.2.05(1): 10.3.2, 10.9.1
 s.2.05(2): 10.3.2
 s.2.05(2)(a): 10.3.2
 s.6.03(4)-(6): 10.3.2

VICTORIA

Associations Incorporation Act 1981: 4.1.4
 s.50B: 4.2.2
 Building Control Act 1981
 s.178A-C: 4.2.1, 4.3.3, 4.9.4
 Business Names Act 1962: 4.1.4
 s. 28A: 4.2.2
 Children and Young Persons Act 1989
 s.3(1): 4.14.1
 s.127: 4.14.1
 s.151: 7.6.1
 s.155: 4.14.1
 s.158: 4.14.2

Classification of Films and Publications Act
 1990
 s.69: 10.7.4
 Companies (Acquisition of Shares)
 (Victoria) Code: 4.1.4
 s.53A: 4.2.2
 Companies (Application of Laws) Act 1981
 Regulations
 Companies (Application of Laws) (Penalty
 Notice) Regulations 1987: 4.2.2
 Companies (Victoria) Code: 4.1.4
 s.570A: 4.2.2
 Conservation, Forests and Lands Act 1987
 s.91: 4.2.1, 4.3.3, 4.9.4
 s.92(1): 4.12.1
 s.92(3): 4.12.1
 s.93(1): 4.10.1
 s.93(2): 4.10.1
 s.93(5): 4.12.1
 s.94: 4.2.1, 4.3.3, 4.9.4
 Control of Weapons Act 1990
 s.9: 10.7.4
 Controlled Substances Act 1984
 s.45a(2): 10.2.2
 Corrections Act 1986
 s.57: 6.9.7
 s.57(5): 4.11.2
 Crimes Act 1958: 10.1.1
 s.322C(4): 10.1.1
 s.325: 10.1.1
 s.456A
 Dangerous Goods Act 1985
 s.45B: 4.2.1, 4.3.3, 4.9.4
 Dog Act 1970: 4.1.4
 s.22A: 4.2.1, 4.3.3, 4.9.4
 s.4(2): Table 10:2
 s.22A(4): 4.12.1
 s.22A(5): 4.12.1
 s.22A(6)(a): Table 10:2
 s.22A(9): 4.10.1
 s.22A(10): 4.10.1
 s.22A(12): 4.12.1
 Drugs, Poisons and Controlled Substances
 Act 1981
 s. 71-73: 10.1.1
 Environment Protection Act 1970: 4.1.4
 s.27(1A): Table 10:2
 s.63B: 4.2.1, 4.3.3, 4.9.4, Table 10:2
 s.63C: 4.12.1
 s.63D: 4.10.1
 Schedule: Table 10:2
 Equipment (Public Safety) Act 1994: 10.5.4
 s.27: 4.2.1, 4.3.3, 4.9.4
 Firearms Act 1958
 s.32(7): 10.1.1
 s.37: 10.7.4

- s.42: 10.7.4
 Fisheries Act 1968: 10.7.4
 Fruit and Vegetables Act 1958
 s.53A: 4.2.1, 4.3.3, 4.9.4
 Futures Industry (Victoria) Code: 4.1.4
 s.149: 4.2.2
 Gaming Machine Control Act 1991
 s.151: 4.2.1, 4.3.3, 4.9.4
 Housing Act 1983: 4.1.4, 4.3.2, 4.3.3
 Sch.5, cl.5: 4.2.1, 4.9.4
 Judicial Studies Board Act 1990: 10.4.2
 s.5: 10.4.2
 Liquor Control Act 1989
 s.156: 10.7.4
 Litter Act 1987: 4.1.4
 s.5: 4.3.2, Table 10:2
 s.6: 4.3.2
 s.9: 4.2.1, 4.3.3, 4.9.4, 4.14.1, Table 10:2
 s.9(4)(b): 4.10.1
 s.14(2): 4.4.6
 s.14(3): 4.4.6
 Local Government Act 1958
 s.555A: 4.1.5, 5.6.4
 Local Government Act 1989
 s.40: 4.2.1, 4.9.4
 s.117: 4.2.1, 4.3.3, 4.9.4, 5.1.2, 5.3.6
 s.117(3): 4.4.1
 Local Government Amendment Act 1959:
 4.1.5
 Lotteries Gaming and Betting Act 1966
 s.73: 10.7.4
 s.82: 10.7.4
 Magistrates' Court Act 1989
 s.26(4): 4.4.2, 4.6.4, 6.9.21, 6.11.5
 s.37: 4.1.4
 s.52: 6.9.4
 s.53(1A): 10.1.1, Table 10:1
 s.58(1): 6.9.11
 s.58(2): 4.9.7, 5.7.2, 6.9.11, 6.9.12
 s.58(3): 4.9.7, 5.7.2
 s.73: 7.5.1
 s.73(1): 6.9.11
 s.74: 7.5.1
 s.82A-82F: 4.9.7, 6.9.16, 7.5.1
 s.83-93: 4.6.6
 s.98: 4.9.7, 6.11.6
 s.99: 4.9.1
 s.131: 6.9.3
 Sch.2: 4.9.4
 Sch.2, cl.5: 4.1.4
 Sch.4: 10.1.1
 Sch.7: 4.9.1
 Sch.7, cl.2: 4.9.7
 Sch.7, cl.3: 4.9.5
 Sch.7, cl.3(6): 4.9.5
 Sch.7, cl.4: 4.9.6
 Sch.7, cl.5: 4.9.7
 Sch.7, cl.5(1)(a): 4.9.7, 6.9.7
 Sch.7, cl.6: 4.9.7
 Sch.7, cl.6(2): 4.9.3, 4.9.7
 Sch.7, cl.7: 4.9.7
 Sch.7, cl.8(1)(a): 4.11.2
 Sch.7, cl.8A: 4.9.7, 6.9.16, 7.5.1
 Sch.7, cl.9(1)(a): 4.9.7, 4.10.1
 Sch.7, cl.9(1)(b)-(d): 4.9.7
 Sch.7, cl.9(2): 4.9.7, 4.10.1
 Sch.7, cl.10: 4.9.8, 6.11.5
 Sch.7, cl.10(3): 4.9.8
 Sch.7, cl.10(4): 4.9.8
 Sch.7, cl.11-cl.13: 4.9.9
 Sch.7, cl.15-cl.16: 4.9.10
Regulations
 Magistrates' Court (Fees, Costs and
 Charges) Regulations 1990
 r.8, Item 33: 4.9.5
 r.8, Item 34: 4.9.6
 r.8, Item 35: 4.9.7
 Magistrates' Court General (Amendment)
 Regulations 1994
 r.11(2): 4.2.1
 Magistrates' Court General Regulations
 1990
 r.402: 4.9.6
 r.1103: 3.6.2, 4.3.2, 4.9.1, 4.9.4
 r.1104: 4.2.2, 4.9.1
 Magistrates' Courts (Penalty Enforcement
 by Registration of Infringement
 Notices) Rules 1986: 4.9.1
 Magistrates (Summary Proceedings) Act 1975
 Pt.VIIA: 4.1.9
 s.84-89: 1.3.2
 s.84(9): 4.1.3
 s.84(10): 4.1.3
 s.88: 4.1.4
 s.89: 4.1.4
 s.89S-89ZE: 4.9.1
 Sch.2: 4.1.4
 Magistrates (Summary Proceedings)
 (Amendment) Act 1985: 4.1.9
 Magistrates (Summary Proceedings) (Sheriff)
 Act 1989: 6.9.11
 Marine Act 1988
 s.17(1): 4.14.1
 s.60: 4.2.1, 4.3.3, 4.9.4
 s.60(3)-(4): 4.12.1
 s.61(1)-(2): 4.10.1
 s.61(4): 4.12.1
 s.62: 4.13.2
Regulations
 Marine (Procedures) Regulations 1989:
 4.3.3
 Mineral Resources Development Act 1990

- s.106: 4.2.1, 4.9.4
- Motor Boating Act 1961: 4.1.4
- Motor Car (Photographic Detection Devices) Act 1986: 4.4.4
- Occupational Health and Safety Act 1985
 - s.47(3): 10.1.1
 - s.47A: 4.2.1, 4.9.4
 - s.47A(4)-(5): 4.12.1
 - s.47A(6): 4.10.1
- Parking of Vehicles Act 1953: 4.1.1
 - s.3: 4.1.2
- Penalties and Sentences Act 1985: s.15: 6.9.13
- Petroleum (Submerged Lands) Act 1982
 - s.133(1)-(2): 10.1.1
- Planning and Environment Act 1987: 4.1.4
 - s.130-132: 4.2.1, 4.3.3, 4.9.4
- Road Safety Act 1986: 4.3.2
 - s.3: 4.3.2, 4.4.2, 4.6.7, 9.5.3, 10.6.2
 - s.18(1): Table 10:2
 - s.18(1)(a): Table 10:2
 - s.25: 4.6.10, 4.7.1
 - s.25(3): 4.7.1
 - s.25(3B): 4.7.1
 - s.25(3D): 4.7.1
 - s.26(1): 4.6.6, 4.7.1, 4.7.4
 - s.26(2): 4.7.1
 - s.26(4): 4.9.6
 - s.26(7): 4.7.1
 - s.28: 4.6.10
 - s.28(1): 4.4.3
 - s.28(1)(a): 4.3.2
 - s.28(6): 4.4.3
 - s.49(1): 4.3.2
 - s.50A(1): 7.2.5
 - s.66: 4.3.5
 - s.66(1): 4.4.3
 - s.66(3): 4.4.3, 6.11.2
 - s.66(3A): 4.4.2, 6.11.5
 - s.66(5): 4.4.2
 - s.72(1): Table 10:2
 - s.72(1)(b): Table 10:2
 - s.74(1): 6.11.3
 - s.76(1): 4.4.8
 - s.77(5): 6.8.2
 - s.85-90: 4.1.9
 - s.85: 4.4.2, 4.4.5
 - s.86(1)-(2): 4.4.2
 - s.86(3): 4.4.2, 4.4.5, 6.11.2
 - s.86(3A): 6.11.5
 - s.86(4A): 4.4.2
 - s.86(5): 4.4.2
 - s.86(25): 4.6.1
 - s.87: 4.2.1, 4.3.5, 4.9.4, 9.2.2
 - s.88: 4.2.1, 4.3.5, 4.9.4, 9.1.5, 9.2.2
 - s.88(1): 9.2.2
 - s.88(1A): 4.5.1, 4.12.1
 - s.88(2): 4.6.2
 - s.88(3): 4.12.1
 - s.88(3A): 4.12.1
 - s.88(4): 4.12.1
 - s.88(6): 4.4.8
 - s.89(1)-(3): 4.10.1
 - s.89(4): 4.12.1
 - s.89(5): 4.7.1, 4.9.8
 - s.89A: 4.6.1, 4.6.3, 4.6.7, 7.2.5, 9.5.3, 10.6.1
 - s.89A(2): 4.6.1, 4.6.6
 - s.89A(5): 4.6.3
 - s.89A(5)(c): 4.6.3
 - s.89A(6): 4.6.4
 - s.89A(7)(a): 4.6.5
 - s.89A(7)(b): 4.6.5
 - s.89A(7)(c): 4.6.5, 4.12.1
 - s.89A(8): 4.6.5
 - s.89AA: 4.6.1
 - s.89B(1): 4.6.3
 - s.89B(2): 4.6.3
 - s.89B(3): 4.6.4
 - s.89B(4): 4.6.4
 - s.89B(3)(g): 4.6.5
 - s.89C: 4.6.1, 7.2.5, 10.7.4
 - s.89D: 4.6.2
 - s.89DA: 4.6.2
 - s.89DB: 4.6.2
 - s.89E: 4.9.5, 4.9.7, 6.11.5
 - s.90: 4.6.7, 4.13.2, 9.5.1, 9.5.3
 - s.93: 4.5.1
 - Sch.1: 7.4.6
 - Sch.1, Col.2: 4.6.1, 10.7.4
 - Sch.5: 7.4.6
 - Sch.5, Col.2: 4.6.2
 - Regulations*
 - Road Safety (Procedures) Regulations 1988
 - r.223(1): Table 10:2
 - r.227(3): 4.7.3, 6.11.7
 - r.228: 4.7.4
 - r.230-233: 4.7.1
 - Pt.4: 9.4.2
 - r.406(2)(c): 4.3.4
 - r.410: 9.4.2
 - r.411(d): 9.4.2
 - r.412: 9.4.2
 - r.441(d): 8.3.2
 - Pt.5: 9.4.2
 - r.701: 4.5.1
 - r.702(2)(c): 4.3.4, 4.3.5
 - r.803: 4.5.1
 - r.804: 4.3.4, 4.3.5
 - r.806: 4.10.1
 - r.903: 6.8.2
 - Sch.3: 4.7.1
 - Sch.6: 9.2.2, Table 10:2

- Road Safety (Procedures) (Amendment No.3) Regulations 1989: 6.9.16
- Road Safety (Traffic) Regulations 1988
 r.202: 4.4.8
 r.204(3): 4.12.3, 5.3.2
 r.401(1): Table 10:2
 r.703-705: 4.4.8
 r.803(1): Table 10:2
 r.1001: 10.7.1
 r.1101(1)(b): 5.6.4
 r.1506: Table 10:2
 Sch.6: 4.2.1
- Road Safety (Vehicles) Regulations 1988
 r.35: 6.11.2
 r.215: 6.11.3
 r.217-r.218: 6.11.3
 r.222: 6.11.3
 r.404A: 4.8.1, 4.15.1
 r.404B: 4.8.2, 4.15.1
 r.409: 4.8.2
- Road Safety (Miscellaneous Amendments) Act 1989
 s.14: 4.7.2
 s.18: 4.6.1, 11.3.7
- Road Safety (Photographic Detection Devices) Act 1988
 s.4: 4.4.4
- Road Traffic Act 1958: 4.1.3
 s.11A: 4.1.5
 Sch.2: 4.1.7
Regulations
 Road Traffic (Infringements) Regulations 1960: 4.1.7
- Road Traffic (Infringements) Act 1959: 10.7.1
- Road Traffic (Infringements) Act 1965: 4.1.6, 4.1.8
 s.6: 4.1.7
- Securities Industry (Victoria) Code: 4.1.4
 s.141A: 4.2.2
- Sentencing Act 1991
 s.3: 4.11.2
 s.5: 6.10.2
 s.5(1)(d): 10.2.1
 s.7: 4.6.10, 6.10.2, 10.6.1
 s.8: 4.6.10, 10.6.1
 s.16(2): 6.9.13
 s.50(6): 6.11.6
 s.50(7): 6.11.6
 s.51: 10.7.2
 s.55(d): 4.11.2
 s.62: 4.11.2
 s.62(9): 4.11.2
 s.62(10): 4.11.2
 s.63(1): 4.9.7
 s.89: 4.6.10
 s.90: 4.6.10
- s.100: 10.7.2
 s.108: 4.16.1
 s.109: 7.5.2, 10.1.1, 10.4.2, 10.5.3, 10.7.1, 10.5.3, 10.10.1
 s.109(2): 7.4.2
 s.110: 10.7.1
 s.112: 10.1.1, Table 10:1
 s.112(2): 10.1.1
 s.113: 10.1.1
- Summary Offences Act 1966: 10.1.1
 s.33: 10.7.4
- Summary Offences Act 1986
 s.52(1): 6.11.3
- Tobacco Act 1987
 s.38: 4.2.1, 4.3.3, 4.9.4
Regulations
 Tobacco Regulations 1987
 r.5: 4.3.5
- Transport Accident Act 1986
 s.65-66: 4.2.1
- Transport Act 1983: 4.1.9, 4.3.2
 s.208-215: 4.1.9
 s.208: 4.4.2
 s.209: 4.4.2
 s.212: 4.2.1, 4.9.4
 s.212(3)-(4): 4.12.1
 s.213(1)-(2): 4.10.1
 s.213(4): 4.12.1
 s.214: 4.13.2
 s.221(3): Table 10:2
 s.223D: 10.7.4
Regulations
 Transport (Infringements) Regulations 1990
 r.202: Table 10:2
- Transport (Public Road and Rail Vehicle) Regulations 1984
 r.48(2): Table 10:2
- Weights and Measures Act 1958: 4.1.4
- Wrongs Act 1958
 s.9-11: 10.1.1

WESTERN AUSTRALIA

City of Perth Parking Facilities Act 1956
s.21: 3.5.2

Justices Act 1902
s.171BB: 3.5.4, 4.14.1, 7.6.1
s.171BH: 3.5.4
Pt.VIBA: 3.5.4

Justices Amendment Act 1988
s.10: 3.5.4

Justices Amendment Act 1991
s.11-21: 3.5.4

Road Traffic Act 1974
s.102: 3.5.3

Traffic Act 1919
s.74A: 3.5.1

Traffic Act Amendment Act 1955
s.2: 3.5.1

CASES

Argersinger v. Hamlin 407 U.S. 25 (1972):
2.1.3

A-G of Queensland v. Holland (1915) 15
C.L.R. 46: 6.9.3

Attorney-General v. Abrahams (1928) 1
A.L.J. 388: 10.3.4

Baldwin v. New York 399 U.S. 66 (1970):
2.1.3

Bastable v. Little [1907] 1 K.B. 59: 6.11.3

Betts v. Stevens [1910] 1 K.B. 1: 6.11.3

City of Chicago v. Crane 49 N.E. (2d) 802
(1943): 2.1.1

Clyne v. East [1967] 2 N.S.W.R. 483: 4.6.8

Foster [1984] 3 W.L.R. 401: 4.6.8, 4.16.2

Fraser v. Spencer-Gardner (1990) 12 Motor
Vehicle Reports 215: 4.4.5

Frost v. Railway Commission 271 U.S. 583,
603 (1926): 2.1.1

Hay v. Justices of Tower Division of London
(1890) 24 Q.B.D. 561: 4.16.2

Hinchcliffe v. Sheldon [1955] 3 All E.R. 406:
6.11.3

Lord Advocate v. Aberdeen Corporation
[1977] S.L.T. 234: 2.2.1

Mannix v. Chief Commissioner of Police,
Supreme Court of Victoria, Unreported, 29
June 1992: 4.3.4, 4.6.3

Miles and Green (1983) 33 S.A.S.R. 211: 4.6.8

Munday v. Gill (1930) 44 C.L.R. 38, 86-87:
10.1.1

Newman Ex parte; re Fischer and McInerney
[1969] 1 N.S.W.R. 538: 4.9.7

Oliviera v. Roads Corporation & Scott,
Supreme Court of Victoria, Unreported, 19
February 1991: 4.6.6

Palling v. Corfield (1970) 123 C.L.R. 52:
4.6.8, 10.6.1

Sheridan [1937] 1 K.B. 223, 229: 4.6.8

Shipp v. Donkin (1981) 26 S.A.S.R. 340: 3.3.7
Standard Insurance Company Ltd v.

Macfarlan [1940] V.L.R. 74: 4.16.2

Tate v. Short 401 U.S. 395 (1971): 2.1.8

Veen (No.1) (1979) 143 C.L.R. 458: 6.3.1

Veen (No.2) (1988) 164 C.L.R. 465: 6.3.1

Willing v. Ewens (1973) 7 S.A.S.R. 231: 3.3.7

Willing v. Watson (1974) 8 S.A.S.R. 487:
3.3.2, 3.3.7

Young v. Owen [1972] A.L.R. 671: 6.11.3

Background

1.1 Introduction

1.1.1 The main business of criminal justice is not serious crime.¹ Nor is it crime which is prosecuted in courts. For every *one* offence for which a charge was brought to trial in the Supreme Court or County Court of Victoria in 1991,² *forty-five* more came before the Magistrates' Court³ and a further *three hundred and thirty-seven*⁴ were handled administratively by way of an 'on-the-spot ticket'. Even if superior court matters are left out, the ratio of 'on-the-spot tickets' to conventional summary charges exceeds 7:1.

1.1.2 'On-the-spot tickets',⁵ or 'infringement notices' as they are more properly called, are a relatively new, largely unexamined, and rapidly expanding feature of modern criminal justice. For example, in Victoria in 1965 the number of traffic offences subject to on-the-spot fines was eleven. The penalty was either £1 or £2. By 1985 the number had grown to 124. The 1992 Victoria Police listing of on-the-spot offences shows more than 200 traffic related infringements out of a total of 387 offences with penalties ranging from \$15 to \$900.⁶ At least 45 also result in licence cancellation or demerit points. But on-the-spot fines may also be imposed by other government and semi-government departments. The total number

¹ Mukherjee S., *Crime Trends in Twentieth Century Australia*, Australian Institute of Criminology and Allen & Unwin, 1981, 40-44, 84-86.

² Victoria Attorney-General's Department, Court Management Division, *Sentencing Statistics Higher Criminal Courts Victoria 1991*, Table 2 - *Disposition of offences* (6945 counts).

³ Victoria Attorney-General's Department, Court Management Division, *Sentencing Statistics Magistrates' Courts Victoria 1991*, Table CR 4.4 - *Disposition of offences and type of penalty imposed for each offence charged* (312,900 counts).

⁴ 2342913 infringement notices issued 1 July 1990-30 June 1991, *see below* 5.1.4.

⁵ Unlike the situation in France, 'on-the-spot' tickets in Australia and the United Kingdom do not have to be paid on the spot. Twenty-eight days are allowed for payment.

⁶ Victoria Police, *Penalty Notice Offences and Codes*, Effective 15 June 1992, V.P. Form 508A.

of offences capable of being dealt with by way of infringement notices as shown in the PERIN Court offence code listing as at 2 October 1991 was 785. Even more fall outside the PERIN enforcement scheme.⁷

1.1.3 The infringement notice system provides for punishment without prosecution. Citizens are encouraged to accept this form of punishment as a matter of expediency. The expediency benefits the State as much as the citizen. The State, through its public agencies, gains a stream of low-cost penal revenue without overwhelming its courts with routine cases. The citizen trades the legal right to a hearing for a swifter form of disposal; a fixed but discounted flat rate⁸ monetary penalty; and the promise of a clean slate. But the ‘on-the-spot ticket’ is a measure whose evolution has not ended. It is showing signs of shifting from regulatory offences to ‘real’ crimes⁹ and transmuting itself from a non-conviction to a conviction model. These changes have been largely unnoticed. The State is beginning to renege on the express bargain of the original model that, if alleged offenders pay up quietly, they can avoid the stigma of a conviction. Now the offender, particularly the motorist, may be subject to multiple sanctions, including that of becoming a convicted person.

1.1.4 Although the individualising of treatment in sentencing for conventional crime has been much promoted over the last few decades, tailoring punishment to the condition of the particular wrongdoer has no place in the high volume processing of offenders through ‘on-the-spot’ tickets and infringement notices. Not only are the offender’s personal circumstances not taken into account in setting the sanction, the system finds it almost impossible to adjust the totality of punishment where there is multiple offending by the same person in the course of the same event or a series of events.¹⁰ With conventional punishment, the rules relating to the concurrency of sentences and the procedures for taking unprosecuted offences into account at sentencing are designed to moderate the excesses of multiple sentences, but these have no application to the infringement notice system, nor is there any equivalent form of amelioration.

⁷ PERIN—Penalty Enforcement by Registration of Infringement Notice (*See below* 4.9).

⁸ I.e. one that does not vary according to the offender’s income, wealth, or prior offending.

⁹ *See*, for example, South Australia’s Cannabis Expiation Notice Scheme (*Controlled Substances Act* 1984, s.45a(2) as amended by *Controlled Substances Act Amendment Act* 1986) and recent proposals in the Australian Capital Territory for the introduction of an ‘offence notice’ scheme involving \$100 on-the-spot fines for offences of street fighting, misbehaviour at public meetings, possession of offensive weapons, offensive behaviour, indecent exposure, noise abatement offences and public mischief: Australian Capital Territory Legislative Assembly, *Report No. 1 of the Standing Committee on Legal Affairs: Crimes (Amendment) Bill 1993*, Canberra, May 1993. This Bill was not passed.

¹⁰ Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, para. 5.7.

1.1.5 Five main forces contribute to the emergence and expansion of the ‘on-the-spot’ ticket system in Australia: first, the influence of measures taken in 1938 in South Australia to regulate the discretion exercised by municipalities to compromise actual or threatened summary prosecutions on payment of a sum of money; secondly, the ongoing simplification, in this country and in the United States of America, of the procedural steps in summary hearings as prosecutors and courts tried to cope with expanding case numbers; thirdly, an explosion in the number of motor vehicle related offences; fourthly, technological advances in the means of detecting and prosecuting such offences and fifthly, gains to revenue.

1.2 Expiation in South Australia

1.2.1 South Australia’s ‘legalisation’ of the practice of out of court settlement of summary prosecutions by defining, for the first time, the maximum permissible payment and the types of offence for which such compromises were permitted was a significant step in the evolution of the on-the-spot ticket system in this country.¹¹ In 1938, a Bill was introduced into the South Australian Parliament to remove the statutory obligation of local councils to contribute to the cost of maintaining police in their areas. While this served to ease the financial burden on municipalities, they wanted to retain their share of any fines imposed as a result of prosecutions initiated by local police. In the course of the debate over amendments designed to protect this source of local revenue, a government member¹² drew attention to a practice which had grown up whereby, after by-law offences had been reported by police, council officers invited the alleged offenders to settle the matter by payment of a sum of money to the council in lieu of being prosecuted.¹³ The offer of such a compromise and the amount sought by way of settlement was entirely discretionary.

1.2.2 According to a report from the South Australian parliamentary draughtsman, this practice of ‘voluntary payments’ commenced when the Adelaide City Council applied it to breaches of by-laws dealing with parking offences, jaywalking and related misconduct. It soon spread to other councils and to offences of a more serious character, including those containing elements of fraud.¹⁴ The government

¹¹ See below 3.3.1.

¹² Mr Walter Gordon Duncan.

¹³ See below 3.3.2. *South Australian Parliamentary Debates* (Legislative Assembly), 1938, Vol. 1, 1293-1302.

¹⁴ *South Australian Parliamentary Debates* (Legislative Assembly), 1938, Vol. 1, 1294.

of the day took the view that the procedure should be brought under statutory control. The *Police Act Amendment Act* 1938 was passed to ban the former unregulated practice, and to introduce a new statutory scheme whereby only prescribed minor offences could be disposed of consensually without the need for any judicial involvement. The legislation, for the first time, described the arrangements as an act of *expiation*.¹⁵ The amount of the expiatory payment was to be regulated; the level had to be less than the normal maximum penalty, and the proceeds would inure for the benefit of the municipality. However, the right of alleged wrongdoer to insist upon a hearing remained intact.

1.3 Expedition of summary proceedings

1.3.1 While the discretion to compromise minor summary matters for cash was being formalised, summary criminal procedure was itself evolving in response to the expanding number of cases reaching the courts. Procedure in the lower courts is already a statutory simplification of the normal trial process. Its elements are frequently re-tuned to help courts dispatch business in minimum time and with the least inconvenience to the parties. Whatever might be the procedural niceties needed to guarantee deliberation and fairness in the determination of guilt and allocation of punishment, the full hearing has repeatedly given way to shorter forms of adjudication in an ongoing effort to cope with the volume of cases reaching the magistrates' courts and the high proportion disposed of on guilty pleas. These alternatives run cases through court on paper. Personal appearances by the parties are discouraged, despite a theoretical right of access to the courts for a full hearing if requested. This is reserved for the accused as a safeguard against unwarranted prosecution and unjustified punishment, but the courts could not cope if it were exercised on a significant scale.

1.3.2 Although there are variations from jurisdiction to jurisdiction, there is a recognisable sequence in the form taken by the simplification. First, there is the preservation of the normal requirement of notice of accusation, particularly for those not immediately apprehended in the course of offending. The original *Motor Car Act* 1903 (UK), s.9, declared that before any summons could be issued in respect of certain motoring offences, the alleged offender was entitled to a warning or notice of the intended prosecution at the time the offence was committed, or written

¹⁵ *South Australian Parliamentary Debates* (Legislative Assembly), 1938, Vol. 1, 1449-1453. See also *South Australian Parliamentary Debates* (Legislative Council), 1938, Vol. 1, 1527-1528.

notice had to be given to the driver or registered owner of the vehicle.¹⁶ Second, the summonsed defendant was granted the right to *opt out* of a summary hearing in open court in order to allow the matter to be dealt with in chambers on written evidence alone. In summary matters, it had always been possible to proceed to a determination of guilt and sentence in the absence of the defendant, but in order to relieve the informant from having to attend court (particularly in cases in which the defendant was unlikely to appear), the information and summons charging the offence was altered to allow space for a brief description of the supporting evidence. This could then be relied upon by the court, in the absence of the parties, as the factual basis on which its jurisdiction in relation to both liability and sentence could be exercised. In Victoria, this was known as the ‘alternative procedure’.¹⁷

1.3.3 Because of poor responses by defendants to the invitation to opt out, the third stage saw reliance on a presumption that certain classes of summary accusation were to be concluded in the absence of the defendant unless the latter formally *opted in*. The defendant’s inertia now militated against the holding of a hearing in open court. The matter still required judicial determination, but this occurred in chambers relying on the documents then before the magistrate. He or she had to make an independent adjudication of guilt and fix the sentence, even though the result was highly predictable because of the repetitious nature of the cases coming before the court. However, at least under Victorian law, the only major sanction that could be applied at such hearings was that of a fine on conviction. A custodial sentence could only be awarded at an open hearing.

1.3.4 The fourth development was the introduction of statutory power to issue notices of an administrative nature, ahead of any summons which might issue, inviting the potential defendant to avert formal court proceedings by an act of *expiation* in the form of a money payment. Compliance betokened consent to use of this non-judicial process. Any defendant who still wished to dispute liability, or who hoped for a personalised sanction, could still opt back into the judicial system for a hearing. This could be readily done by simply declining to pay the suggested amount, thus forcing the informant to decide whether to issue a summons or abandon the matter.¹⁸ Although some Australian developments on this front were apparently modelled on North American arrangements for the imposition of administrative penalties for traffic

¹⁶ The first Victorian *Motor Car Act* 1909, though based on the English Act, did not include this requirement.

¹⁷ Formerly available under *Magistrates (Summary Proceedings) Act* 1975, s.84-89, since repealed.

¹⁸ Under some forms of infringement notice, a formal objection is now needed.

violators, in many United States jurisdictions the notice handed to the defendant is an instant summons, with the defendant being invited to waive his or her right to a hearing by making a voluntary payment ahead of the hearing date.¹⁹

1.3.5 Since the fixed penalty was not imposed by a court under the Australian expiatory notice system, there was no immediate sanction for non-payment. If payment was not made, the informant had to withdraw the infringement notice and proceed afresh by a conventional charge and summons.²⁰ This brought the matter to court, but the scale of defaulting made this option unmanageable. Sheer numbers created insuperable difficulties. This led to the fifth stage. If the offer of expiation was ignored, the obligation to initiate formal judicial proceedings and to conduct a hearing was circumvented by new enforcement measures which allowed the demand for expiation to be treated as though it were already an unpaid judicially imposed fine. This was done by statutory arrangements whereby the fact of non-compliance with the 'voluntary' expiatory payment could, after a further courtesy reminder, be registered with the Magistrates' Court to be enforced as though the fixed penalty were a conventionally ordered fine. This is the basis of Victoria's PERIN system (Penalty Enforcement by Registration of Infringement Notice) and New South Wales SEINS (Self Enforcing Infringement Notice System) and similar ones in Western Australia, Queensland and the United Kingdom.

1.3.6 The most recent stage, introduced in Victoria in 1989, is one which involves recording a conviction and imposing other sanctions, such as immediate loss or suspension of driver's licence, despite the fact that no charge has been filed, no judicial determination of guilt has been made, and the offence has been apparently expiated by payment of the fixed sum demanded. This most recent form of 'licence loss infringement' is used for moving vehicle offences of a more serious kind where the authorities wish to use the on-the-spot ticket as a 'prior conviction' in order to expose the offender to escalated penalties as a recidivist if apprehended again and charged and prosecuted in conventional proceedings. If the offender objects to this procedure, a full summary hearing can be held.

1.4 Growth in motor vehicle ownership

1.4.1 Criminal justice 'on-the-spot' now affects most adult citizens in their daily lives. It regulates the machinery of their mobility. Its primary focus is motor vehicles and other forms of transport. The majority of road

¹⁹ See below 2.1.4.

²⁰ Including a summons making use of the simplified 'alternative procedure', see above 1.3.2.

traffic offences for which any official action is taken are dealt with by way of a notice inviting the payment of a fixed penalty set out in an infringement notice rather than a summons to court. The post-war expansion in the number of motor vehicles on the road, the volume of traffic movement and mileage covered, and the consequential increase in the workload of courts of summary jurisdiction in dealing with motoring offences has, more than anything else, triggered this major departure from conventional forms of criminal prosecution. Though large numbers of road traffic offences, particularly minor ones, go undetected, sufficient do come to official attention to amount to a major problem in criminal justice administration.

1.4.2 The growth in registered motor vehicle ownership proportionate to population has been massive. As shown in Table 1.1 below, in Victoria alone the rate has risen from 42 vehicles per 1000 population in 1925 to 604 per 1000 of the population in 1992. It has almost doubled every twenty years. As at 30 June 1992 there were 2.6 million motor vehicles currently registered in Victoria, with a further 72 200 motorcycles on the register.

Table 1.1
Motor Vehicles per 1000 Population, 1925-92, Victoria²¹

Year	Motor Vehicles on register	Population Victoria 000's	Vehicles per 1000
1925	70191	1684	42
1930	154482	1792	86
1935	177970	1841	97
1940	240912	1914	126
1945	235359	2015	117
1950	369647	2237	165
1955	599954	2546	235
1960	782312	2888	271
1965	1037288	3195	325
1970	1300174	3482	373
1975	1603300	3800	438
1980	1971700	3930	502
1985	2354000	4140	568
1990	2584200	4395	588
1991	2703000	4439	609
1992	2684800	4448	604

1.4.3 With the growth in the number of cars on the road came an explosion in the number of offences arising out of the use of those vehicles. In magnitude they soon exceeded any other category of offending. Courts of summary jurisdiction were called upon to deal with a volume of cases, most of which were routine, which threatened to swamp

²¹ Source: *Victorian Yearbook 1994*, 247-48 & 292-93.

them. The offences related to one or other of the three main characteristics of motor vehicle use: parking, driving and pollution. First, large numbers of stationary vehicles occupy public space when not in use. Parking is ordinarily provided on the roadway, but in heavily populated centres, the capacity of such public areas is finite and in heavy demand. Congestion follows. Stationary vehicles in public places impede the free flow of traffic and, if left there too long, inequitably occupy scarce parking resources. They also affect the amenity of the area. Secondly, as a moving force, motor vehicles are fraught with danger to other road users, pedestrians and the general public when mis-employed. They can cause great damage. Thirdly, they pollute the environment. The effects of vehicle emissions on the atmosphere and of noise pollution are recognised as hazards in their own right and the more extreme forms of such pollution by vehicles are now coming to be criminalised under modern environment protection legislation. Though the infringement notice system has expanded into other areas, such as minor drug offences, regulation of corporations, litter, dog and marine offences, and misuse of public transport facilities (and has been considered for use in relation to liquor, gambling, pawnbroking and public order offences²²), the regulation of motor vehicle use is still its paramount concern.

1.4.4 A distinction has always been drawn between lesser and more serious vehicle violations. Public safety matters fall within the former; ones concerned with efficient movement of traffic or public amenity come within the latter. On-the-spot tickets were originally designed for the enforcement of parking laws. Because the offences were minor, the issuing of notices could be entrusted to municipal by-laws or parking officers. Moving vehicle offences remained within the domain of the police and, at least initially, were not regarded as appropriate to be regulated by the infringement notice system with its fixed and automatic penalties. The use of on-the-spot tickets for the more serious moving traffic violations was accompanied by debate, at least in the United Kingdom, about the legitimacy of adding ancillary sanctions, such as automatic licence suspension or loss. If infringement notices were to be used in lieu of court proceedings, and the alleged offender was not to be convicted, was it fair to also use this alternative to prosecution as the occasion for depriving the person of his or her driver's licence? The issue was complicated by the various means by which licences could be lost. In some cases, disqualification results from a judicial order (something which

²² Media release, *Labor's Vision for Community Safety and Security*, Mal Sandon, Minister for Police and Emergency Services, Victoria, 27 July 1992; 'On-spot fines may help to fight youth drinking' *Age*, 4 February, 1994, p.3. See also Australian Law Reform Commission, *Report No. 57: Multiculturalism and the Law*, Sydney, ALRC, 1992, Ch. 9: 'An infringement notice scheme'.

is absent with an on-the-spot fine); in others, licence withdrawal is purely an administrative action of the licensing authority. The latter may set up a system under which loss of licence is the product of an accumulation of demerit points which themselves need not depend on convictions (and thus can follow the issuing of infringement notices).

1.4.5 An early problem faced in creating parking offences was that it was not the vehicle, but its driver who was at fault. If the driver was on the scene, and made the appropriate admissions, or was directly observed breaking the law, the informant's task in serving a summons upon the offender and of proving the case was no more difficult than usual. But when the driver was absent, as occurred with most parking offences, or difficult to identify, as with photographically recorded offences, there were problems of identification, service and proof. Legislation allowing service upon the owner by attaching a notice to the vehicle, or sending it by post, did not suffice to establish guilt even if the identity of the owner was established through the vehicle's registration. Orthodox summary criminal proceedings required the informant, in court, to prove beyond reasonable doubt who was responsible for the crime. Because the owner's sworn denial that he or she was the driver made it impossible to discharge this burden in most parking and speed camera cases, owner-onus provisions were adopted which, in effect, reversed the onus of proof rules and deemed the registered owner of the vehicle the violator, unless he or she could prove the contrary. These owner liability provisions are now a common feature of the infringement notice system for moving vehicle as well as parking offences.

1.5 Technological advances

1.5.1 The number of summary offences committed can be expected to rise as population and the proportion of car owners grows. However, the enlargement of the infringement notice system is not merely a reflection of an increase in the absolute numbers of offences. Wrongdoing, however prolific, has to be detected. The emergence and expansion of on-the-spot tickets has been boosted by new technology which has significantly enhanced the ability of enforcement officials to detect offences and has increasingly automated the processes of identifying, pursuing and punishing the offenders.²³ It allows high volume law enforcement. For example, in 1993, over twenty-five million speed camera checks were

²³ See Mahaffy R.P. & Dodson G., *The Law Relating to Motor Cars*, London, Butterworth & Co., 1910, 361, for description of the early technical difficulties in establishing breaches of the 10 mph speed limit in built up areas and the general 20 mph limit on public highways imposed under the *Motor Car Act 1903* (UK), s.9.

performed. This led to 524 000 infringement notices being issued for speeding offences.²⁴ The beginnings of the infringement notice scheme are associated with the introduction of parking meters in England, Australia and the United States to ration parking space. These date from the mid-1930s in the United States²⁵ and the 1950s in the United Kingdom and Australia.²⁶ Parking meters not only increased parking turnover, they made proof of parking violations easier by providing an accurate time-check on parking duration, and also promoted more efficient use of the enforcement officers in supervising the parking time limits.²⁷ In more recent times, new technology in the form of red light, bus or transit lane, and radar triggered speed cameras has allowed for the wholly automatic detection and recording of moving vehicle violations in unprecedented numbers.

1.6 Revenue and other advantages

1.6.1 Use of infringement notices appears to be one of the few areas in which criminal enforcement pays a cash dividend. From the beginning, use of parking meters not only produced immediate fiscal returns for the licence to park, but also receipts by way of the on-the-spot penalties paid for breaching that licence. This added bonus did not escape the notice of enforcement agencies. Ever since then it has served as a hidden agenda in decisions to expand the on-the-spot enforcement system. The recent dramatic enhancement of detection and enforcement abilities in respect of moving vehicle violations through use of automatic speed recording and photographic instruments and greater governmental willingness to acknowledge the revenue function of fines, has led to anxiety that crime control and correctional objectives have become secondary to the fiscal goals of those enforcing the law. This clash of objectives threatens the integrity of the law enforcement programs. The Victorian Parliamentary Public Accounts and Estimates Committee most recently noted how the 'revenue generating productivity' of police use of speed cameras had dropped from over \$2000 per hour of camera use to under \$1000 per hour within 18 months. It recommended that police review the number of traffic camera hours worked with a view to increasing the efficiency of

²⁴ Victorian Parliament, Road Safety Committee, *Inquiry into the Demerit Points Scheme*, November 1994, para 3.1.

²⁵ Oklahoma City in 1936 was apparently the first municipality to utilise parking meters, Grimes M.A. 'The Legality of Parking Meter Ordinances and Permissible Use of Parking Meter Funds' (1947) 35 *California Law Review* 235 and references cited there.

²⁶ New South Wales, in 1955, was the first Australian state to authorise their use.

²⁷ National Association of Australian State Road Authorities, *Guide to Traffic Engineering Practice - Part 11: Parking*, Milsons Point, NSW, NAASRA, 1988, 24-5; Standards Australia, *Manual of Uniform Traffic Control Devices - Part 11: Parking Controls*, Australian Standard AS 1742.11, Sydney, Standards Association of Australia, 1989, 29-30.

their use.²⁸ The police have repeatedly stressed that generation of revenue is not one of their objectives and that if revenue declines because of reduced offending, their enforcement activities should still be counted as efficient.²⁹

1.6.2 The overall advantages of the infringement notice system are said to be:

- It is not mandatory. It does not exclude the exercise of discretion to dispose of an apparent offence by administering a verbal or written warning, or to file a charge with a view to a formal summary prosecution and hearing. On the other hand, there appears to be a reduction in the issuance of warnings as an alternative to penal action because of the ease with which infringement notices can be issued and their value to revenue.
- The use of non-police personnel (such as municipal by-law and traffic officers) in issuing infringement notices for certain classes of offence relieves police of minor law enforcement tasks that would otherwise fall upon them. On the other hand, demand is growing from non-police agencies (such as municipalities) to be given wider powers in relation to the enforcement of moving traffic offences and to be able to use the automatic detection technology currently controlled by specialist branches of the police.
- The overwhelming majority of persons receiving infringement notices opt to expiate their offence by paying the amount set out in them.
- No prosecutorial action is required in the cases in which the penalty has been paid.
- The prosecution and court systems are thus saved the costs of having to deal with a volume of cases with which they could not, in any event, cope.
- Both parties are also relieved of the inconvenience entailed in attending court.
- Even where the notice is not immediately complied with, and the penalty has to be registered for enforcement and pursued, the paper work is simpler and clearer for both informant and defendant than in conventional prosecutions.

²⁸ Victoria, Parliamentary Public Accounts and Estimates Committee, *1992-93 Budget Estimates and Outcomes*, November 1993, 108-112.

²⁹ Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, para 3.7. See generally Ch. 6, 'Costs and Benefits'.

- The procedures lend themselves to automation and computerisation.
- The offender knows in advance what the penalty is.
- The infringement penalty is fixed at a lower monetary level than the normal statutory maximum fine for the offence.
- The infringement penalty and its ancillary consequences (demerit points etc.) are probably less severe than the sentence which would actually be imposed by a court for the offence in question.
- Timely payment of the fixed penalty ordinarily results in the offender acquiring neither a conviction nor a record. The offender thus avoids the social stigma and legal disabilities which attach to prosecution and conviction in a criminal court.
- The offender's right to have the accusation determined by a court and to plead in mitigation of penalty is not lost.
- Because it is easier and quicker to issue an infringement notice than to mount a prosecution in court it is more likely that the prohibition will be enforced.
- The sanction for the offence remains a deterrent.

1.6.3 On the other hand the overall disadvantages of the infringement notice system are said to be:

- The newer forms of infringement notice leave the offender with a conviction and other disabilities despite having paid the monetary penalty demanded by way of expiation.
- The deterrent force of the law may be reduced when matters are dealt with administratively rather than judicially, leading to increases in offending.
- The difficulties of enforcing the payment of infringement penalties are as great as those in relation to fines, but occur on a much larger scale.
- The ease with which infringement notices can be issued makes it likely that they will be used when a caution or warning without further action would have been more appropriate. This results in the criminal justice net scooping up a wider group of citizens for formal action than might otherwise have been the case.
- Authorities may be more likely to initiate proceedings by way of infringement notices in circumstances in which a case is weak.
- The ease of dealing with infringement notices and the discounted penalty places recipients under great pressure to settle the allegation

against them by payment of the penalty even though they believe they are innocent.

- The limited availability of legal aid for defended summary matters adds to the pressure to pay the infringement penalty.
- The undesirability of enforcement authorities imposing penalties without independent scrutiny of the facts by a court.

1.6.4 Despite the heavy use of infringement notices in motor vehicle offences, it is symptomatic of current ignorance of the scope and legal significance of this measure that one of the few modern Australian books dedicated to examining the principles of law governing offences committed by motorists in this country contains only one paragraph on traffic infringements. It represents three-quarters of a page in a work of 323 pages.³⁰ The current text on traffic law in New South Wales treats the subject in a similarly cursory fashion.³¹ Other than a 1986 New South Wales Parliamentary Public Accounts Committee report on the collection of parking and traffic fines,³² and the 1992 Australian Law Reform Commission reports on multiculturalism, customs and excise (which encourages greater use of infringement notices for minor offences against Commonwealth law),³³ there has been no significant text or report on the subject of infringement notices in Australia to date.

1.6.5 The main elements of the infringement notice system are set out in Figure 1.1. These emphasise the increased number of offences which have come to official attention, the effect of technology on detection, the reduction in discretion in dealing with offences, the exclusion of the courts from the adjudicative process, the absence of conviction, restriction of sentencing discretion and importance of the follow-up of enforcement procedures.

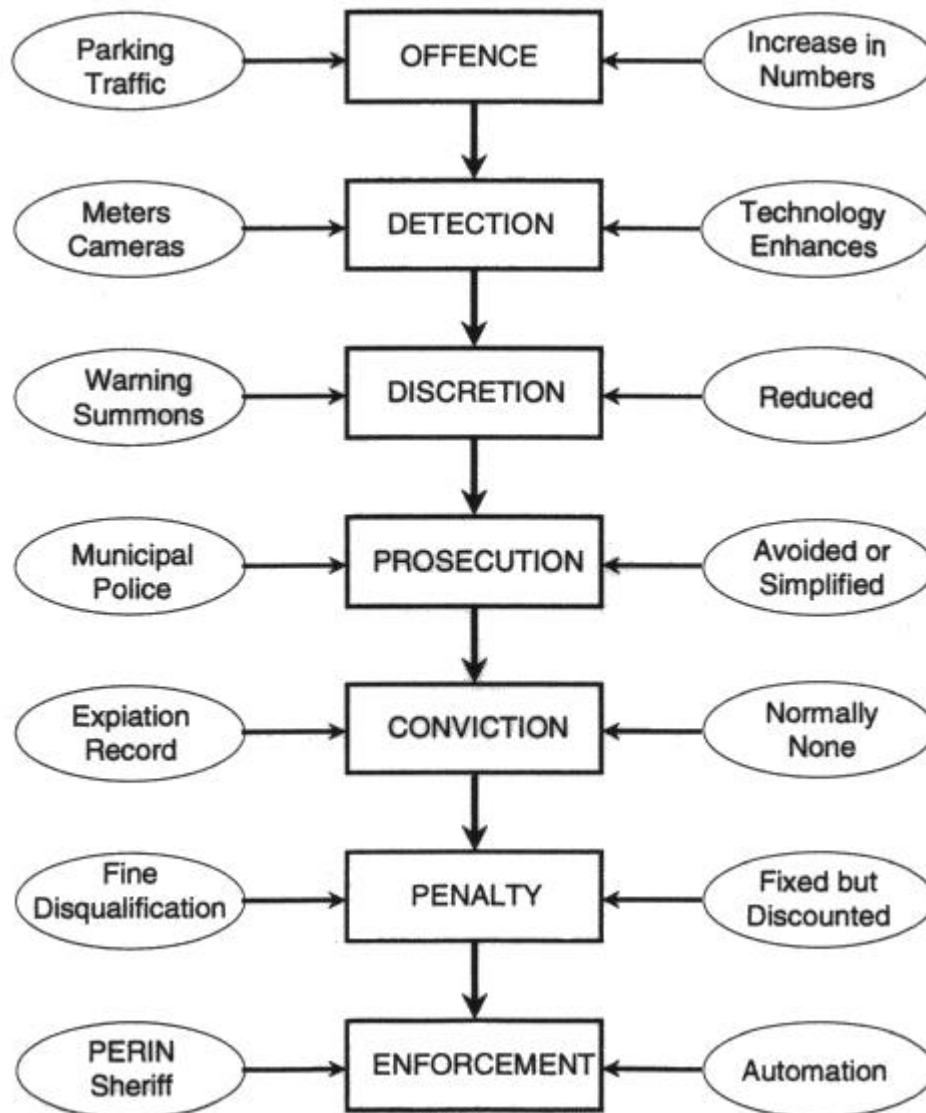
³⁰ Brown D., *Traffic Offences: An Examination of the Principles of Law Governing Offences Committed by Motorists on the Roads in Australia*, Butterworths, Sydney, 1983, para. 4.13.

³¹ Britts M.M.G., *Traffic Law (N.S.W.)* (3rd ed.), Sydney, Law Book Company, 1992.

³² New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986.

³³ Australian Law Reform Commission, Report No. 57, *Multiculturalism and the Law*, Sydney, ALRC, 1992, Ch. 9; Australian Law Reform Commission, Report No. 60, *Customs and Excise*, Vol. III, Sydney, ALRC, 1992, Part 33.

Figure 1.1
Infringement Notice Elements



Chapter 2

Overseas

2.1 United States

2.1.1 In the United States, as in Australia, parking and traffic regulation are matters of state and local law. However, in the United States, even municipal ordinances must comply with constitutional guarantees of due process if the prohibitions are to be properly characterised as criminal in nature. Yet, from the earliest days of motoring regulation a pragmatism prevailed. In 1926, Justice McReynolds of the United States Supreme Court observed that ‘the states are now struggling with new and enormously difficult problems incident to the growth of automobile traffic, and we should carefully refrain from interference unless and until there is some real, direct, and material infraction of the rights guaranteed by the Federal Constitution’.¹ In accordance with this spirit, in 1943, the validity of a municipal ordinance was upheld which made a prima facie assumption that the owner of a vehicle to which a parking ticket was attached was the offender.² While it would have been unconstitutional to deprive the owner-defendant of his or her right to be presumed innocent until proven guilty, it was treated as legitimate for the legislature to indicate that it took certain facts to be prima facie evidence of guilt so long as the inference to be drawn was a reasonable one and the prosecution was left to discharge the ultimate burden of proof.

2.1.2 Coin-operated parking meters were invented in Oklahoma in 1932³ and for a decade and a half, almost to the 1950s, there was much

¹ *Frost v. Railway Commission* 271 US 583, 603 (1926).

² *City of Chicago v. Crane* 319 Ill. App. 623, 49 NE (2d) 802 (1943) (Illinois Appellate Court); Ascherman L.H., ‘Automobiles—Offences and Prosecutions’ (1943) 22 *Chicago-Kent Law Review* 87. The ticket attached to the car directed the owner to appear in court on pain of arrest—it was not a modern ‘on-the-spot ticket’.

³ By Carlton C. Magee, Chairman of the Businessmen’s Traffic Committee of Oklahoma City. His Dual Parking Meter Co. commenced commercial production in 1935. New York did not adopt parking meters until 1951, see Hagan S. and Osborough N., ‘The Parking Motorist and the Road Traffic Act (NI) 1964’ (1967) 18 *Northern Ireland Law Quarterly* 177, 184.

writing about their legality as a device for facilitating traffic control and regulation.⁴ These too passed constitutional muster as being reasonable regulation of traffic in the public welfare, provided the parking schemes were not open to being characterised as unauthorised taxes raising revenue in the guise of police regulation. But almost from the beginning, the American legal literature was canvassing the need to set national standards for the legal system's treatment of traffic offenders⁵ and the methods by which courts could avoid spending a disproportionate amount of time in dealing with minor cases both at first instance and on appeal. Speeding and other hazardous moving vehicle offences were still viewed as requiring a court appearance, with the accused retaining a right to a jury trial where the latter was guaranteed under federal or state constitutional law for 'criminal' prosecutions.⁶ However, it was increasingly difficult to maintain the characterisation of all motoring violations as criminal acts because the magnitude of offending by its mobile and motor-rich populace not only clogged the courts,⁷ but also stripped the conduct of its social stigma. Driving offences came to be regarded as the norm and a kind of 'folk crime'.⁸ The idea grew in the United States that there should be some decriminalisation of traffic violations and/or simplification of the procedures under which motoring offenders were dealt with. As early as 1931, the removal of parking offences from the courts was advocated in the course of a major federal enquiry into criminal justice in the United States (the Wickersham Commission⁹). In 1938, a National Conference of Judicial Councils and the National Committee on Traffic Laws Enforcement undertook a study of the nation's traffic courts. Some 57 recommendations for the improvement of these courts emerged from the study. This formed part of an action program adopted by the United States President's Committee for Traffic Safety in 1942.¹⁰

⁴ E.g. Grimes M.A. 'The Legality of Parking Meter Ordinances and Permissible Use of Parking Meter Funds' (1947) 35 *California Law Review* 235.

⁵ The American Bar Association played a leading role with its Traffic Court Program established in 1942. A major work commissioned under it was Warren G., *Traffic Courts*, Boston, Little Brown, 1942.

⁶ United States, *Constitution*, Sixth Amendment, 'In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury . . .'

⁷ In 1982 it was estimated that 59 million traffic citations were issued each year in the United States, *U.S. News and World Report*, 1 November 1982, p. 54.

⁸ Ross L., 'Traffic Law Violation: A Folk Crime' (1961) 8 *Social Problems* 231.

⁹ National Commission on Law Observance and Enforcement (Wickersham, Chairman), *No. 8: Report on Criminal Procedure*, United States Government Printing Office, Washington, 1931, 14. See also Johnston P.A., 'A Plan for the Hearing and Deciding of Traffic Cases' (1954) 33 *North Carolina Law Review* 1; Netherton R.D., 'Fair Trial in Traffic Court' (1957) 41 *Minnesota Law Review* 577.

¹⁰ *National Standards for Improving the Administration of Justice in Traffic Courts*, reprinted in Economos J.P. and Steelman D.C., *Traffic Court Procedure and Administration* (2nd ed.),

2.1.3 Given the number of jurisdictions in the United States, it is not surprising that all manner of possibilities are represented in current law.¹¹ The most extreme traditionalist view is that all traffic offences should continue to be regarded as crimes to be prosecuted before a criminal court. This is represented by the Chicago Traffic Court. The guilty motoring defendant will be convicted of a misdemeanour, or 'petty offence' (a sub-division of misdemeanours). He or she is entitled to the full panoply of due process rights and safeguards such as apply in any other criminal prosecution. This would ordinarily include a right to a trial by jury. However, there has been a degree of constitutional re-definition of what state and federal law requires by way of minimum procedural protections in respect of minor offences.¹² In the 1970s, Supreme Court rulings made it clear that the content of due process was variable according to the gravity of the class of offence being prosecuted. Thus a jury trial was not an absolute right in the case of minor offences carrying a maximum term of imprisonment of six months or less,¹³ nor was there a right to appointed counsel for petty offences.¹⁴ Since parking and minor moving traffic offences were rarely punished by more than a fine, this opened the way for highly attenuated forms of criminal proceeding, as well as civil procedures that were not subject to due process guarantees, and administrative procedures which by-passed the courts altogether.

2.1.4 On the criminal side, various jurisdictions brought into existence a 'traffic ticket' that is actually a summons to court, but one which invites the offender to plead guilty and waive the right to trial by marking and signing an appropriate box. The offence is punishable by a fixed fine which the offender has to pay with costs on admitting guilt. In theory a judicial officer is seized of the matter, but in most cases will have no occasion to examine the file. Processing is by clerks in what are known as *Traffic Violation Bureaus* in the absence of the parties, but a judicial adjudication is available if a plea of not-guilty is entered. Though the first of these Bureaus was established in the 1930s, the original national standards for improving the administration of justice in traffic courts preferred them not to be used unless the number of traffic cases made it impossible for a court to dispose of them properly. That impossibility was

Chicago, American Bar Association Press, 1983, Appendix 3. *See also President's Committee for Traffic Safety Action Programme 1961*, reprinted in Appendix 6.

¹¹ For a survey of all the states in the Union *see* Appendix to Pike J.M., 'Civil Infractions for Minor Traffic Offences: Michigan's New Motor Vehicle Code' (1980) 26 *Wayne Law Review* 1543, 1558-60. At least eleven treat minor traffic infractions as civil in nature. *See also* Economos J.P. and Steelman D.C., *Traffic Court Procedure and Administration* (2nd ed.), Chicago, American Bar Association Press, 1983.

¹² Graffam W.I., 'Minor Traffic Violations: A New Approach' (1967) 19 *Maine Law Review* 261.

¹³ *Baldwin v. New York* 399 US 66 (1970).

¹⁴ *Argersinger v. Hamlin* 407 US 25 (1972).

soon manifest, but the recommendations of the President's Committee for Traffic Safety adopted in the 1940s and revised in 1961 continued to emphasise that this procedure should only be used for non-hazardous traffic offences and that all offenders charged with 'moving hazardous traffic violations' should be required to appear in court to answer the charge in person.¹⁵ The distinction between 'hazardous' and 'non-hazardous' traffic violations relates to whether the violation contributed to an accident or serious collision, or involved drink-driving, reckless driving, leaving the scene of an accident, or driving while disqualified.¹⁶ This concern with drawing distinctions between levels of criminality was very much in evidence in the 1960s when the American Bar Association, in its influential *Model Penal Code*, advanced the idea of a new non-criminal offence category known as a 'violation'.¹⁷ Likewise in 1973 the National Advisory Commission on Criminal Justice Standards and Goals urged that 'all traffic violation cases should be made infractions subject to administrative disposition, except certain serious offences, such as driving while intoxicated, reckless driving, [etc.]'.¹⁸

2.1.5 Another approach has been to remove traffic offences from the courts entirely. This has been acted upon by at least 11 jurisdictions in the United States, commencing in 1979 with Michigan, which have treated 'civil infractions' as true civil actions.¹⁹ Under the Michigan legislative arrangements, traffic citations are civil matters. The plaintiff is the state or local government agency issuing the traffic citation. Instead of pleading guilty or not guilty, the motorist responds by admitting or denying liability. Failure to comply with the court's judgment in the case involving a civil infraction may lead to suspension of driver's licence or motor vehicle registration, enforcement against the property or assets of the offender, or civil contempt proceedings. It is also an independent criminal offence not to attend and complete a program of treatment, education, or rehabilitation ordered by the court in the course of its 'civil judgment'.

2.1.6 A third type of response to breaches of parking and traffic laws has been to move some types of motoring offences entirely from the

¹⁵ Economos J.P. and Steelman DC, *Traffic Court Procedure and Administration* (2nd ed.), Chicago, American Bar Association Press, 1983, Appendix 3, *President's Committee for Traffic Safety Action Programme 1942*, Recommendation 11; Appendix 6, *President's Committee for Traffic Safety Action Programme 1961*, Recommendation 13.

¹⁶ National Conference of Commissioners on Uniform State Laws, *Model Rules Governing the Procedure in Traffic Cases*, New York, 1957, Rule 1:3-7(b), cited in Economos J.P. and Steelman DC, *Traffic Court Procedure and Administration* (2nd ed.), Chicago, American Bar Association Press, 1983, Appendix 2.

¹⁷ *Model Penal Code (Proposed Official Draft)*, 1962, s.1.04.

¹⁸ National Advisory Commission on Criminal Justice Standards and Goals, *Report on Courts*, Washington DC, 1973, 168.

¹⁹ Pike J.M., 'Civil Infractions for Minor Traffic Offences: Michigan's New Motor Vehicle Code' (1980) 26 *Wayne Law Review* 1543.

courts to an administrative agency. In the United States, this form of decriminalising traffic infringements by shifting them from the judicial to the executive arm of government has been subject to two lines of attack. First, it was argued that penalties imposed administratively in this fashion were not permitted by the doctrine of separation of powers since their effect would be completely to pre-empt the jurisdiction of the courts in motoring matters.²⁰ Secondly, it was argued that they violated the constitutional requirement of due process since the accuser would be also the adjudicator. Neither line of objection has been successful. The new forms of administrative adjudication have been held to be valid so long as the administrative agency cannot impose custodial sanctions and observes certain minimum due process rights. These include an impartial tribunal, notice of charges, notice of hearing and the obligation to receive submissions by or on behalf of the motorist. It must also apply a penalty defined in advance by the legislature and not one left at large to the administrative agency itself. An avenue of review or appeal must also be provided.²¹ Nonetheless, this shift of authority from the judiciary has its critics and the American Bar Association remains opposed to the transfer of traffic jurisdiction to agencies of the executive government.²²

2.1.7 This opposition has to face the practical reality of high volume offending. In order to deal with 4 million traffic cases a year in New York City, the New York Department of Transportation's Parking Violations Bureau was set up, in 1970, as the nation's first administrative tribunal designed expressly to deal with the enforcement of parking infringements.²³ Minor moving traffic infractions can also now be dealt with administratively in New York City and other major cities in New York State by the Department of Motor Vehicles' Traffic Violations Bureau. The offence enforcement notice is a summons which specifies the 'scheduled fine' prescribed for the particular violation. This summons invites the violator to admit liability by paying the amount specified to the Bureau within seven days of the offence. If the driver does not admit liability, he or she may appear in person at any one of a number of

²⁰ Carrow M.M. and Reese J.H., 'State Problems of Mass Adjudicative Justice: The Administrative Adjudication of Traffic Violations—A Case Study' (1976) 28 *Administrative Law Review* 223, 232-234.

²¹ Force R., 'Administrative Adjudication of Traffic Violations Confronts the Doctrine of Separation of Powers' (1974) 49 *Tulane Law Review* 84; Pike J.M., 'Civil Infractions for Minor Traffic Offences: Michigan's New Motor Vehicle Code' (1980) 26 *Wayne Law Review* 1543.

²² American Bar Association Committee on the Traffic Court Program, *Standards for Traffic Justice*, Chicago, American Bar Association Press, 1975, Section 2.0 and commentary.

²³ Note, 'Unburdening the Criminal Courts? New York City's Parking Violations Bureau' (1971) 7 *Columbia Journal of Law and Social Problems* 447. Its major problem was that of scofflaws. It was estimated in 1970 that 79% of the parking tickets issued in the city were never paid, Comments, 'Changes in the New York Vehicle and Traffic Law during the 1970 Legislative Session' (1971) 35 *Albany Law Review* 431, 518.

‘Adjudication Centers’ for a ‘walk-in hearing’. No appointment is required. The offender is invited to bring the summons, witnesses, photographs, and other evidence for the matter to be considered by Hearing Officers. Their decisions are subject to review by an Administrative Appeals Board within the Department. Failure to respond to the summons within seven days leads to increased penalties and the rendering of a civil default judgment under the local vehicle and traffic law. A 30 days notice of an impending default judgment is given. If there are unsatisfied judgments on three or more summonses issued within an 18-month period, the person may be certified as a ‘scofflaw’ to the Commissioner of Motor Vehicles. The effect of this will be to prevent the person from renewing or transferring his or her vehicle registration.²⁴

2.1.8 In general, the New York administrative scheme handles non-payment of parking and motoring fines by assigning the case to a debt collection agency. Ultimately the sanctions utilised include: seizing personal property, including motor vehicles which might have already been clamped or impounded; placing orders on the offender’s bank account; deducting amounts from the offender’s wages; and denying renewal of motor vehicle registration. The same department of government imposing the sanction holds the computerised records of vehicle registrations. In 1986, it was reported that over 14 000 registration renewals were deferred per month because of undischarged traffic violations. The reports also indicated large numbers of offenders driving unregistered vehicles, switching number plates, and changing their vehicle registration to that of another state. There are the usual difficulties of locating the offender, serving warrants, and compelling payment. Imprisonment of offenders is not used as the sanction for parking violations. It may be an ultimate sanction for traffic offences, but the effect of the United States Supreme Court ruling in *Tate v. Short*²⁵ has to be faced. This prohibits the default imprisonment of offenders who, having breached ‘fines only’ traffic laws, lack the means to pay.

2.1.9 Decriminalised approaches to traffic violations do not count as criminal convictions for the purpose of the double jeopardy protection of the United States Constitution;²⁶ however, both criminal and non-criminal violations may lead to other administrative sanctions such as the accumulation of licence disqualification points where these are provided for under state law. There have been a number of attempts to draft

²⁴ Samples of these forms and further explanations are to be found in the New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986, Appendix 3 and Appendix 7.

²⁵ 401 US 395 (1971).

²⁶ United States, *Constitution*, Fifth Amendment.

uniform traffic ticket legislation and procedures. In 1958 the American Bar Association, as part of its Traffic Court Program, prepared a model set of traffic ticket and complaint rules.²⁷ Almost 25 years later the United States Department of Transportation commissioned another study of a uniform traffic ticket scheme.²⁸ Neither study has produced uniformity in traffic law administration in the United States.

2.2 United Kingdom

2.2.1 Problems of system overload by minor motoring offences also beset the United Kingdom, but it did not have to struggle with constitutional issues other than questions of fairness. Parking meters were installed in London in the late 1950s, as authorised under the *Road Traffic Act 1956* (UK) and in major regional cities in the early 1960s, but the principal Act to deal with the volume of new work occasioned by their appearance was the *Road Traffic and Roads Improvement Act 1960* (UK).²⁹ It authorised the appointment of a corps of traffic wardens to aid police in the discharge of their general responsibility for the enforcement of parking and other controls on road traffic.³⁰ It also authorised the introduction of a new method of law enforcement, the fixed penalty procedure, for parking and lesser offences involving stationary vehicles. The Act both defined the offences to which the new procedure was to apply and the areas within which it was to operate—in the first instance this was the County of London, but soon it spread to other centres. The legislation was initially designed to operate in respect of breaches of no-parking, no-waiting and parking meter offences. All other offences had to proceed by summons before a Magistrates' Court in the usual manner. The fixed penalty notice could be affixed to the offending vehicle, or given to the alleged offender. Payment of the penalty amount prescribed in the notice within twenty-one days discharged the offender's liability and did not count as a conviction because no judicial proceedings had been invoked. Non-payment of the amount within the time specified would lead to the issuing of a conventional summons for the offence. The maximum

²⁷ American Bar Association, *Uniform Traffic Ticket and Complainant Model Rules Governing Procedure in Traffic Cases: A guide designed to assist traffic judges in court and police aspects*, Lansing, Michigan, Weger Governmental Systems, 1958.

²⁸ Spell L.A., *Final Report of the Uniform Traffic Ticket Study*, US Department of Transportation, National Highway Traffic Safety Administration, Washington DC, 1981.

²⁹ Note, 'The Road Traffic and Roads Improvement Act 1960' (1960) 104 *The Solicitors' Journal* 1083; Jones A.E., 'Some Parking Meter Problems' [1962] *Criminal Law Review* 532. For similar developments in Northern Ireland see, Hagan S. and Osborough N., 'The Parking Motorist and the Road Traffic Act (NI) 1964' (1967) 18 *Northern Ireland Law Quarterly* 177.

³⁰ See Chief Constable Robert Mark, Letter to the Editor, 'Leicester Traffic Wardens—the first year' [1962] *Criminal Law Review* 267.

penalty would be higher and, if found guilty, the person alleged to be the offender would have acquired a conviction. It was assumed that there would be a high level of voluntary compliance with the new system and that it would become 'punishment without prosecution'.³¹

2.2.2 Within a year, the Commissioner of Police for the Metropolis drew attention to the 'considerable volume' of work occasioned by those who did not pay the fixed penalties on time under the new procedures.³² He added the prescient words:³³

In fact initial experience has shown that recent provisions designed to simplify the procedure against offenders for minor traffic offences are still too cumbersome. Unless the motoring public show a greater sense of respect for the law, both in conforming to regulations and replying to legally authorised notices, further short cuts will be inevitable.

The weakness in the new procedure was that of identifying the 'offender' who was to be pursued by summons for non-payment. The ticket affixed to the vehicle was addressed to a person unknown. While steps existed under which police could ask the registered owner for information relating to the identity of the driver of the vehicle, these were cumbersome, slow and easily defeated. Indeed it was suggested that the system was at risk of collapsing once offenders discovered that they had a good chance of over-straining the police force in forcing it to trace the identity of every driver responsible for a breach of the regulations.³⁴ The remedy suggested for overcoming this defect was the early American one of making the registered owner of the vehicle wholly or prima facie liable for any offence for which a ticket had been issued and also more completely separating the fixed penalty system from the normal discretionary penalty procedure in the criminal courts, possibly through the establishment of a distinct system of Traffic Courts.³⁵

2.2.3 By 1975 the annual number of fixed penalty notices issued in England and Wales was over 3.6 million: three for every road traffic offence prosecuted in a Magistrates' Court.³⁶ But the non-payment rate in the preceding year had reached 50 per cent and insufficient court space was available to mount the hundreds of thousands of prosecutions

³¹ *Lord Advocate v. Aberdeen Corporation* [1977] SLT 234.

³² *Report of the Commissioner of Police for the Metropolis for the Year 1960*, London, HMSO, Cmnd. 1440, 1961, 13.

³³ Cited, Note (A Solicitor), 'The Future of the Fixed Penalty Ticket' [1961] *Criminal Law Review* 805, 806.

³⁴ Jones A.E., 'Some Parking Meter Problems' [1962] *Criminal Law Review* 532, 536-538.

³⁵ Halnan P., 'Diversion and Decriminalisation of Road Traffic Offences' [1978] *Criminal Law Review*, 456, 459.

³⁶ Halnan, above, 456, 457.

necessary to enforce payment.³⁷ The system was recognised as in danger of breaking down. The earlier threatened short cut was implemented by the *Road Traffic Act 1974* (UK) which imposed a system of ‘owner liability’ under which the registered owner was now deemed to be the driver at the time of the commission of the offence unless he or she proved the contrary. The pressure now was to expand the system to include additional types of offence. Amongst the categories mooted were speeding offences and others which might lead to the endorsement of the driver’s licence.

2.2.4 In 1977 a Scottish Committee under Lord Stewart was appointed:³⁸

To consider the effect on the criminal courts and the prosecution system of the volume of minor offences at present dealt with by summary prosecution and whether some other process might be devised to deal with such offences while maintaining essential safeguards for accused persons.

The Committee was convinced that an extension of the fixed penalty system to a wider range of statutory offences was one of the obvious, and potentially one of the most effective, ways of reducing the burden on the courts and the prosecution system.³⁹ But it struggled with two problems: first, to identify those classes or types of case in which the measure was appropriate and secondly, ‘maintaining essential safeguards for accused persons’.

2.2.5 As to the first problem, it felt that the fixed penalty system should be confined to ‘minor offences’ or ‘regulatory offences’. It could not define minor offences other than by excluding offences involving dishonesty, injury to a victim, or obstruction of police⁴⁰ and described regulatory offences in terms of ‘offences which affect a large number of people’, or offences ‘intended to promote and maintain public safety and an orderly use of roadways throughout the country’.⁴¹ However, it expressly rejected an earlier view that fixed penalties were only appropriate for ‘offences of a mainly technical nature and of such triviality that the prospect of repeated offences without conviction can be accepted with equanimity’.⁴² The significance of the relevant offending could be raised a notch or two. It noted that earlier examinations of fixed penalty systems

³⁷ United Kingdom, Home Office, *Report of the Fixed Penalties Working Group*, December 1988, 5.

³⁸ Scottish Home and Health Department and Crown Office, *The Motorist and Fixed Penalties: First Report by the Committee on Alternatives to Prosecution*, (Stewart Committee), Edinburgh, HMSO, Cmnd. 8027, 1980.

³⁹ Scottish Home and Health Department and Crown Office, above, para. 1.02.

⁴⁰ Scottish Home and Health Department and Crown Office, above, para. 1.08.

⁴¹ Scottish Home and Health Department and Crown Office, above, para. 3.01.

⁴² *Report on the Sheriff Court*, (Grant Committee), Cmnd. 3248, 1967, para. 254.

did not favour extension to any offences, particularly speeding ones, where disqualification was or might be a competent penalty.⁴³ At that earlier time it was argued that to extend the system to such offences might devalue their gravity in the eyes of the public. The Scottish Committee concluded that the extension of the system to offences which would lead to disqualification did not present insuperable theoretical or procedural difficulties.

2.2.6 First, it declined to accept that the application of a fixed penalty to any particular offence would lessen the seriousness with which that offence would be publicly regarded. In doing so it stressed that the fixed penalty system did not amount to decriminalisation. The conduct remained criminal. The scheme was a procedural method of disposing of offences other than by bringing the full weight of the criminal process to bear upon the offender.⁴⁴ There was, in its view, a wide range of further offences in road traffic legislation to which the fixed penalty system could usefully be extended.⁴⁵ Secondly, it felt that machinery for developing a points system that would lead to the disqualification of offending drivers after a sufficient number of fixed penalty notices had been accumulated would not be too difficult to manage. Nonetheless, it balked at recommending extending the procedure to the more serious road traffic offences attracting obligatory disqualification from the courts, or those where imprisonment was a possibility.⁴⁶

2.2.7 The Scottish Council for Civil Liberties feared that given an easier system of punishing people, more people would be punished. The Committee acknowledged that there would be an increase in the number of persons proceeded against, just as there had been in relation to parking: 'Such an increase in our view, is justifiable on the ground that the procedure leads to a better standard of road safety through a higher level of enforcement of the law'.⁴⁷ It felt that the essential safeguard and cornerstone of the system which sought to remove cases from the normal criminal prosecution process was the preservation of the right of a citizen facing any criminal accusation to have the allegation against them brought

⁴³ Scottish Home and Health Department and Crown Office, above, para. 3.02.

⁴⁴ Scottish Home and Health Department and Crown Office, above, para. 4.01.

⁴⁵ The Committee also recommended that the Procurator Fiscal, the Scottish public prosecutor who has no counterpart in English law, be permitted to offer offenders personally the opportunity to pay fixed penalties in lieu of prosecution, United Kingdom, Scottish Home and Health Department, *Keeping Offenders Out of Court: Further Alternatives to Prosecution*, Second Report by the Committee on Alternatives to Prosecution (Chairman Lord Stewart), Edinburgh, HMSO 1983, Cmnd 8958; Duff P. and Meechan K., 'The Prosecutor Fine' [1992] *Criminal Law Review* 22; Duff P., 'The Prosecutor Fine and Social Control' (1993) 33 *British Journal of Criminology* 481.

⁴⁶ Scottish Home and Health Department and Crown Office, above para. 4.02.

⁴⁷ Scottish Home and Health Department and Crown Office, above para. 3.12.

before a criminal court, before any punishment was imposed.⁴⁸ Provided that right was preserved, it saw no objection in principle or theory to removing uncontested cases from the courts and disposing of them by alternative means. On the other hand the Committee strongly opposed the concept of deeming guilt by silence. In its view the correct approach to take was the retention of the right to a court hearing, with the alleged offender allowed to opt into the alternative fixed penalty procedure within a certain period of time.⁴⁹

2.2.8 The Committee did not see any place in the fixed penalty system for allowing a defendant time to pay or payment by instalments. It considered that to allow payment of anything other than the full amount at one time would be an unnecessary complication. Should an individual consider that he or she could not meet the penalty, other than by paying on an instalment basis, the right of recourse to the courts should be exercised. The magistrates could then exercise the necessary discretion.⁵⁰

2.2.9 The Scottish Committee recommended that the penalty provided for in relation to a fixed penalty notice should be a set percentage of the maximum general fine prescribed for the offence in question. It suggested that, as a starting point for discussion, the penalty for the infringement notice should be 20 per cent of the maximum available.⁵¹ It also pointed out that the wider the net of infringement notices, the greater the likelihood that the offender will be faced with a number of infringement notices at the same time in respect of the same transaction.⁵² To prevent disparities arising from the inclusion of a number of offences on a fixed penalty form, and the possible simultaneous commission of several of those offences leading to a combined fixed penalty exceeding the probable amount of any fine imposed by a court, it recommended the adoption of some system of discounting, whereby one of the penalties was charged at the full rate while the others were subject to a preset reduction (possibly 60 per cent of the full fixed penalty) to arrive at the total cumulative fixed penalty imposed. It also suggested that a police officer who decides to apply a fixed penalty when there are multiple offences should not issue more than four. No ideas on the administrative machinery for implementing this proposal were put forward.

2.2.10 While the Scottish report was being prepared, road traffic law was also under review in England. As the result of a 1981 Inter-departmental Report of the Home Office and the Department of

⁴⁸ Scottish Home and Health Department and Crown Office, above para. 7.01.

⁴⁹ Scottish Home and Health Department and Crown Office, above para. 3.29.

⁵⁰ Scottish Home and Health Department and Crown Office, above para. 6.21.

⁵¹ Scottish Home and Health Department and Crown Office, above para. 6.23.

⁵² Scottish Home and Health Department and Crown Office, above para. 6.24.

Transport,⁵³ new and enlarged fixed penalty provisions were included in the *Transport Act 1982* (UK). These did not come into force in England and Wales until 1986, when machinery for the Act's implementation by police and courts was in place.⁵⁴ The objective of the new legislation was to increase the scope and effectiveness of fixed penalty notices by (a) extending the range of offences open to being dealt with by way of a ticket (these now include less serious moving traffic offences which carry demerit points towards licence endorsement or disqualification); (b) providing an immediate sanction where the recipient or owner failed to respond within the permitted time, thus overcoming the deficiencies of the old fixed penalty system in which too many tickets, particularly parking ones, were being ignored; and (c) simplifying the documentation required where a recipient wished to contest liability for the offence and asked for a hearing.⁵⁵ The time allowed for the recipient to pay the penalty fixed for the particular offence, or alternatively to request a Magistrates' Court hearing is now 28 days.⁵⁶ If the offender is assumed to be the vehicle owner, he or she has to be given an opportunity to deny ownership of the vehicle and/or responsibility for the offence. If no response is made to the notice, the offender neither paying it nor requesting a court hearing, the amount of the penalty is increased by 50 per cent and this larger sum is registered for enforcement as a fine in the Magistrates' Court at the expiration of the suspended enforcement period. No formal hearing is needed.

2.2.11 In order that the penalty system operate uniformly on a national basis, and to avoid the problem of an excessive number of notices being issued to the same offender in relation to same transaction, the Home Office has issued a circular stating that:⁵⁷

A fixed penalty notice should be given only in respect of one offence and only one fixed penalty notice should be issued on a single occasion. Thus where multiple offences are detected the constable should either:

- (i) give a verbal warning for all offences; or
- (ii) give one fixed penalty notice for the single most serious offence . . . and give a verbal warning for the remaining offences; or
- (iii) report all offences for consideration of summons.

The decision as to whether to give a fixed penalty notice . . . rests with the constable at the time the offence is or has been committed.

⁵³ United Kingdom, Department of Transport and Home Office, *Report of the Inter-Departmental Working Party on Road Traffic Law*, London, HMSO, 1981.

⁵⁴ Separate legislation was passed for Scotland in 1983. The fixed penalty provisions of the *Transport Act 1982* (UK) were later incorporated in the *Road Traffic Offenders Act 1988* (UK).

⁵⁵ Turner A.J. and Marsh M., *The New Fixed Penalty System*, London, Barry Rose, 1986.

⁵⁶ Called the 'suspended enforcement period'.

⁵⁷ Home Office Circular 92/1985, cited in Turner and Marsh, para 007, p. 7.

2.2.12 By 1988 the annual number of fixed penalty notices issued in England and Wales had grown to 6.2 million, representing 71 per cent of all proceedings for non-parking offences relating to motor vehicles.⁵⁸ Following the introduction of the extended fixed penalty system, a decline in the proportion of written warnings issued to offenders was noted.⁵⁹ Prior to the changes in 1986, about a third of fixed penalties were written off as unrecoverable and in a further 5-6 per cent of cases (approximately 250 000 a year), court proceedings were instituted for non-payment. By 1987, with the automatic enforcement of unpaid penalties in place, 20 per cent of notices (approximately 1.1 million of 5.7 million fined) were registered for automatic enforcement and in only 29 000 cases (0.5 per cent of notices issued) did the alleged offender opt to contest the matter in open court.

2.2.13 In 1985 the Minister of Transport and the Home Secretary had set up the Road Traffic Law Review to re-examine road traffic law in England. In 1988 it issued a wide-ranging *Road Traffic Law Review Report* (the North Report) which, amongst other things, encouraged wider use of warnings and fixed penalty notices to avoid criminalising those whose road behaviour did not justify them coming before a court.⁶⁰ At the same time it argued that the effectiveness of the system would be improved if the fixed penalty levels, and the supplementary costs added when a penalty was registered for enforcement as a fine, were increased to recover the true costs to the criminal justice system in issuing and enforcing them.⁶¹ The government of the day rejected the concept that cost recovery should be the basis for setting penalty levels. In its 1989 White Paper response, *The Road User and the Law*, it reiterated the importance of proportionality between the wrongdoing and the penalty. There was also the countervailing practical consideration that, as it was open to any driver receiving a fixed penalty notice to opt for a full court hearing, it was necessary for the fixed penalty to be pitched below that which a court might award in order to provide an incentive to pay it.⁶² An effective incentive indirectly reduced the cost burden on the courts. On the other hand, in its White Paper, the government accepted the North Report recommendations that there needed to be further simplification of

⁵⁸ United Kingdom, Home Office, *Statistical Bulletin*, 34/89, *Offences Relating to Motor Vehicles, England and Wales 1988*, 27 September 1989, Table 1.

⁵⁹ United Kingdom, Home Office, *Statistical Bulletin*, above p.3.

⁶⁰ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988 (Dr Peter North, Chairman); Spencer J.R., 'Road Traffic Law: A Review of the North Report' [1988] *Criminal Law Review* 707.

⁶¹ North Report, above, Recommendation 58.

⁶² United Kingdom, Secretaries of State for Transport, Home Department and Scotland, *The Road User and the Law: The Government's Proposal for Reform of Road Traffic Law*, London, HMSO, Cm 576, 1989, paras. 4.29-4.31.

the law to reduce the burden on the criminal justice system and greater use of technology in the prevention and detection of offending. It implemented some of these in the new *Road Traffic Act 1991* (UK).⁶³

2.2.14 The *Road Traffic Act 1991* (UK) is primarily concerned, in Part I, with re-formulating major driving offences and revising their penalties and, in Part II, with improving traffic conditions in London. Much of Part I of the Act is based on proposals put forward by the government in the White Paper *The Road User and the Law*.⁶⁴ The special feature of Part II is that contraventions of orders relating to designated parking places are no longer to be criminal offences and provision is made for London authorities to impose penalties for such contraventions recoverable as civil debts. For instance, s.65 has the effect of decriminalising breaches of certain orders designating parking places and s.73 allows for the appointment of parking adjudicators to deal with disputes relating to the parking of a vehicle, or its being towed away, or its subjection to a wheel clamp. The legislation also contains provisions, to facilitate the use of automatic detection devices for road traffic law enforcement. These allow for the admissibility in evidence, by certificate, of information recorded and measurements made by various types of approved speed recording and photographic devices, thus minimising the need for police officers to attend court to give oral evidence in contested cases.⁶⁵ Owner-onus provisions are also made to apply to vehicles detected by an automatic device in a speeding or traffic light offence and a new conditional fixed penalty offer scheme is to be available throughout the United Kingdom.⁶⁶ The latter, which was previously only available in a limited fashion in Scotland,⁶⁷ allows the police who have detected an offence and are contemplating laying a charge and proceeding by way of summons to invite the offender to have the matter dealt with by way of a fixed penalty notice, even though no such notice was given to the person or affixed to his or her vehicle at the time of the offence.

⁶³ See also *Road Traffic Offenders Act 1988* (UK).

⁶⁴ Cm 576 (1989).

⁶⁵ United Kingdom, Home Office, *Road Traffic Act 1991: The Use of Automatic Detection Devices for Road Traffic Law Enforcement*, Home Office Circular no. 38/1992.

⁶⁶ *Road Traffic Offenders Act 1988* (UK), s.75-77 as amended by *Road Traffic Act 1991* (UK), 34.

⁶⁷ Duff P. and Meechan K., 'The Prosecutor Fine' [1992] *Criminal Law Review* 22.

Interstate and Federal

Table 3.1
Main Legislative Developments in Australia, by Jurisdiction

Jurisdiction	Parking Notices	Parking Meters	Traffic Infringement Notices	Automatic Enforcement Procedure
	<i>Year of Introduction</i>			
NSW	1930	1955	1961	1983
Qld	1956	1956	1960 ¹	1992
SA	1938	1957	1981	-
Tas.	1954	1962	1971	-
Vic.	1959	1959	1965	1985
WA	1955	1956	1968	1988
Cth	-	-	1960	-

3.1 New South Wales

3.1.1 There are two sources for the New South Wales version of infringement notices. The first is the administrative arrangements for cautions and modified penalties for ‘minor traffic offences’ which were allowed for by legislation enacted in 1930. The second is the ‘penalty notice’ system for moving traffic offences which initially appeared in 1961. The parallel systems continued until 1988 when they were both subsumed under a general system of ‘penalty notices’. The *Transport Act* 1930, s.265 authorised the making of regulations for the infliction and collection by public service officers of penalties for minor offences against the *Metropolitan Traffic Act* 1900, the *Motor Traffic Act* 1909-1930 and the *Motor Tax Management Act* 1914. This legislation made New South Wales the first State in Australia to permit lesser traffic offences to be disposed of by a system akin to modern ‘on-the-spot’

¹ Not in force until 1965.

finer instead of normal court proceedings. However there is no evidence that the power was utilised until the first regulations under s.265 were made in 1954.² Use of parking meters was authorised in New South Wales in 1955 by the *Local Government, Motor Traffic and Transport (Amendment) Act 1955*.³ The *Transport Act 1930*, s.265 was accordingly amended to extend its application to the new parking offences. Two years later, owner-onus provisions were inserted into both the *Local Government Act 1919*⁴ and the *Motor Traffic Act 1909*.⁵ Thus far the legislation was confined essentially to parking offences.

3.1.2 In 1961, the *Traffic Act 1909*⁶ was amended to provide for a 'ticket' system for various moving traffic offences.⁷ The New South Wales parliamentary debates refer to similar schemes already operating in the United States and Canada, but that this was the first time that such a system had been introduced into an Australian State for moving vehicle violations.⁸

The 'ticket system' provided for in the Bill will, in reality, be an extension of the existing penalty notice system to embrace other classes of traffic offences in addition to parking offences. One important difference will be that, instead of posting penalty notices to offenders as at present, notices will be issued on-the-spot. However, where parking breaches occur in relation to unattended vehicles, provision is made for penalty notices to be attached to the vehicle itself.

3.1.3 Though similar legislation had been enacted in Queensland in the preceding year, it was not to be proclaimed until five years later. The New South Wales scheme allowed the issuing of what are called 'penalty notices' by police or 'other prescribed officers'. The latter were to be parking police who were sworn in, not as ordinary constables, but as special constables. A person who did not wish to have the matter determined by a court, could pay the amount specified in the notice within the time prescribed and would be no longer liable for any further proceedings in respect of the alleged offence. The penalty prescribed could not exceed the maximum amount which might be imposed by a court for the relevant offence.⁹ The arrangements were to be applied to all traffic offences except those for which a penalty for imprisonment might

² *Minor Traffic Offences Regulations 1954* (NSW). These initially covered a set of parking offences under the *Motor Traffic Act 1909* (NSW) and the *Metropolitan Traffic Act 1900* (NSW). They provided for penalties of 10 shillings for a first offence; 15 shillings for a second and 20 shillings for a third and subsequent offence.

³ Inserting 'Division 13A - Parking' into the *Local Government Act 1919*.

⁴ *Local Government Act 1919* (NSW), s.270O.

⁵ *Motor Traffic Act 1909* (NSW), s.18A.

⁶ Until 1988 called the *Motor Traffic Act 1909*.

⁷ Section 18B. Inserted by *Motor Traffic (Amendment) Act 1961*.

⁸ *New South Wales, Parliamentary Debates*, Session 1960-61, Third Series, Vol. 34, (Legislative Assembly), 2316.

⁹ *Traffic Act 1909*, s.18B(7).

be imposed. The right of the person to have the alleged breach of the traffic law dealt with by a court was preserved.

3.1.4 An obvious part of the motivation for the introduction of the scheme was the fact that the New South Wales courts had fallen 40 000 cases behind in dealing with traffic prosecutions.¹⁰ There was no prospect that they would catch up with the backlog and the numbers of new cases were increasing. In 1970, penalty notices were applied to newly created parking offences under the *Local Government Act 1919*.¹¹ By 1988, all parking offences in New South Wales were brought under the new penalty notice system on the repeal of the *Transport Act 1930* and other related provisions.¹² The *Transport Administration Act 1988*, s.117 now provides the general power for the issue of penalty notices in the State.

3.1.5 In 1983, a scheme for the enforcement of unpaid sums under penalty notices was introduced into New South Wales by Part IVB of the *Justices Act 1902*. This legislation came into effect on 1 July 1984. It refers to some 34 Acts under which a penalty notice may be issued and sets up the enforcement system known as SEINS (Self-Enforcing Infringement Notice System). The idea may have come out of the UK *Report on the Inter-Departmental Working Party on Road Traffic Law 1981* (UK) and the 1982 United Kingdom legislation which followed (though the latter was not implemented until 1986). Certainly, in 1981, the then Chief Stipendiary Magistrate of New South Wales, Clarrie Briese, had asked the then Attorney-General and Minister of Justice of New South Wales to make infringement notices self-enforcing. The SEINS system was intended to do away with the requirement of having to pursue unpaid infringement notices by prosecuting the original offence in a court of summary jurisdiction. It provided that, twenty-one days after the date due for the payment of the penalty notice, a courtesy letter¹³ was to be sent to the alleged offender extending the time for payment for a like period and outlining the procedures for electing to have the matter determined by a court if the offender so wished. At the expiration of the further twenty-one days the facts could be certified to an authorised Justice of the Peace who could then make an order that the offender pay to the court an amount equal to the sum payable under the penalty notice, together with costs, or face a default period of imprisonment. Enforcement of the order would

¹⁰ *New South Wales, Parliamentary Debates*, Session 1960-61, Third Series, Vol. 35, (Legislative Council), 2549.

¹¹ See *Local Government Act 1919*, Division 13B.

¹² By the *Transport Legislation (Repeal And Amendment) Act 1988*.

¹³ Reference was made in the *New South Wales Parliamentary Debates*, Third Session, No. 44, 22 March 1983 (Legislative Council), 4827 & 4828 to the fact that the agencies issuing infringement notices had already initiated a practice of sending out reminder letters in the hope that magisterial hearings might be avoided.

then proceed in the usual manner for a court imposed fine.¹⁴ The attempts of the New South Wales Parliamentary Public Accounts Committee to evaluate the effects of the new system in 1987 were unsuccessful. The statistical data on which they drew was unreliable, but some indicators suggested improvements. For instance, under the pre-SEINS procedure, approximately 10 000 summonses to court for fine defaulters were produced by the police each week in the period 1983-1984. Under the new system the rate had dropped to 1000 per week. On the other hand, the number of applications to the Attorney-General's Department for the exercise of the royal prerogative of mercy by the Governor on the recommendation of the Attorney-General for the purpose of correcting manifest injustice or tempering the rigidity of the law with clemency increased by 400 per cent from an annual average of 4000 to approximately 20 000. During the first six months of 1985 the Attorney-General received almost 10 000 such applications. Of these, 75 per cent were successful in either having the conviction declared void or the penalty waived.¹⁵

3.1.6 The offender was to be notified of the terms of the order and two weeks were allowed in which to pay before a warrant of commitment to prison was issued for execution by the police. A right of appeal to the District Court and a right to apply to have the order annulled where the offender failed to receive any of the prescribed notices, or for other reasons, was included. With parking offences, provision was made for the owner of the vehicle to nominate the actual driver at the time of the offence. SEINS is designed to be available for any offence for which a penalty notice can be issued under State law.

3.1.7 In 1984 the Public Accounts Committee of the New South Wales Parliament resolved to conduct an enquiry into the collection of parking and traffic fines. The enquiry resulted from the Auditor-General's adverse comments on the high level of outstanding warrants of commitment in respect of parking and traffic fines which, at the end of 1983, stood at \$34 million. The Committee reported in July 1986.¹⁶ During the course of the enquiry the SEINS system had already come into operation to simplify the fine collection process. The Committee reported, however, that, by the end of 1985 (despite writing off outstanding warrants valued at \$7 million) the value of outstanding warrants of

¹⁴ New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986, Section 4 sets out the sequence of procedures in detail and copies of relevant notices are provided in Appendix 1.

¹⁵ New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986, p.28.

¹⁶ New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986.

commitment for non-payment of fines had reached \$52 million. The Committee made numerous recommendations for improvement in the fine collection system, including the possibility of licence cancellation as a means of encouraging defaulters to pay.¹⁷ The report also called for better information systems to measure the performance of the parking and traffic fine enforcement system and recommended that after three warrants for imprisonment for non-payment of infringement fines, or warrants exceeding \$200 in value, the defaulter's driver's licence be cancelled. In the case of corporate offenders, the vehicle registration should be cancelled in similar circumstances.

3.2 Queensland

3.2.1 A system of penalty notices bringing in an 'owner-onus' system and a form of optional payment of penalties without court proceedings for parking offences was first introduced into Queensland in 1956 to amend the *Traffic Act* 1949 and at the same time the State was legislatively recognising parking meters.¹⁸ This legislation also allowed regulations to define offences as 'minor traffic offences'.¹⁹ These too were subject to the procedure introduced for parking offences. In both instances the alleged offender could decline to pay the sum indicated in the penalty notice and have the matter dealt with by a court. The original Queensland legislation authorising metered parking on streets permitted the local authority to receive the revenue from the parking meters and from fines and penalties arising from the offences, but made actual enforcement a matter for the police. Non-payment would result in the issue of ordinary summary proceedings.

3.2.2 Four years later, the government, through the *Traffic Act (Amendment) Act* 1960, sought to extend the new procedure to moving traffic offences. This caused much controversy in the Queensland Parliament.²⁰ The opposition resisted the legislation on two grounds. First, that it was wrong in principle to apply the ticket system beyond parking offences or other breaches of a very minor nature, and secondly, because it would allow repeat offenders to get off lightly because their recidivism would not have been recorded. The sponsoring minister made it clear that it was not intended that the regulations include major offences such as those which might cause personal injury or property damage, nor ones relating to driving without a licence or driving under the influence of

¹⁷ New South Wales, Legislative Assembly Public Accounts Committee, above para 1.20.

¹⁸ *Traffic Acts And Another Act Amendment Act* 1956; *Queensland Parliamentary Debates*, Vol. 215, 1956-57, 1367, 1369.

¹⁹ *Traffic Regulations (Minor Traffic Offences)* 1957. These were replaced by the *Traffic Regulations* 1962.

²⁰ *Queensland Parliamentary Debates*, Vol. 228, 1960-61, 1886-1929, 2120-2138.

alcohol or drugs. The government held to its view that the lesser speeding offences could be open to disposal by way of penalty notice. Again, as with parking violations, it was emphasised that either the offender or the complainant could opt to have the matter determined summarily by a court. The intensity of the opposition delayed the legislation to such a degree that the new provisions were not able to come into effect until 1965.²¹ The Queensland extension was modelled on American developments and on those taking place in New South Wales.²²

3.2.3 The key provisions are now to be found in the amended *Traffic Act* 1949, s.44F. In 1990, Part VIB was inserted into this Act by the *Traffic Act (Amendment) Act* 1990 to deal with photographic detection devices. These also include, under s.44R a separate penalty notice procedure for camera detected prescribed offences. Section 44T provides that if the offence is expiated by payment of the penalty, ‘no conviction shall be regarded as having been recorded’.²³ The 1990 amendments were passed without dispute.²⁴ In August 1992, SETONS (the Self Enforcing Ticketable Offence Notice) system commenced in Queensland. Under this scheme, unpaid traffic fines are transferred to the Department of Justice SETONS court which issues enforcement orders against the offenders.²⁵

3.3 South Australia

3.3.1 The credit for the introduction of the Australian concept of ‘expiation notices’ goes to South Australia. Expiation notices appear in the *Police Act Amendment Act* 1938 which inserted a new s.149a into the *Police Act* 1936. This permitted regulations to be made in respect of offences administered by municipal or district councils authorising them to deal with breaches of their by-laws or regulations by giving notice to the alleged offender that he or she might expiate the alleged offence by payment to the council of an amount fixed by regulation as the penalty.²⁶ Payment absolved any criminal liability for the matter.²⁷ Their application to parking meter offences was recognised in 1957.²⁸ These original provisions continued in the *Police Offences Act* 1953, s.64 until repealed

²¹ Proclamation, *Gazette* 7 August, 1965, p.1809.

²² *Queensland Parliamentary Debates*, Vol. 228, 1960-61, 1925; *Motor Traffic (Amendment) Act* 1961 (NSW).

²³ *Traffic Act (Amendment) Act* 1990, s.44T(1)(c).

²⁴ *Queensland Parliamentary Debates*, 1990, No. 3, 20 March, 1990, pp.466-68; No. 5, 8 May, 1990, pp.1233-260.

²⁵ *Justices Act* 1886, Part IVA; Queensland, Attorney-General’s Department and Ministry for Justice and Corrective Services, *A Green Paper on Fine Defaulters*, Brisbane, 1990.

²⁶ At that time, not exceeding 10 shillings for each offence; *Police Act* 1936, s.149a(5).

²⁷ *Police Act* 1936, s.149a(6).

²⁸ *Local Government Act Amendment Act* 1957.

in 1979 on the passing of the *Local Government Act Amendment Act (No. 2) 1978*. This Act inserted provisions dealing with the expiation of offences into the *Local Government Act* and extended them to include offences under the *Local Government Act 1934* and other Acts.²⁹

3.3.2 The stimulus for the introduction of the expiation notice scheme in South Australia was financial. The purpose of the original *Police Act Amendment Bill 1938* was to relieve municipalities of the duty to contribute to the cost of maintaining foot police in their areas. While this benefited them financially, they were also concerned to keep their share of any fines imposed as a result of prosecutions initiated by local police. Parliament was told that the Adelaide City Council had already been enlarging its coffers by inviting alleged offenders to make ‘voluntary’ payments to forestall prosecutions for breaches of by-laws dealing with parking offences and jaywalking.³⁰ Other councils had adopted and widened the practice.³¹ In essence it was the compromise or composition of a criminal prosecution and, though not amounting to the crime of compounding, arguably unlawful at common law.³² The *Police Act Amendment Act 1938* forbade its continuation, but introduced a statutory procedure whereby prescribed minor offences could be settled administratively by out of court payments with revenue benefits to the council. The ultimate objectives of the legislation were to legalise ‘voluntary’ contributions, standardise the payment demanded and confine the practice to specified lesser offences.³³

3.3.3 Although, by 1979, the range of offences capable of expiation had been widened to include offences under Acts other than the *Local Government Act 1934*,³⁴ it was not until 1981 that traffic offences were included. This was achieved by the *Police Offences Act Amendment Act 1981*³⁵ creating ‘traffic infringement notices’ in order ‘to bring South Australia into line with other States, each of which has its own pre-determined fees for the expiation of minor traffic offences.’ It was the view of the government that an expiation scheme similar to that which operated in relation to parking offences under the *Local Government Act* would increase the efficiency of dealing with traffic infringements and

²⁹ See *Local Government Act 1934*, s.794a; *Local Government (Expiation of Offences) Regulations 1991* (parking offences; littering; driving over footways, lawns or gardens), and *South Australian Parliamentary Debates*, 1977-78, Vol. 2, 2381.

³⁰ *South Australian Parliamentary Debates* (Legislative Assembly), 1938, Vol. 1, 1293-1302.

³¹ *South Australian Parliamentary Debates* (Legislative Assembly), 1938, Vol. 1, 1294.

³² To agree, for valuable consideration, not to prosecute an information on a penal statute is unlawful, Turner J.W.C, *Russell on Crime* (12th ed.) Vol. 1., London, Stevens, 1964, 342.

³³ *South Australian Parliamentary Debates* (Legislative Assembly), 1938, Vol. 1, 1449-1453. See also *South Australian Parliamentary Debates* (Legislative Council), 1938, Vol. 1, 1527-1528. Difficulties with the legislation are highlighted in *Willing v. Watson* (1974) 8 SASR 487.

³⁴ E.g. *Dog Control Act 1979*, s.64.

³⁵ *Police Offences Act 1953*, s.64, renamed the *Summary Offences Act 1953* in 1985.

reduce the enormous burden on the courts and the police.³⁶ Though traffic infringement notices (TINS) given under the *Police Offences Act 1953* (later *Summary Offences Act 1953*, s.64) were not to count as convictions, s.98b of the *Motor Vehicles Act 1959* treated the expiation by payment as a conviction for the limited purpose of accumulating demerit points.

3.3.4 In 1986 South Australia introduced a Cannabis Expiation Notice Scheme (CENS).³⁷ The legislation was introduced because the penalties imposed for lesser cannabis offences were well below the maximum provided in the Act and the use of court time in the prosecution of such offences was regarded as wasteful of resources and out of proportion to the seriousness of the offence. In introducing the Bill, the Minister of Health commented:³⁸

It is unnecessarily draconian for a person, particularly a young adult, to be plagued by the stigma, and often the restriction of employment opportunities, of a conviction that will stay with him for the rest of his life.

The CEN system allowed for on-the-spot fines to be issued to adults alleged to have committed a ‘simple cannabis offence’ which would normally have carried a maximum penalty on summary conviction of \$500. For these offences of personal possession or use, the scheme allows the offence to be expiatable provided the police believe that no commercial dealing is involved and, in the case of cannabis, that the amount in the person’s possession is less than 100 grams or, in the case of cannabis resin, 20 grams. The legislation assumes that the offender will admit the nature and quantity of the drug, but it is possible for a police officer to take the offender’s name and address and, after arranging for the drug to be identified and weighed, later to forward an expiation notice. The expiation penalties range between \$50 and \$150, i.e. smoking cannabis in one’s home (penalty \$50), or growing cannabis for own use (penalty \$150).³⁹ For CENs 60 days are allowed for payment rather than the normal 28 days applicable to other expiation notices. Payment of the expiation fee is neither an admission of guilt, nor is it recorded as a criminal conviction.⁴⁰ Despite opposition protests that the legislation trivialised simple cannabis offences by, in effect, introducing a licensing fee for

³⁶ *South Australian Parliamentary Debates*, 1980-81, Vol. 3 (Legislative Council), 2858, (Legislative Assembly) 3262; *Summary Offences (Traffic Infringement Notice) Regulations 1981*; *Road Traffic Act 1961*, s.79b. Prosecutions against the last provision may not be commenced unless the owner has been served a traffic infringement notice and been given the opportunity to expiate it.

³⁷ *Controlled Substances Act 1984*, s.45a(2) as amended by *Controlled Substances Act Amendment Act 1986*.

³⁸ *South Australian Parliamentary Debates*, 1986-87, Vol. 1 (Legislative Council), 737.

³⁹ *Controlled Substances Act Regulations 1984*, No.74 of 1987.

⁴⁰ *Controlled Substances Act 1984*, s.45a(5).

affluent users⁴¹ in the form of an on-the-spot penalty, the government emphasised that the aim of the legislation was to de-emphasise the criminal status of small-scale cannabis use rather than decriminalising its use altogether.⁴²

3.3.5 In 1987 the *Expiation of Offences Act* was passed. It was not intended to rationalise or override the existing various arrangements for parking, traffic and transit infringements, but was a deliberate extension of the expiation notice to scheme offences under a further eighteen South Australian Acts.⁴³ The aim was to streamline procedures and free up resources.⁴⁴ The Acts are:

Commercial Motor Vehicles (Hours of Driving) Act 1973;
Dangerous Substances Act 1979;
Education Act 1972;
Enfield General Cemetery Act 1944;
Explosives Act 1936;
Financial Institutions Duty Act 1983;
Industrial Conciliation and Arbitration Act 1972;
Land Tax Act 1936;
Lifts and Cranes Act 1985;
Pastoral Land Management and Conservation Act 1989;
Payroll Tax Act 1971;
Public and Environmental Health Act 1987;
South Australian Metropolitan Fire Services Act 1936;
Stamp Duties Act 1923;
Tobacco Products Control Act 1986;
Unclaimed Moneys Act 1891;
Valuation of Land Act 1971;
West Terrace Cemetery Act 1976

3.3.6 There is no South Australian scheme similar to that in New South Wales and Victoria for the enforcement of penalties demanded under expiation notices as though the government proposes to introduce one in late 1994 or early 1995.⁴⁵ The *Expiation of Offences Act 1987*, s.7,

⁴¹ *South Australian Parliamentary Debates*, 1986-87, Vol. 2 (Legislative Council), 1140.

⁴² Sarre R., 'A Review of the Cannabis Expiation Notice Scheme in South Australia—A Research Note' (1990) 23 *Australian and New Zealand Journal of Criminology* 299.

⁴³ Expiation notices are available under other Acts, such as: *Dog Control Act 1964*, s.64; *Fair Trading Act 1987*, s.89; *Waste Management Act 1987*, s.43;

⁴⁴ *South Australian Parliamentary Debates*, 1986-87, Vol. 4 (Legislative Council), 3685-86; *South Australian Parliamentary Debates*, 1987-88, Vol. 2 (Legislative Assembly), 1240 et seq.

⁴⁵ This scheme is intended to reform the enforcement of the Traffic Infringement Notices System (TINS) by replacing the present court based system with an administrative system run by the Courts Administration Authority which will have the responsibility of issuing enforcement orders. South Australia, Enforcement of Fines Working Group, *Report: Proposed Fines and Infringement Notices Enforcement Scheme*, May 1994.

provides for 'money received by way of *expiation fees*' to be treated as fines, but this relates to the disposal of the funds, not to the means of enforcement. If the expiation notice is not met, withdrawal and issuing of a summons is the means of enforcement. Where an expiation notice is withdrawn and a prosecution for an offence to which the notice related is commenced, the fact that the defendant has already paid the expiation fee is not admissible in those proceedings as inculpatory evidence.⁴⁶

3.3.7 Because South Australia has no intermediate court of appeal, appeals from courts of summary jurisdiction come before judges of the Supreme Court. This means that a number of matters relating to infringement notices have been the subject of reported cases. In *Willing v. Ewens*⁴⁷ the Full Supreme Court of South Australia, in dealing with an appeal against conviction for leaving a vehicle at an expired parking meter, took a strict view on the obligation of a council to meet the statutory conditions precedent to a prosecution. In the particular case, the conditions required that certain signs or markings indicating the existence of a metered zone be present. Their absence was fatal to the prosecution. As the requirement was mandatory in its terms, the council had breached it in failing to indicate properly or mark out a metered zone. In *Willing v. Watson*⁴⁸ a by-law of a municipal council provided that no one should attach to any parked vehicle any notice without the consent of the owner or driver of a vehicle. A council parking inspector placed a parking infringement notice on the vehicle. The owner of the vehicle himself issued a complaint against the inspector alleging that he had committed an offence against the by-law by attaching the notice to the vehicle without the owner's consent. The Full Supreme Court held that the owner was entitled to bring the proceedings. As the legislation then stood, a notice inviting the expiation of the infringement could not be sent until the offence itself had been reported to the municipal council. As this had not occurred in the present case, the affixing of the infringement notice to the car was unlawful and the parking inspector had been guilty of an offence against the by-law. In *Shipp v. Donkin*⁴⁹ the *Local Government Act 1934*, s.794a was under consideration. It not only allowed for the expiation of infringements within a certain specified time, but also provided that, notwithstanding that the time limit has passed, a council could accept late payment of the expiation if its additional costs were met. A driver, having committed offences against the parking regulations of the City of Adelaide, tendered late payment of the appropriate expiation fee which the council refused to accept for no other reason than the fact that it was late.

⁴⁶ *Expiation of Offences Act 1987* (SA), s.6(5).

⁴⁷ (1973) 7 SASR 231.

⁴⁸ (1974) 8 SASR 487.

⁴⁹ (1981) 26 SASR 340.

The driver was then convicted in a court of summary jurisdiction of the offence and fined an amount five times the expiation fee. Jacobs J. held that in declining to exercise its power to accept late payment simply because the payment was late, the council had misconceived its duty and had failed properly to exercise its discretionary power to accept a late payment. It had exercised no discretion at all. His Honour also added the point that though there was a wide disparity between the maximum amount of penalty if a matter was tried summarily as compared with the relatively minor penalty required by way of expiation, a sentencer is bound, in the proper exercise of his or her discretion, to weigh the fact that the matter need never have come to court at all if the council had properly exercised its discretionary power to accept a late payment. A fine at the lower end of the scale was therefore appropriate.

3.4 Tasmania

3.4.1 When parking meters were first authorised for the streets of Hobart by the *Hobart Corporation Act* 1954, the legislation allowed those who breached metered parking regulations to ‘expiate’ the offence by payment to the Council of an amount specified in a notice sent to the owner of the vehicle.⁵⁰ The owner could transfer responsibility by nominating the actual driver.⁵¹ These provisions were moved in an amended form to the *Local Government Act* in 1962 so as to allow the parking meter regulations to apply throughout the State.⁵² Police or by-laws officers were then allowed to serve the notices by attaching them directly to the offending vehicles. The arrangements also required the driver to pay the municipal authority, within 24 hours, the sum of 10 shillings by way of ‘composition’ for the offence. Such a ‘composition’ would bar any subsequent proceedings in respect of the same contravention.⁵³ The shift in language from expiation to composition was deliberate. A composition is an arrangement between two or more persons for the payment by one to the other of a sum of money in satisfaction of an obligation to pay another sum differing in amount or mode of payment. Apparently because of doubts about whether it was possible to enter into a composition in relation to criminal liability, the provisions were amended in 1968 to give the enforcement of parking meter violations a civil character. Owners of vehicles parked in metered spaces in contravention of the Act were to be subject to a ‘forfeit’ to the municipal corporation, of \$25. Such forfeits were to be enforced only as civil matters under the *Justices Act* 1959. The parking

⁵⁰ The amount not being greater than the penalty normally fixed in respect of the offence.

⁵¹ *Hobart Corporation Act* 1954, s.201A.

⁵² *Local Government Act* 1962, s.703-708.

⁵³ *Local Government Act* 1962, s.704(3)&(4).

officer could, as before, affix a notice to the vehicle requiring the driver to pay \$1 by way of composition of the civil forfeit. The maximum period allowed was increased from 24 hours to fourteen days.⁵⁴

3.4.2 In 1982 these provisions were repealed and replaced by the *Local Government (Highways) Act 1982* which, under Part VII (controlled parking), revamped the arrangements in respect of parking offences. It maintained the system of forfeits, though it now described the liability as arising on ‘summary conviction’.⁵⁵ ‘Composition’ of the contravention was still permitted⁵⁶ and fourteen days were still allowed for payment. The notices affixed to the vehicle inviting payment were now called ‘parking tickets’.⁵⁷ This currently is the basis for the parking ticket scheme in Tasmania.

3.4.3 So far as moving traffic offences in Tasmania are concerned, the first provision for ‘traffic infringement notices’ came in 1971 by way of an amendment to the *Traffic Act 1925*. Traffic infringement notices could be served indicating the offence alleged, the penalty and the number of demerit points prescribed.⁵⁸ The notice had to indicate that the alleged offender could disregard it, but might then be prosecuted in a court for the offence to which it related. Twenty-one days were given for payment of the penalty and arrangements for payment by instalments could also be entered into with the clerk of local court of summary jurisdiction. Also included in the 1971 amendment to the *Traffic Act* was a provision that where the traffic infringement notice had been accepted by a person, the acceptance was to be taken, in relation to proceedings for any other offence, as a *conviction* for the offence in respect of which the notice was served ‘unless the court before which these proceedings are taken is satisfied that it is unjust that it should be so treated’.⁵⁹ This was the first Australian example of a paid traffic infringement notice counting as a conviction. Although the first version of this Bill was never passed and the second only after a parliamentary compromise, the issue dividing the parties related to demerit points and the size of the fines, not whether it was proper that acceptance of a traffic infringement notice by payment should be treated as a conviction.

3.4.4 In 1978 there was a further amendment by the *Traffic (Infringement) Notices Act 1978* to extend the period the alleged offender was given to pay the infringement notice to 28 days (or 42 days if an

⁵⁴ *Local Government Act 1962* (reprint 1968), s.703-706.

⁵⁵ *Local Government (Highways) Act 1982*, s.97(4).

⁵⁶ *Local Government (Highways) Act 1982*, s.100.

⁵⁷ *Local Government (Highways) Act 1982*, s.101.

⁵⁸ See now *Traffic Act 1971* Parts IVA & IVB.

⁵⁹ *Traffic Act 1971*, s.43H(6). ‘Accepted’ means acceptance by payment within 21 days, or undertaking to pay by instalments, s.43H(4). Acceptance of the traffic infringement notice is not to be regarded as an admission of liability for any civil claim or proceeding, s.43H(7).

additional period had been allowed under the Act). Further amendments occurred in 1979 and 1987 to allow payments by instalments to be extended for up to 63 days from the date on which the infringement notice was originally served. In 1988, provisions for infringement notices were also inserted into the *Metropolitan Transport Act 1954* to cover offences concerned with the use of public transport, breaches of ticketing regulations, etc.⁶⁰ This legislation continues the policy of treating an infringement notice that has been accepted as a conviction but, unlike s.43H(6) of the *Traffic Act 1925*, s.43C(8) of the amended *Metropolitan Transport Act 1954* allows the payment of the infringement notice to be treated as a conviction only in relation to other 'prescribed' offences. This gives it a narrow base in that the offender now can be treated as a second offender in relation to the issue of infringement notices under this Act. However, the policy regarding notices counting as convictions is not consistently applied. When infringement notices were introduced into the *Dog Control Act 1987*, it was expressly provided, in s.67(b), that payment of the penalty specified in the infringement notice was not to be recorded as a conviction. There is no SEINS or PERIN type enforcement scheme in Tasmania to date. If the parking or traffic infringement notice is not paid, the notice must be withdrawn and a summons issued if the issuing authority wishes to pursue the matter further.

3.5 Western Australia

3.5.1 In 1950 a proposal based on American approaches to dealing with minor traffic offenders was brought before the Western Australian Cabinet, but was rejected. In 1955, following discussion of the issue at the annual interstate conference of commissioners of police, Western Australia passed legislation, similar to that in New South Wales, to allow minor offences to be subject to modified penalties and procedures. Changes were made to the *Traffic Act 1919*.⁶¹ Section 74A of the parent Act allowed the making of regulations authorising the infliction and collection by public service officers of modified penalties, not exceeding £5, for defined parking and related minor offences. These provisions allowed the person affected to decline to have the offence dealt with under the regulations, but rather have it determined by a court. The legislation was deliberately borrowed from the 1955 New South Wales arrangements for dealing with offences without a court hearing, under regulations made pursuant to the New South Wales *Transport Act 1930*, s.265. At that stage, the New South Wales modified penalty legislation dealt only with

⁶⁰ *Metropolitan Transport Amendment Act 1988* inserting a new Part IVA into the *Metropolitan Transport Act 1954*.

⁶¹ *Traffic Act Amendment Act 1955*, s.2.

parking offences. In moving the second reading speech, the Western Australian Chief Secretary said that the purpose of the legislation was 'to ease the strain on the courts and to make the processes of law less involved'.⁶²

3.5.2 The regulations allowed for a penalty of 10 shillings for a first offence, 15 shillings for a second and £1 for a third or subsequent offence. The proposed penalties were considerably lower than the normal court maximum. The arrangements envisaged that the police would keep records of penalty notices issued during the preceding 12 months with a view to considering, in the case of repeat parking offenders, whether the penalty provided was sufficient. If not, court action could be initiated. The opposition was concerned about the adequacy of the record keeping, particularly if offences were committed in different parts of the State. By-laws prescribing 'modified penalties' for parking offences within the district of the City of Perth were also authorised by the *City of Perth Parking Facilities Act 1956*, s.21. These regulations also contained owner-onus provisions. Payment of the modified penalty was declared to be a defence to a charge of the offence in respect of which the penalty was paid.

3.5.3 Infringement notices for moving traffic offences first became available in Western Australia in 1968 on the introduction of what is now s.102 of the *Road Traffic Act 1974*. This provision originated in the *Traffic Act Amendment Act 1968* which added to the *Traffic Act 1919* a form of notice entitled a 'traffic infringement notice'. It covered both moving vehicle offences and parking offences and allowed service by post, personally, or in the case of parking offences, by attaching it to the vehicle. The legislation included an owner-onus provision and established a demerit point system which allowed for the loss of a licence after a certain number of minimum points had accrued on conviction. It then declared that payment of the penalty pursuant to traffic infringement notices was to constitute a conviction of an offence for the purposes of earning these demerit points. The Western Australian Parliamentary Debates of 1968 refer to the aims of the legislation as: relieving the courts of the duty to hear trivial offences while still preserving the right of the defendant to have his or her case heard, reducing the time between the offence and its disposal, and reducing traffic inspector and clerical work.⁶³

3.5.4 A system for the registration and enforcement of infringement notices was introduced into Western Australia in 1988, by the *Justices Amendment Act 1988* s.10, which inserted a new Part VIBA into the

⁶² *Western Australian Parliamentary Debates 1955*, Vol. 1, 820.

⁶³ *Western Australian Parliamentary Debates 1968*, 19 September 1968, Legislative Assembly, 1250-1253.

Justices Act 1902.⁶⁴ This provides for the registration and enforcement of infringement notices after the issue of courtesy letters and an enforcement certificate as in the SEINS and PERIN systems. The imprisonment of the defaulter is the ultimate sanction. The Western Australian legislation allows for time to pay.⁶⁵ The enforcement procedures originally could not be used in relation to persons under 18 years of age but, in 1991, the minimum age was reduced to 16 years at the date of the alleged offence.⁶⁶ In Western Australia the enforcement procedure is known as the INREP system (Infringement Notice Registration Enforcement Procedure). If a person does not pay the infringement penalty, the matter is referred to an INREP Court for the issue of an enforcement order.

3.5.5 In 1992-93 approximately 450 000 infringement notices were issued by Western Australian Police and local government authorities.⁶⁷ A number of problems have been identified with the current system of enforcement. These include the volume of cases reaching unmanageable levels, a growing lack of confidence in the enforcement of infringement notices and fines, particularly because of abuses of the system arising out of work orders for defaulters being made regardless of their suitability or ability to pay and the concurrent discharge of numerous fines by short periods of imprisonment in default. Inconsistent practices and procedures amongst infringement issuing agencies were noted, as well as poor payment rates, particularly by corporate offenders.⁶⁸ The Ministry report has recommended the drafting of new Infringement Notice and Fine Management legislation using licence suspension as the principal enforcement strategy, whether or not the original offence was related to a traffic matter, with no further enforcement action involving work or imprisonment. This scheme is not yet in effect.

3.6 Federal

3.6.1 The levying of administrative penalties by way of infringement notices or penalty notices is also available as an alternative to prosecution under Commonwealth law. These notices first made their appearance with the parking infringement notices authorised under the *Airports (Surface Traffic) Act* 1960 (Cth) and have since spread to some fifteen federal Acts. Generally they provide for the making of regulations which either

⁶⁴ *Justices Act* 1902, s.171BA - 171BU as further amended by the *Justices Amendment Act* 1991, s.11-21.

⁶⁵ *Justices Act* 1902 (as amended), s.171BH.

⁶⁶ *Justices Act* 1902 (as amended), s.171BB.

⁶⁷ Western Australia, Ministry of Justice and Police, *Infringement Notice and Fines Management Systems Western Australia*, 21 March 1994, 29.

⁶⁸ Western Australia, Ministry of Justice and Police, *Infringement Notice and Fines Management Systems Western Australia*, 21 March 1994, 29-34.

create offences, or indicate which offences under the relevant piece of legislation may be dealt with administratively. A wide variety of wrongdoing is now covered. It includes offences arising out of: the use of vehicles, aircraft and vessels; regulation of corporations; federal elections and referenda; and breaches of taxation law. The Acts are:

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987 (Cth), s.23(4);
Airports (Surface Traffic) Act 1960 (Cth), s.13;
Child Support Act 1988 (Cth), s.56;
Civil Aviation Act 1988 (Cth), s.98(3)(p);
Close Corporations Act 1989 (Cth), s.164;
Commonwealth Electoral Act 1918 (Cth), s.245;
Corporations Act 1989 (Cth), s.31 and *Corporations Law*, s.1313;
Defence Act 1903 (Cth), s.116ZD(2)(r);
Great Barrier Reef Marine Park Act 1975 (Cth), s.66(1)(n);
Income Tax Assessment Act 1936 (Cth), s.221NB; s.221YHLA; s.221ZDB; s.221ZQA and s.221YHZG;
Interstate Road Transport Act 1985 (Cth), s.56(2)(b);
Migration Act 1958 (Cth), s.181(1)(j);
National Parks and Wildlife Conservation Act 1975 (Cth), s.71(2)(r);
Radiocommunications Act 1983 (Cth), s.93(2)(d);
Referendum (Machinery Provisions) Act 1984, s.45;
Taxation Administration Act 1953 (Cth), s.8ZE.

3.6.2 Those Acts which are primarily directed towards the collection of revenue, the routine regulation of corporations, or compulsory voting, tend to call the notice inviting payment a *penalty notice*, while legislation concerned with traffic and area management usually designates it an *infringement notice*. A distinction in culpability and criminality seems implied in the different labels, but it is ill-defined. In either case, if the payment invited by the notice is not forthcoming, the only means of enforcement is to withdraw it and to issue a summons to prosecute the alleged offence in the normal way under the relevant Act. Federal law itself contains no general PERIN type mechanism for the enforcement, by way of registration, of an unpaid penalty or infringement notice. The *Judiciary Act* 1903 (Cth), s.68 does not operate automatically to apply the State procedure to federal offenders because it only picks up local procedural law when someone is ‘charged’ with an offence. The issue of a notice is designed to avoid the laying of charges. Likewise, *Crimes Act* 1914 (Cth), s.15A is of no assistance since it only applies State law to the enforcement of ‘fines’ and a penalty or infringement notice does not impose one. The *Magistrates’ Court General*

Regulations 1990 (Vic), r.1103 makes no effort to extend the PERIN registration process to notices issued under federal Acts,⁶⁹ nor could it constitutionally do so. It is a matter for federal law.

3.6.3 The Australian Law Reform Commission, in its 1992 report on multiculturalism and the law, recommended a significant extension of the infringement notice scheme for minor offences against Commonwealth law.⁷⁰ The Commission contemplated whether to recommend introducing legislation converting existing regulatory offences and other minor criminal offences to a new class of administrative illegality to be called ‘contraventions’, or to continue with the present model which allowed some lesser offences to be dealt with by way of infringement notice on an ad hoc basis without formally establishing a distinction between crimes and contraventions.⁷¹ It supported the ad hoc use of infringement notices without creating a special sub-category of crime.⁷² It did so because it feared that to decriminalise the conduct would both create difficulties in enforcing the penalty, and would encourage authorities to take proceedings despite a weak case. The latter was more likely because there would be less potential judicial scrutiny of the circumstances in which the penalty is being imposed. The effectiveness of the law might thus be undermined and there might be a serious loss of safeguards for accused persons.

3.6.4 Despite concerns about net-widening (because an infringement notice scheme would encourage authorities to issue notices when they might otherwise only issue warnings), the Committee recommended that an infringement notice scheme similar to the ones already in place, but with increased safeguards, should be available as an alternative to prosecution for minor breaches of federal law. The report did not purport to identify the general class or type of offence to be subject to this procedure, but supported the introduction of an infringement notice scheme of the type which it recommended in its report on *Customs and Excise*.⁷³

3.6.5 The Commission recommended that infringement notices should be served on the person within 12 months of the date of the alleged offence and that the notice itself include:

⁶⁹ But the *Corporations Law* has a foundation in State law, see the revised definition of code in the amendment to the *Interpretation of Legislation Act* 1984, s.32.

⁷⁰ Australian Law Reform Commission, Report No. 57, *Multiculturalism and the Law*, Sydney, ALRC, 1992, Ch. 9.

⁷¹ Australian Law Reform Commission, Discussion Paper No. 48, *Multiculturalism: Criminal law*, Sydney, ALRC, 1990, 6.12.

⁷² Australian Law Reform Commission, Discussion Paper No. 48, *Multiculturalism: Criminal Law*, Sydney, ALRC, 1990, 6.15; Australian Law Reform Commission, Report No. 57, *Multiculturalism and the Law*, Sydney, ALRC, 1992, 9.8. See further discussion below Ch.10.

⁷³ Australian Law Reform Commission, Report No. 57, *Multiculturalism and the Law*, Sydney, ALRC, 1992, 9.18 and Appendix A.

- the name and address of the person on whom it is served;
- the offence alleged to have been committed and the particulars of the offence, including date and place of alleged offending;
- the penalty due under the infringement notice and the maximum penalty which a court might ordinarily impose for such an offence;
- how the penalty is to be paid;
- the options available to the person on receipt of the infringement notice, including:
 - the right to notify the person issuing the notice of matters that ought to be taken into account in deciding whether the notice should be enforced;
 - the right to apply to pay the penalty by instalments;
 - the right to pay the penalty specified in the notice without incurring a conviction;
 - the right to do nothing, in which case the person may be prosecuted for the alleged offence.

The Commission recommended that the infringement notice penalty should be no more than one-fifth of the maximum penalty for the offence in question: ‘ideally the amount would be that which would offer no scope for pressure on an innocent defendant but is not so high as to induce the guilty to allow the matter to proceed to court’.⁷⁴

⁷⁴ Australian Law Reform Commission, above 9.28.

Victoria

4.1 History

4.1.1 The *Parking of Vehicles Act 1953* was one of the foundation stones upon which the Victorian infringement notice scheme was built. It did not create such notices, but offered anyone summonsed for a ‘parking infringement’ the opportunity of electing not to appear in court to answer it. The summons was served by post or personally in the normal manner, but contained a copy of the sworn statement of the informant regarding the circumstances of the offence, together with a notice advising the defendant that he or she could elect not to come to court to defend the charge. If the election not to appear was made, a magistrate could deal with the matter in chambers and, if satisfied on the statement supplied as evidence, record a conviction and impose a penalty in the person’s absence. If no such election was lodged, the hearing of the information proceeded in the usual way in open court.

4.1.2 The Act covered offences arising out of the parking of vehicles in contravention of by-laws, rules or regulations made under the various Acts dealing with local government, road traffic, transport regulation, and motor cars. Initially it applied only to proclaimed areas within the municipal district of the City of Melbourne. The legislation also brought ‘owner-onus’ to Victoria. It deemed the owner of the vehicle to be the person responsible for the offence unless the court was satisfied that the vehicle was stolen or illegally used, or the owner provided the name and address of the person who was in charge of the vehicle at the relevant time or satisfied the court that he or she did not know and could not, with reasonable diligence, have ascertained the driver’s name or address.¹ In time the procedure created by this Act became the ‘alternative

¹ *Parking of Vehicles Act 1953*, s.3.

procedure' available under Part VII of the *Magistrates (Summary Proceedings) Act 1975*, s.84-89 prior to it being abolished in 1990.²

4.1.3 The 1953 Act was amended in 1954 and 1955 and then replaced by the *Road Traffic Act 1956*.³ A number of significant changes were made. First, a class of crimes known as 'infringements' was firmly established. 'Infringement' was broadened to mean either a 'parking infringement' or a 'traffic infringement'. This allowed the modified court procedure for infringements to be applied to moving vehicle offences. Secondly, the summons could incorporate the sworn statements of witnesses other than the informant to ease the task of proving the prosecution case. Thirdly, the defendant was now required to elect to appear, rather than elect not to appear. The system had shifted from one of *opting out* to one of *opting in*. If the election was not received, the defendant was no longer entitled to appear or to be heard in court, except by the court's leave. The default procedure was no longer an open hearing in court, but a determination in chambers. However, the magistrate was prohibited from ordering imprisonment, or any form of licence cancellation, suspension, or disqualification in these chamber proceedings. If such sanctions were being considered, the matter had to be adjourned to open court and the defendant given notice.⁴ Later there was an erosion of this safeguard in relation to cancellation of probationary drivers' licences.

4.1.4 At the date of its abolition in 1990, the alternative procedure was open for use in relation to some fifteen Acts covering summary offences. They went beyond parking, traffic and transportation matters. It could be used for offences under Acts such as the *Associations Incorporations Act 1981*; *Business Names Act 1962*; *Dog Act 1970*; *Environment Protection Act 1970*; *Housing Act 1983*; *Litter Act 1987*; *Motor Boating Act 1961*; *Planning and Environment Act 1987*; and *Weights and Measures Act 1958*, as well as the *Companies (Acquisition of Shares) (Victoria) Code*; *Companies (Victoria) Code*; *Futures Industry (Victoria) Code* and the *Securities Industry (Victoria) Code*.⁵ Nonetheless, because the bulk of the offences for which the alternative procedure could be used were parking, traffic and transportation ones, certain courts in the metropolitan area were declared to be 'Traffic Courts' for the exclusive purpose of determining matters brought under the alternative procedure by members of the police force.⁶ This arrangement continued until the alternative procedure was abolished and

² *Magistrates' Court Act 1989*, s.52.

³ The 1956 Act became the *Road Traffic Act 1958* in the consolidation of that year.

⁴ *Magistrates (Summary Proceedings) Act 1975*, s.84(9) & (10).

⁵ See *Magistrates (Summary Proceedings) Act 1975*, Schedule Two.

⁶ *Magistrates (Summary Proceedings) Act 1975*, s.88 & 89.

the Traffic Courts closed in the course of the revamping of the Victorian Magistrates' Court under the new *Magistrates' Court Act* 1989. The offences to which the alternative procedure used to apply are now largely dealt with by way of infringement notices, thus shifting them further away from immediate judicial control. The *Magistrates' Court Act* 1989 did introduce a new form of summary hand-up-brief procedure⁷ which, in theory, could replace the alternative procedure as a means of expediting the disposal of undefended summary prosecutions, but this is rarely used because of the paperwork required.⁸

4.1.5 Another foundation stone to the Victorian infringement notice scheme was the legislation introduced in 1959 to govern use of parking meters in Victoria. The *Local Government (Amendment) Act* 1959 inserted a new s.555A into the *Local Government Act* 1958. This declared that the council of any Victorian municipality could set restrictions on parking in streets and roads within its boundaries and impose parking fees. Councils were permitted to employ parking attendants and install parking meters. In the same year, the *Road Traffic Act* 1958 was amended by the *Road Traffic (Infringements) Act* 1959 to introduce infringement notices into Victoria for the first time.⁹ They were limited to *parking* offences. They were designed to free those enforcing the new meter offences from having to proceed by information and summons before a local court of summary jurisdiction unless the offender declined to pay the infringement penalty within the fourteen days allowed.¹⁰ In his second reading speech, Attorney-General Rylah referred to the time-saving and administrative convenience which the new measure would bring¹¹ and to the fact that no conviction would be recorded against those who expiated their wrongdoing by payment of the penalty set out in the ticket itself.¹² Reference was made to the existence of such schemes in the United States and in Australia in Sydney, Brisbane and Adelaide, but the Victorian scheme was most directly copied from the South Australian system of

⁷ Not to be confused with hand-up-brief procedure used in relation to committal proceedings.

⁸ The new arrangements, which may be used in relation to any summary offence, require the informant to serve on the defendant a brief of evidence containing statements, exhibits and documents relating to the charge, *Magistrates' Court Act* 1989, s.37. If the defendant fails to appear in court this material will ordinarily be admissible as evidence as if the contents were a record of evidence given orally. The court may then proceed to hear and determine the charges on the basis of the material thus presented, *Magistrates' Court Act* 1989, Sch.2, cl.5.

⁹ *Road Traffic Act* 1958, s.11A.

¹⁰ The infringement fine level was set at either £1 or £2, depending on the class of seriousness. This was a significant discount both on the average fine of £2 10s for such offences if tried in open court and on the normal statutory maximum of £25, *Victoria Parliamentary Debates*, Legislative Assembly, 1959-60, Vol. 258, 669.

¹¹ He estimated that time to process the infringement notice would be 5 minutes compared with 109 minutes of police and court time for conventional summary prosecutions, *Victoria Parliamentary Debates*, Legislative Assembly, 1959-60, Vol. 258, 247.

¹² *Victoria Parliamentary Debates*, Legislative Assembly, 1959-60, Vol. 258, 249-50.

‘expiation notices’.¹³ The opposition objected to the concept of ‘coin in the slot justice’ as simply a toll on behaviour that could not be controlled. In their view it promoted disrespect for the law. They were anxious that there would be pressure to pay the fixed fine as a matter of convenience, even though the person might feel they had a reasonable excuse. The Opposition was also troubled about the likelihood of this form of penalty being extended into other areas of regulation.¹⁴

4.1.6 Their prediction was sound. The infringement notice scheme was extended to *traffic* offences by the *Road Traffic (Infringements) Act* 1965. The enlargement had been attempted on three earlier occasions, but failed because of back-bench anxiety about its lack of safeguards and opposition resistance to what was regarded as an unjustified move into non-parking offences. In the Legislative Assembly, Mr Turnbull, (the opposition member for Brunswick West) said:¹⁵

. . . motorists will be able to buy their way out of trouble. I think that is wrong. The role of the police in society is either to try to prevent people from committing offences or, if offences are committed, to detect the offender. Having detected an offender, it should be the duty of the police to take him with all speed before a court of competent jurisdiction and let the magistrate deal with him. If once we depart from this principle, where will the end be? Once the proposal contained in this Bill is established in practice, the number of offences covered will be added to, as was the case with the parking provisions. From time to time, senior officials in the Police Force will communicate with the appropriate Minister recommending that additional offences should be added to the list. Instead of a small list, as is contained in the schedule at the moment, perhaps 20 or 30 offences will be covered.

4.1.7 The first eleven offences to which the new traffic infringement notices applied were those of driving over double lines, failing to give way at an intersection, disobeying traffic signs and signals, exceeding any speed limit by not more than 10 miles per hour, failing to keep to the left, failing to give signals, unlawfully turning to right or left; and certain vehicle lighting offences.¹⁶ The government’s principal arguments in favour of extending on-the-spot tickets to driving offences were that this approach had already been successfully adopted in New South Wales in 1961¹⁷ and that the offences were of a minor nature not warranting the issue of ordinary or alternative summonses, particularly as in most cases listed for open court, the defendant failed to appear, or

¹³ *Victoria Parliamentary Debates*, Legislative Assembly, 1959-60, Vol. 258, 636. The South Australian scheme had been in place since 1938. *See above* 3.3.

¹⁴ *Victoria Parliamentary Debates*, Legislative Assembly, 1959-60, Vol. 258, 626-30.

¹⁵ *Victoria Parliamentary Debates*, Legislative Assembly, 1964-65, Vol. 278, 4606.

¹⁶ *Road Traffic Act* 1958, Schedule Two, inserted by *Road Traffic (Infringements) Act* 1965, s.6. *See also Road Traffic (Infringements) Regulations* 1960.

¹⁷ *Victoria Parliamentary Debates*, Legislative Council, 1964-65, Vol. 278, 3612.

pleaded guilty. On figures given by the Chief Commissioner of Police, the eleven offences accounted for 42 per cent of the 153 000 traffic offences detected for the preceding year ended 31 December, 1964.¹⁸ The maximum infringement penalties for traffic offences were £5 or £10 which was less than the statutory maximum for the same offences, but the opposition saw the exercise as essentially one of revenue raising.¹⁹ They were also concerned about the risk of lenient treatment of recidivists. The government's response to this was that while parking infringement notices allowed 14 days for payment, traffic infringement notices gave 28 days in order to allow police an opportunity to check whether the person to whom such a notice was issued was a persistent offender. If that was the case, the notice could be withdrawn and a summons issued. The parliamentarians also recognised the continuing police discretion to decline to issue an infringement notice because of the gravity of the offending and, implicitly, the discretion to issue a verbal or written warning instead of either an infringement notice or summons.

4.1.8 The 1965 Act also extended the definition of a 'traffic infringement' to include a wider variety of motoring misbehaviour. This was not intended to add to the offences that could be dealt with on-the-spot by way of an infringement notice, but simply increased the number of offences that could be determined by a magistrate in chambers in the absence of the defendant under the alternative procedure. This later served as a stepping stone for expanding the application of infringement notices to moving vehicle offences. The process was straightforward. First, define more offences as infringements. Secondly, allow them to be dealt with by the alternative procedure. Thirdly, later ease them over to the list of offences capable of being dealt with by infringement notices. Finally, abolish the alternative procedure altogether.

4.1.9 In 1983 the *Road Traffic Act 1958* was repealed and replaced by the *Transport Act 1983*. This now not only dealt with infringement notices for parking and traffic offences, but also a further group of 'transport infringement notices'.²⁰ These applied to offences such as travelling without a valid ticket, trespass, boarding or leaving railway carriages whilst in motion, hanging out of railway carriages, unauthorised crossing of railway lines, and a set of 'discomfort' offences such as placing feet on seats etc. of public transport vehicles.²¹ The period allowed for payment of a transport infringement notice was one month. The same legislation now covered parking, traffic and transportation

¹⁸ *Victoria Parliamentary Debates*, Legislative Council, 1964-65, Vol. 278, 4095.

¹⁹ *Victoria Parliamentary Debates*, Legislative Council, 1964-65, Vol. 278, 3914-5, The Hon. J.W. Galbally.

²⁰ *Transport Act 1983*, s.208-215.

²¹ Included by *Transport Act 1983*, s.212 and listed in Schedule 10.

offences, but the notices offered different periods of grace. The provisions relating to parking and traffic offences were soon transferred to the *Road Safety Act* 1986.²² But transport infringements have remained in the *Transport Act* 1983. The PERIN system (Penalty Enforcement by Registration of Infringement Notice) was introduced by the *Magistrates (Summary Proceedings) (Amendment) Act* 1985 which added a new Part VIIA to the *Magistrates (Summary Proceedings) Act* 1975. It came into force early in 1986²³ and the opportunity was then taken to set 28 days as the period for payment of all infringement notices.

4.1.10 In 1987 traffic infringement penalties were increased by varying amounts which represented rises of between 9 per cent and 175 per cent. In 1991, they were again increased by 20 per cent across the board. This was claimed to be necessary in order to provide an increased deterrent effect and to meet ‘the huge costs associated with traffic safety’,²⁴ but its principal objective was not to change driver behaviour, but to generate an extra \$5 million revenue in 1991/92.²⁵ In September 1989 the government announced a new strategy to reduce the road toll. It included 54 new radar triggered automatic speed cameras to supplement other forms of excessive speed detection, 20 additional red light cameras and the development of a computerised traffic infringement processing system. The speed camera program was commenced in December 1989 with at least two speed cameras given to each of the State’s 17 police districts. The Traffic Camera Office was set up as the central processing centre for all speed, red light and bus lane offences within Victoria. Operators in the office verify that the photographs reveal an offence; trace the registered owner of the vehicle through registration records; and issue infringement notices when warranted. By December 1990 the Traffic Camera Office had issued 177 389 infringement notices and collected \$11.97 million in infringement penalties. In December 1991 the figure of notices issued was 496 685, an increase of 180 per cent and of revenue collected \$42.96 million, a growth of 259 per cent.²⁶

4.2 Current authorising Acts

4.2.1 Thirty years after first being introduced into Victoria, infringement notices are allowed for under eighteen different Victorian Acts. The fixed

²² *Road Safety Act* 1986, s.85-90.

²³ Now found in *Magistrates' Court Act* 1989, s.99, Sch.7.

²⁴ Former Premier Joan Kirner, Economic Statement, 19 June 1991, 12.

²⁵ Total fine revenue increased by 61% from 1990/1 to 1991/2 (\$78.2m to \$125.9m), Treasurer of Victoria, *Preliminary Statement of Budget Sector Transactions to 30 June 1992*, Department of the Treasury, 31 July 1992, 9.

²⁶ Source: Traffic Camera Office.

penalty levels now range from \$15²⁷ to \$900²⁸ in value. The authorising provisions are:²⁹

Building Control Act 1981, s.178A-C
Conservation, Forests and Lands Act 1987, s.91 & s.94
Dangerous Goods Act 1985, s.45B
Dog Act 1970, s.22A
Environment Protection Act 1970, s.63B
Equipment (Public Safety) Act 1994, s.27
Fruit and Vegetables Act 1958, s.53A
Gaming Machine Control Act 1991, s.151
Housing Act 1983, Sch. 5, cl.5
Litter Act 1987, s.9
Local Government Act 1989, s.40 & s.117
Mineral Resources Development Act 1990, s.106
Marine Act 1988, s.60
Occupational Health and Safety Act 1985, s.47A³⁰
Planning and Environment Act 1987, s.130-132
Road Safety Act 1986, s.87-88
Tobacco Act 1987, s.38
Transport Act 1983, s.212

Not all offences created by the above-mentioned Acts are open to being dealt with by way of an infringement notice; they must be separately identified in the Act itself, or supporting regulations, as an infringement open to that procedure. And even then the PERIN system may not necessarily be available to enforce payment.³¹

4.2.2 In addition to infringement notices, there is a parallel form of *penalty notices*³² issued under Victorian law dealing with corporate or

²⁷ E.g. jaywalking offences, *Road Safety (Traffic) Regulations* 1988, Schedule 6, Codes 2241—2245.

²⁸ E.g. exceeding speed limit in large vehicles, *Road Safety (Traffic) Regulations* 1988, Schedule 6; Codes 1905 & 1906; *see also* Code 2128—own or use an unregistered motor vehicle with five or more axles.

²⁹ *See also Transport Accident Act* 1986, s.65-66 for another form of infringement notice.

³⁰ This section, as amended in 1990, allows for regulations providing for infringement notices, but none has yet been made.

³¹ E.g. infringements of Local Laws made by municipalities under *Local Government Act* 1989, s.117 are not yet subject to the PERIN system. Defaulters must be taken to court if the local government authority wishes to pursue the penalty. *Magistrates' Court General (Amendment) Regulations* 1994, r.11(2) which would bring infringement notices issued under the *Local Government Act* 1989, s.40 is not yet in force, *see* r.3(2).

³² *Magistrates' Court Act* 1989, Sch.7, Part 3; *Magistrates' Court General Regulations* 1990, r.1104. This regulation still makes reference to *Companies (Acquisitions of Shares) (Victoria) Code*, s.53A; *Companies (Victoria) Code*, s.570A; *Futures Industry (Victoria) Code*, s.149 and *Securities Industry (Victoria) Code*, s.141A.

business matters, pursuant to the *Associations Incorporation Act* 1981, s.50B and the *Business Names Act* 1962, s.28A. These were introduced into Victorian law in 1983 through the: *Companies (Victoria) Code*, s.570A; *Companies (Acquisitions of Shares) (Victoria) Code*, s.53A; *Futures Industry (Victoria) Code*, s.149 and *Securities Industry (Victoria) Code*, s.141A.³³ These enabled the then National Companies and Securities Commission to serve penalty notices for breaches of the Codes. The Codes have been superseded by new federal provisions contained in the *Close Corporations Act* 1989 (Cth), s.164, the *Corporations Act* 1989 (Cth), s.31 and the *Corporations Law*, s.1313. The Australian Securities Commission, which is now responsible for administering the *Corporations Law*, was able to issue penalty notices, but not to enforce them through the PERIN Court until an appropriate amendment was made to the *Magistrates' Court General Regulations* 1990, r.1104 in 1994 to include a reference to *Corporations Law*, s.1313.³⁴ Until this amendment came into effect, if payment was not forthcoming the notice had to be withdrawn and a summons issued. A more potent sanction, however, was to have the offending company deregistered under administrative powers available to the Australian Securities Commission in appropriate cases.

4.3 Infringements and infringement notices

4.3.1 There has been no useful statutory or parliamentary definition of what the offences labelled as infringements share in common. In essence they are lesser summary offences which have been declared capable of being dealt with by way of an infringement notice in addition to the normal form of prosecution by way of charge and summons. However, the offences which are prescribed as subject to infringement notices are not always expressly called 'infringements'. Usage is inconsistent. There is no evidence that the word 'infringement' is meant to have a fixed legal meaning, or that, in using this term, the draftsman was intending to create a new form of non-criminal illegality carrying only an administrative penalty such as is found in the American Model Penal Code's concept of a 'violation'.³⁵ There are no offences which can only be dealt with by way of an infringement notice: all are open to being prosecuted in the courts. The fact that the matter is capable of being dealt with by an infringement notice does not compel the policing authority to do so. Nor does that fact

³³ *Companies (Application of Laws) (Penalty Notice) Regulations* 1987.

³⁴ *Magistrates' Court General (Amendment) Regulations* 1994, r.12. See also the revised definition of code in the amendment to the *Interpretation of Legislation Act* 1984, s.32.

³⁵ See above 2.1.4, 3.6.3 and below Chapter 10.

limit the sentencer in regard to the level of fine or other penalty which might be imposed should the matter come to court without an infringement notice having been served, or, if served, it having been withdrawn.

4.3.2 There are at least fifteen types of infringement notice available in Victoria. The main ones are set out in the *Road Safety Act 1986*. There are two major categories: notices for *parking* infringements, and notices for *traffic* infringements. The latter then includes a sub-group of the more serious *licence loss* infringements which also result in an automatic conviction. The categories and basic content are:

INFRINGEMENT:³⁶

1. PARKING INFRINGEMENT:³⁷ Parking of a vehicle, or leaving it standing, whether attended or not, in contravention of the regulations made under the *Road Safety Act 1986* or any regulation or local law under the *Local Government Act 1989*, or any other Act or subordinate legislation.
2. TRAFFIC INFRINGEMENT:³⁸

Litter Act 1987, s.5 & 6 (littering involving vehicles, but not other littering offences)

Transport Act 1983: Offences prescribed under the Act or regulations.

Road Safety Act 1986: Offences prescribed under the Act or regulations, other than parking infringements. These include the following licence loss infringements.³⁹

 - (A) DRINK-DRIVING INFRINGEMENT:⁴⁰ An offence under *Road Safety Act 1986*, s.49(1)(b), (f) or (g) where the blood alcohol level is less than 0.15 grams/100 millilitres of blood and the offence is a first offence.

³⁶ *Road Safety Act 1986*, s.3. Compare *Magistrates' Court General Regulations 1990*, r.1103 explanation of the Meaning of 'infringement notice' for the purpose of enforcement under the PERIN system.

³⁷ *Road Safety Act 1986*, s.3 & s.86-87. Parking infringement notices are also issued under the *Airports (Surface Traffic) Act 1960 (Cth)*, s.13 and the *Conservation, Forests and Lands Act 1987*, s.94. Under the *Housing Act 1983* they are called a 'parking offence notice'.

³⁸ *Road Safety Act 1986*, s.3.

³⁹ *Road Safety Act 1986*, s.89AA (This section creates the general 'licence loss' classification, but the loss of licence and conviction provisions are operative only for the first two categories, i.e., 'drink-driving infringements' and 'excessive speed infringements').

⁴⁰ *Road Safety Act 1986*, s.3 & s.89A. These may only be issued by members of the police force, s.88(1A). See s.89C for cancellation of licence.

- (B) **EXCESSIVE SPEED INFRINGEMENT:**⁴¹ For an offence under s.28(1)(a) of driving a motor vehicle at 130 kilometres per hour or more, or exceeding the applicable speed limit by 30 kilometres per hour or more.
- (C) **MENACING DRIVING INFRINGEMENT:**⁴² For driving a motor vehicle on a highway in a manner intended to menace (by threat of personal injury or damage to property) another person.
- (D) **PROBATIONARY DRIVER INFRINGEMENT:**⁴³ For offences specifically prescribed for probationary drivers.

4.3.3 But beyond the *Road Safety Act 1986* there are: ‘building infringement notices’;⁴⁴ ‘dog infringement notices’;⁴⁵ ‘gaming infringement notices’;⁴⁶ ‘litter infringement notices’;⁴⁷ ‘marine infringement notices’;⁴⁸ ‘planning infringement notices’;⁴⁹ and ‘transport infringement notices’.⁵⁰ Under the *Conservation, Forests and Lands Act 1987*, s.91 and s.94, *Dangerous Goods Act 1985*, s.45B, *Environment Protection Act 1970*, s.63B, *Equipment (Public Safety) Act 1994*, s.27; *Fruit and Vegetables Act 1958*, s.53A, *Local Government Act 1989*, s.117 and *Tobacco Act 1987*, s.38 they are simply called ‘infringement notices’.

4.3.4 The statute or regulation permitting an offence to be dealt with by an on-the-spot ticket sets out the particulars which must be included in the infringement notice. At minimum these require a statement of: the time, date and place of the alleged infringement; the penalty fixed for the offence if dealt with by an infringement notice; where and when the penalty may be paid; a statement that if payment is made within the prescribed period the matter will not be brought before a court unless the notice has been withdrawn; and a summary of the provisions relating to

⁴¹ *Road Safety Act 1986*, s.3 & s.89A. See s.89D for suspension of licence.

⁴² *Road Safety Act 1986*, s.3 & s.87A (formerly defined as a ‘tailgating infringement’). See also s.89DA for suspension of licence. These last two provisions are not yet in force.

⁴³ *Road Safety Act 1986*, s.3. See s.89DB for suspension of licence. The latter provision is not yet in force.

⁴⁴ *Building Control Act 1981*, ss.178A-C

⁴⁵ *Dog Act 1970*, s.22A.

⁴⁶ *Gaming Machine Control Act 1991*, s.151.

⁴⁷ *Litter Act 1987*, s.9.

⁴⁸ *Marine Act 1988*, s.60; *Marine (Procedures) Regulations 1989*.

⁴⁹ *Planning and Environment Act 1987*, s.130-132.

⁵⁰ *Transport Act 1983*, s.212.

the right of the prosecuting authority to withdraw the notice.⁵¹ The identity of the alleged offender need not always be specified, particularly in relation to parking and traffic offences where owner-onus applies.⁵² However, if the offences involve drink-driving or excessive speed, details of the blood alcohol concentration or the speed must appear on the traffic infringement notice.⁵³ If any of the prescribed particulars are omitted or are incorrect, the infringement notice is invalid and of no effect.⁵⁴ In *Mannix v. Chief Commissioner of Police*,⁵⁵ Coldrey J. stressed the importance of infringement notices being written up by those issuing them in such a way as to provide an adequate description of the infringement alleged to have been committed.

4.3.5 When the *Magistrates (Summary Proceedings) (Amendment) Act* 1985, which added a new Part VIIA to the *Magistrates (Summary Proceedings) Act* 1975, introduced the PERIN system to Victoria, the opportunity was taken to increase the time allowed for payment of parking infringement penalties from 14 to 28 days.⁵⁶ Though a few Acts expressly require a recipient of an infringement notice to be granted 28 days grace,⁵⁷ the majority do not.⁵⁸ The Act or the accompanying regulations generally only require payment 'by the time specified in the notice'. In particular, neither Part VII of the *Road Safety Act* 1986 dealing with parking and traffic infringement notices, nor the associated *Road Safety Procedure Regulations* which define the form of these notices, expressly adverts to a 28-day minimum.⁵⁹ There are references to rights of withdrawal within 28 days and suspension of licences after this time, but, under present law, periods for expiation of infringement notices of less than 28 days can be readily set.

⁵¹ E.g. *Dog Act* 1970, s.22A(3); *Environment Protection Act* 1970, s.63B(3); *Local Government Act* 1989, s.117(3); *Occupational Health and Safety Act* 1985, s.47A(3).

⁵² E.g. *Road Safety (Procedures) Regulations* 1988, r.406(2)(c) & 702(2)(c), cf. 804(2)(c).

⁵³ *Road Safety Act* 1986, s.88(2); *Road Safety (Procedures) Regulations* 1988, r.804.

⁵⁴ Cf. *Road Safety Act* 1986, s.89A(7).

⁵⁵ Supreme Court of Victoria, Unreported, 29 June 1992.

⁵⁶ *Transport Act* 1983, s.210(6)(d). This section was repealed by the *Road Safety Act* 1986.

⁵⁷ E.g. *Environment Protection Act* 1970, s.63B(3); *Tobacco Act* 1987, s.38(10) and *Tobacco Regulations* 1987, r.5 (one month).

⁵⁸ E.g. *Building Control Act* 1981, s.178C; *Conservation, Forests and Lands Act* 1987, s.93(1); *Dog Act* 1970, s.22A(3); *Gaming Machine Control Act* 1991, s.154; *Local Government Act* 1989, s.117(3). The *Occupational Health and Safety Act* 1985, s.47A(3) requires the regulations to state the period within which the fixed penalty is to be paid, but no regulations have yet been promulgated.

⁵⁹ See *Road Safety Act* 1986 ss.66, 87 and 88; *Road Safety (Procedures) Regulations* 1988, r.702, 804.

4.4 Owner-onus

4.4.1 While some Acts require that the infringement notice specify the name of the alleged offender,⁶⁰ others, namely those relating to parking and traffic offences, do not call for this information. Because there is a registry of motor vehicle ownership in each State and Territory of Australia, and each vehicle is required to display an identifying registration plate, it has been thought sufficient either to address the infringement notice to the 'owner' of the motor vehicle by affixing it to the car (in the case of parking offences), or to post it to the address of the registered owner in the case of traffic offences detected by cameras and other automatic recording devices. Because direct identification of the actual driver is difficult, the legislation deems the registered owner to be the offending driver unless the owner establishes the contrary. This form of vicarious responsibility is popularly known as owner-onus and is critical to the operation of the bulk of the infringement notice system.

4.4.2 The main provisions of this sort are found in the *Road Safety Act* 1986. It creates the rebuttable presumption that the owner is responsible for the offence in the following manner. First, 'owner' is defined as including a part-owner, or one who has the vehicle under hire-purchase agreement or a written hiring.⁶¹ The definition also includes the person in whose name the motor vehicle is registered at the time of the offence or, if a notice of transfer of registration has been received, the person entitled to be so registered.⁶² Secondly, for parking offences and for traffic offences detected by camera, s.86(1) and s.66(5) respectively provide that the owner of the vehicle involved in a parking infringement is to be treated as guilty of the offence in all respects as if he or she was the actual offender unless the court is satisfied that the offence was committed when the vehicle was stolen. This deeming provision does not affect the liability of the actual offender against whom action may also be taken. However, if the full amount of any penalty has been paid by the actual offender or owner in relation to any parking infringement (whether pursuant to an infringement notice, or on a court order), no further penalty may be imposed on or recovered from the owner or actual offender respectively in relation to that infringement.⁶³ However, the owner may avoid the vicarious responsibility if, within 14 days of being charged (or of a courtesy letter if the matter is being dealt with by an on-the-spot ticket) he or she supplies the informant or prosecuting authority with a sworn statement or statutory declaration giving the name and address of the

⁶⁰ E.g. *Local Government Act* 1989, s.117(3); *Occupational Health and Safety Act* 1985, s.47A(3).

⁶¹ *Road Safety Act* 1986, s.3.

⁶² *Road Safety Act* 1986, s.85.

⁶³ *Road Safety Act* 1986, s.86(2); *Transport Act* 1983, s.208 & s.209.

person who was in charge of the vehicle at the relevant time, or otherwise satisfies the court that he or she did not know and could not with reasonable diligence have ascertained the actual driver's name and address.⁶⁴ In the latter case the owner must elect to have the matter determined in court. The sworn statement or statutory declaration identifying another as the driver may be used in proceedings against the other as evidence that the person named was in charge of the vehicle at all relevant times relating to that parking infringement.⁶⁵ Normally court proceedings in relation to an infringement must be commenced within twelve months of the date of the offence.⁶⁶ However, if the owner declares another person to have been the driver, this period is extended to twelve months from the date of declaration.⁶⁷

4.4.3 If an offence is detected by a speed or red light camera, or other prescribed photographic detection device, the owner of the motor vehicle at the time is deemed to be guilty of an offence as if he or she were the actual driver at the time of the offence unless the Magistrates' Court is satisfied that the vehicle was stolen.⁶⁸ Again, the liability of the actual driver remains, but an owner of a motor vehicle may avoid being held accountable if, within 28 days of receiving a summons for the offence (or a courtesy letter if the matter is being dealt with by an on-the-spot ticket), he or she supplies the informant with a sworn statement identifying the name and address of the person who was driving at the relevant time, or declaring that the owner did not know and could not with reasonable diligence have ascertained the name and address of the person who was driving the motor vehicle at the relevant time.⁶⁹ Statements in this form may be used in evidence against the person alleged to be the actual driver. An important limitation on the owner-onus provisions is that the mandatory and discretionary powers of a court to suspend or cancel driver licences under *Road Safety Act* 1986, s.28(1) for moving vehicle offences does not apply to those detected by photographic devices under s.66 unless the court is satisfied that the person convicted or found guilty

⁶⁴ *Road Safety Act* 1986, s.86(3). This must occur within 14 days of service of either a summons or a courtesy letter in relation to the alleged offence.

⁶⁵ *Road Safety Act* 1986, s.86(5).

⁶⁶ *Magistrates' Court Act* 1989, s.26(4).

⁶⁷ *Road Safety Act* 1986, s.66(3A) & s.86(4A).

⁶⁸ *Road Safety Act* 1986, s.66(1). See below 4.7.2.

⁶⁹ *Road Safety Act* 1986, s.66(3). It has been pointed out that the traffic infringement notices served by the Traffic Camera Office do not advise recipients of their opportunity to avoid liability under this sub-section. The Committee considered that the failure of the Office to provide such information to vehicle owners could lead to potential injustices and should be rectified, Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, para. 3.09.

of the offence was the actual driver of the motor vehicle at the time of the offence.⁷⁰

4.4.4 Victoria commenced experiments with red light cameras in November 1981, but the formal public trial of these devices did not start until August 1983. The police complained that the full utilisation of the devices was being inhibited by the need for them to identify the driver of the photographed vehicle before issuing a traffic infringement notice. This required them to identify the driver through the registration and interview him or her. When owner-onus was initially applied to speed and red light camera offences in 1986 by the *Motor Car (Photographic Detection Devices) Act 1986*, these provisions were subject to a sunset clause which would have had them lapse in 1988. A research project undertaken by the Road Traffic Authority⁷¹ attempted to evaluate the utility of owner-onus provisions. This evaluation turned, first, on demonstrating the effectiveness of the cameras and then on showing whether owner-onus had a beneficial effect on police workload and efficiency. The effect of red light cameras on accidents at the sites at which they were installed was also examined. There was a statistically significant reduction in the accident rate in relation to right-angle accidents (i.e. where one of the two vehicles entering the intersection runs the red light), but not in other forms of accident, e.g. right-angle accidents where the cars were turning in the intersection, or rear end collisions. There was, however, evidence of a change in accident severity at intersections both in terms of number of casualties and vehicle and other property damage costs. An examination was made of the average cost to the Traffic Camera Office of detecting and processing each offender prior to owner-onus and after owner-onus. For the period January-July 1986 these were \$53 before owner-onus and \$21 after owner-onus. In both cases over 90 per cent of the traffic infringement notices had been paid, though not as frequently as when the police made more personalised calls upon the alleged offender. Overall, 83 per cent paid within the 28 days permitted.⁷² As the result of this report, the sunset clause was removed in 1988.⁷³

4.4.5 In interpreting the owner-onus clause in *Fraser v. Spencer-Gardner*⁷⁴ Southwell J., in the Supreme Court, held that s.85 of the *Road*

⁷⁰ *Road Safety Act 1986*, s.28(6).

⁷¹ *Road Safety (Photographic Detection Devices) Act 1988*, s.4. See South D., Harrison W., Portans I. and King M., *Evaluation of the Red Light Camera Program and the Owner-Onus Legislation*, Melbourne, Road Traffic Authority, 1988.

⁷² South D., Harrison W., Portans I. and King M., *Evaluation of the Red Light Camera Program and the Owner-Onus Legislation*, Melbourne, Road Traffic Authority, 1988, 26-29 & 32.

⁷³ *Road Safety (Photographic Detection Devices) Act 1988*, s.4. See South D., Harrison W., Portans I. and King M., *Evaluation of the Red Light Camera Program and the Owner-Onus Legislation*, Melbourne, Road Traffic Authority, 1988.

⁷⁴ (1990) 12 Motor Vehicle Reports 215.

Safety Act 1986 was intended to cast on the owner of a vehicle an obligation to ensure that, on sale of the vehicle, the fact of the sale was registered with VicRoads. If the change of registration was not effected, the person still registered as owner would be subject to a continuing liability for infringements arising out of the use of the car. The only other manner in which this could be avoided was to prove that he or she had given a sworn statement, within the time limit prescribed by s.86(3), identifying the actual owner or satisfying the court that he or she did not know of the name of the person in charge of the vehicle when the offence was alleged to have occurred. The person who fails to give timely notice is estopped from denying that he or she is the owner for the purposes of the infringement enforcement procedure.

4.4.6 The concept of owner-onus is extended beyond motoring offences under the *Litter Act* 1987. Under s.14(2) anyone who sees another committing a litter offence may report that event in writing to the Environment Protection Authority, or the relevant Municipal Council. If the report identifies the alleged offender by reference to the fact that the person was seen driving to or from the place where the offence occurred, the owner of the vehicle is to be treated as if he or she had committed the offence in question.⁷⁵

4.4.7 The owner-onus system is dependent on the accuracy of the central registry of motor vehicle ownership. The inadequacy of VicRoads records was the subject of numerous complaints in the course of this study by enforcement agencies, particularly the municipalities, who rely heavily on this information for the address to which to send their parking infringement notices. The deliberate avoidance of accurate and timely registration of changes of vehicle ownership is aided by administrative weaknesses in cross-checking and recording ownership details.⁷⁶ This leads to many infringement penalties being written off as unenforceable through inability to locate the owner of the offending vehicle.

4.4.8 To cover those situations in which owner-onus is inappropriate, but the problem of identifying the offender is real, the *Road Safety Act* 1986 contains a number of provisions which have the practical effect of requiring alleged offenders to identify themselves. Firstly, under s.76(1) a police officer may arrest without warrant anyone who in his or her view commits an offence against any regulation made under Clauses 42-49 in Schedule 2 and who refuses to give a name and address, or gives one suspected to be false. The relevant clauses refer to various forms of traffic regulation, including the regulation and control of vehicles, animals and pedestrian traffic on highways. Secondly, under s.88(6) a member of

⁷⁵ *Litter Act* 1987, s.14(3).

⁷⁶ For details, see below 6.9.24.

the police force who has reason to believe that a person (other than a driver of a motor vehicle) has committed a traffic infringement may require that person to state his or her name and address. It is an offence not to do so. This covers traffic infringements including ones committed by pedestrians.⁷⁷ There is also now a more general power, recently added by the *Crimes Act 1958*, s.456A, permitting police to demand the name and address of any person they reasonably believe has committed or is about to commit any summary or indictable offence.

4.5 Service of the notice

4.5.1 The service and form of parking infringements under the *Road Safety Act 1986* are governed by the *Road Safety (Procedures) Regulations 1988*, Part 7⁷⁸ and those of traffic infringements by Part 8. In addition to the conventional form of personal service on the driver or the person apparently in charge of the vehicle, parking infringement notices may also be affixed to the car in question and simply addressed to the 'owner', or served by post.⁷⁹ A traffic infringement notice may be served personally on the alleged offender, or by leaving with a person apparently over 16 at the alleged offender's last known residential or business address, or by ordinary mail to that address.⁸⁰ Notices relating to a drink-driving infringement, or an infringement detected by a speed camera, or a red light camera or similar detection device may only be issued by a member of the police force.⁸¹

4.5.2 Legislation authorising infringement notices does not set a time limit by which service must be effected. However, since the alleged offender retains the right to a court hearing, the normal 12 month limitation in relation to the commencement of summary proceedings sets the boundary of effective use of infringement notices.

⁷⁷ E.g. failing to obey a traffic instruction given by a member of the police force, *Road Safety (Traffic) Regulations 1988*, r.202; alighting from or boarding a moving vehicle, *Road Safety (Traffic) Regulations 1988*, r.704; walking improperly on a carriage way, *Road Safety (Traffic) Regulations 1988*, r.703, 704 and 705; crossing a road within 20 metres of a pedestrian crossing, *Road Safety (Traffic) Regulations 1988*, r.705.

⁷⁸ Reprint 1991.

⁷⁹ *Road Safety (Procedures) Regulations 1988*, r.701; *Road Safety Act 1986*, s.93.

⁸⁰ *Road Safety (Procedures) Regulations 1988*, r.803; *Road Safety Act 1986*, s.93.

⁸¹ *Road Safety Act 1986*, s.88(1A).

4.6 Conviction and loss of licence

4.6.1 Victorian legislation allows certain classes of infringement to carry exceptional penalties, including a conviction.⁸² By an amendment to the *Road Safety Act 1986* in 1989⁸³ the fundamental model of infringement notices was changed. The amendment was passed without debate in Parliament,⁸⁴ but continued to be refined up to 1991.⁸⁵ In addition to demanding a monetary payment, the issue of these infringement notices automatically results in the cancellation or suspension of any driver's licence or permit held by the person to whom the infringement notice has been issued and the acquisition by that person of a criminal conviction if he or she does not elect to have the matter dealt by a court. Demerit points also accrue.⁸⁶ Though the legislation is not yet wholly proclaimed, it is designed to cover a group of 'licence loss infringements',⁸⁷ encompassing drink-driving infringements; excessive speed infringements; menacing driving infringements; and probationary driver infringements.⁸⁸ If no objection is lodged by the driver within 28 days of the issue of the notice, the conviction and loss of licence take effect at the end of that period. It requires no court order. For a drink-driving infringement, the licence is cancelled and the person is disqualified from obtaining one for a period which varies from six to fourteen months according to how much the blood alcohol concentration is above .05 per cent.⁸⁹ Some 4500 persons a year are automatically convicted and lose their licence in this manner (*see* Table 4.1).

⁸² *Road Safety Act 1986*, s.89A(2).

⁸³ *Road Safety (Miscellaneous Amendments) Act 1989*, s.18, introducing *Road Safety Act 1986*, s.89A.

⁸⁴ *Victoria Parliamentary Debates*, Legislative Assembly, 1989, Vol. 394, 1402-04, Legislative Council, 1989, Vol. 394, 862-71.

⁸⁵ *Road Safety (Amendment) Act 1990*, s.15(4); *Road Safety (Drivers) Act 1991*, s.4 & 17 (not yet proclaimed).

⁸⁶ *Road Safety Act 1986*, s.25.

⁸⁷ *Road Safety Act 1986*, s.89AA.

⁸⁸ The legislation producing automatic loss of licence and conviction for offences in the last two categories has not yet come into force.

⁸⁹ *Road Safety Act 1986*, s.89C and Sch. 1, Column 2. Note the definition of 'drink-driving infringement' in s.3 which limits such infringements to cases in which the concentration of alcohol in the blood is less than 0.15% and the offence is a first offence. If the blood alcohol concentration is below .05% in the case of a probationary driver or learner permit holder, the period of suspension is one month, s.89C(2)&(3).

Table 4.1
**Licence Loss on Automatic Conviction
 for Drink-driving Infringements
 under the Road Safety Act 1986 (Vic.)⁹⁰**

Year ⁹¹	1 Month	6 Months	10 Months	11 Months	12 Months	13 Months	14 Months	Total
1990/1 ⁹²	145	1 574	636	740	660	632	619	5 006
1991/2134	1 384	626	716	682	624	607	4 773	
1992/3144	1 220	544	667	560	499	589	4 223	
TOTAL	423	4 178	1 806	2 123	1 902	1 755	1 815	14 002

4.6.2 Excessive speed infringements lead to the suspension of the driver's licence or permit for a period which likewise varies from one to six months according to the extent to which the driver exceeded the speed limit by 30 km per hour.⁹³ Over 45 500 drivers have been convicted and disqualified in this fashion in the three years 1990/91-1992/93, but the total number of convictions has dropped from 1990/91 to 1992/93 by 38 per cent (*see* Table 4.2) Although this coincides with increased speed camera usage in Victoria, the majority of excessive speed infringement notices were not issued as the result of detection by the cameras.⁹⁴ Infringement notices issued for drink-driving offences or excessive speed must show the blood alcohol level, or the alleged speed, as the case may be, on the infringement notice itself.⁹⁵ In the former case, the driver must also be served with the normal breath or blood test certificate used as the basis for establishing the infringement. Menacing driving infringements, when brought into force, will result in suspension of licence for three months⁹⁶ and probationary driver infringements will produce a similar result plus an extension of the probationary period.⁹⁷ The monetary side of these infringement notices is dealt with in the usual manner, but the automatic

⁹⁰ Source: VicRoads, Registration and Licence Information Services.

⁹¹ For period 1 July to 30 June.

⁹² Includes estimates for the six months to 31 December 1990. The 1990 total of such infringements is known. Six months was taken to be half this figure.

⁹³ *Road Safety Act* 1986, s.89D and Sch. 5, Column 2.

⁹⁴ The Traffic Camera Office issued 2895 excessive speed infringements in 1990/91; 3047 in 1991/92 and 2423 in 1992/93 amounting to no more than 0.5% of the traffic infringement notices issued by the Office. This percentage has remained stable for some time.

⁹⁵ *Road Safety Act* 1986, s.88(2).

⁹⁶ *Road Safety Act* 1986, s.89DA (not yet in force).

⁹⁷ *Road Safety Act* 1986, s.89DB (not yet in force).

conviction and disqualification is independent of whether the penalty has been paid.

Table 4.2
**Licence Loss on Automatic Conviction
 for Excessive Speed Infringements
 under the *Road Safety Act 1986 (Vic.)*⁹⁸**

Year ⁹⁹	1 month	4 months	6 months	Total
1990/1 ¹⁰⁰	13441	4,118	1994	19553
1991/2	5822	5635	2637	14094
1992/3	9067	2033	906	12006
TOTAL	28330	11786	5537	45653

4.6.3 Automatic conviction and loss of licence can be forestalled by giving notice in writing of an objection within 28 days of the date of the notice.¹⁰¹ Anyone who denies either having received an infringement notice which results in automatic conviction, or having been made aware of the notice before it took effect as a conviction, may apply to a Magistrates' Court for an extension of time to lodge an objection on learning of the issue of the notice.¹⁰² The evidentiary burden of establishing ignorance of the notice is upon the person affected by it.¹⁰³ The Notice of Objection must declare that the person refuses to pay the penalty and is requesting the matter to be dealt with by a court so that he or she can defend any charge arising out of the infringement notice.¹⁰⁴ In *Mannix v. Chief Commissioner of Police*¹⁰⁵ the recipient of a drink-driving infringement notice issued under s.89A sought an order in the nature of certiorari from Coldrey J. to quash the cancellation of his driver's licence. He indicated that his intention was to plead guilty to the alleged offence contained in the penalty notice, but wished to do so before a Magistrates' Court in order to avail himself of the wider range of penalty options (including a requirement that the financial circumstances of the offender be taken into account in determining the level of any fine imposed) that were open to the

⁹⁸ Source: VicRoads, Registration and Licence Information Services.

⁹⁹ For period 1 July to 30 June.

¹⁰⁰ Includes estimates for the six months to 31 December 1990. The 1990 total of such infringements is known. Six months was taken to be half this figure.

¹⁰¹ Not the date of its receipt by the alleged offender.

¹⁰² *Road Safety Act 1986*, s.89B(1).

¹⁰³ *Road Safety Act 1986*, s.89B(2).

¹⁰⁴ *Road Safety Act 1986*, s.89A(5).

¹⁰⁵ Supreme Court of Victoria, Unreported, 29 June 1992.

court. There was a possibility of an adjournment without proceeding to a conviction. The alleged offender had not lodged a Notice of Objection because the wording prescribed by s.89A(5)(c) requires the objector to state that he or she ‘intends to defend any charge arising out of the facts specified in the infringement notice’. The alleged offender argued that it would be necessary for him to lie to bring himself within the ambit of the notice since he intended to plead guilty, but only plead in mitigation of penalty. Coldrey J. held that though the notice could be worded with greater clarity, the statement that the person intended to ‘defend’ any charge was adequate to cover cases in which both the elements of the offence and the amount of penalty are contested or the penalty alone. In dismissing the application to quash the notice, his Honour commented that neither the provisions of s.89A nor of the notice procedure allowed pursuant to it involved a denial of natural justice. The alleged offender still retained access to the courts.

4.6.4 The effect of an objection properly lodged *within the 28-day time limit* is that the infringement notice is cancelled and the person to whom the infringement notice was issued may only be proceeded against (if at all) by way of a charge.¹⁰⁶ This does not prevent the police issuing a new infringement notice to any other person identified in the objection as the actual driver, or charging that person. The filing of a charge must take place within the normal limitation period which, for most summary matters, is 12 months.¹⁰⁷ At the Magistrates’ Court hearing the defendant will be subject to the normal maximum penalty applicable to the offence in question. The lesser penalty scale for infringement notices no longer operates. If an objection is filed *outside the 28-day time limit under an extension of time* and after the conviction and loss of licence have taken effect, the legislation provides that the giving of the notice has the effect of setting aside the conviction and any licence cancellation, disqualification, or suspension that has occurred.¹⁰⁸ Any subsequent conduct (e.g. driving while disqualified) that amounted to an offence only because of the cancellation, disqualification or suspension, or extension of probation, which resulted from the automatic conviction is also set aside. Action to pursue the penalty under the PERIN procedure must also be discontinued. The infringement notice is treated as cancelled and the person may only be proceeded against in court by way of a charge.¹⁰⁹

4.6.5 If, at that hearing, the defendant is convicted, the sentencer is enjoined to take into account any period of cancellation, disqualification

¹⁰⁶ *Road Safety Act 1986*, s.89A(6).

¹⁰⁷ *Magistrates’ Court Act 1989*, s.26(4).

¹⁰⁸ *Road Safety Act 1986*, s.89B(3).

¹⁰⁹ *Road Safety Act 1986*, s.89B(3)&(4). The charge may be filed at any time within 12 months of the date of the Notice of Objection, even if this falls outside the normal statute of limitations.

etc. the driver suffered after becoming aware that the infringement notice had been issued.¹¹⁰ The means for taking it into account is not clear because mandatory minimum periods of disqualification etc. are prescribed for the particular offences irrespective of whether they are dealt with by way of an infringement notice or by a court. Unless this provision can be read to allow the minimum to be reduced in some way, any taking into account of licence loss periods already served can only have an impact upon the court's discretion to exceed the minimum and its power to fix a fine, or make some other form of sentencing order. Another problem relates to the effect of a notice issued for a drink-driving offence of a more serious nature than allowed to be dealt with by an infringement notice. Such a notice is deemed to be valid and the automatic licence disqualification etc. after 28 days legally effective.¹¹¹ However, the infringement notice may then be withdrawn with a view to a charge being filed for the correct offence.¹¹² It is not clear whether the motorist remains disqualified after the wrongfully issued infringement notice has been withdrawn. The disability should cease since there is no obligation on the police to prosecute the matter in open court. If they do so and the person is convicted on admissible evidence, the court will impose the relevant sanction and must, again, endeavour to take into account time when the right to drive was lost.¹¹³

4.6.6 There is no right of appeal against the automatic loss of licence or conviction produced by an infringement notice under *Road Safety Act 1986*, s.89A(2). Neither sanction constitutes a sentencing order for the purposes of the *Magistrates' Court Act 1989* and therefore cannot form the basis of an appeal to the County or Supreme Court, nor for an application for rehearing.¹¹⁴ There is no special right of appeal to the Magistrates' Court, such as exists in respect of licences lost administratively under the demerit points scheme.¹¹⁵ Likewise, there are no provisions for 'cancelling' the effect of an infringement notice when a person, aware of the issue of the infringement notice, and therefore unable to obtain an extension of time from a Magistrates' Court, lodges a Notice of Objection when the conviction is already in place. A person may be able to establish that he or she was neither the owner nor driver of the vehicle at the relevant time but, for good domestic or medical reasons, or through the ineptness of his or her legal adviser, was unable to lodge an objection within 28 days. Some meritorious cases of this nature have been

¹¹⁰ *Road Safety Act 1986*, s.89B(3)(g).

¹¹¹ *Road Safety Act 1986*, s.89A(7)(a)&(b).

¹¹² *Road Safety Act 1986*, s.89A(7)(b)&(c).

¹¹³ *Road Safety Act 1986*, s.89A(8).

¹¹⁴ *Magistrates' Court Act 1989*, s.83-93.

¹¹⁵ *Road Safety Act 1986*, s.26(1).

dealt with administratively by the police by agreeing to a reversal of VicRoads' computer entry recording the conviction and accepting a Notice of Objection out of time. There is no statutory foundation for this practice,¹¹⁶ nor for that of allowing the Notice of Objection itself to be withdrawn.¹¹⁷

4.6.7 The obvious objective in treating certain moving vehicle infringements as a conviction, whether that conviction is recorded judicially or achieved administratively, is to be able to treat the offender as a recidivist for the purpose of escalated penalties on reoffending. The *Road Safety Act* 1986 does not provide for penalty levels to be raised if further infringement notices are issued for subsequent acts of the same type. It is central to the orthodox concept of infringement notices that the penalty is fixed for each instance of wrongdoing without account of the person's 'record'. However, the *Road Safety Act* 1986, s.90, provides that if a person is served with a summons for any infringement, and is alleged to have been previously convicted of any infringement, there may be served with the summons a document setting out particulars of the prior convictions. These would include automatic convictions acquired under s.89A. The information in the document is admissible evidence of the fact the person was convicted of the offences alleged and is sufficient for treating the person as a second or subsequent offender for the purposes of a more severe sentence when found guilty of the later offence. There is also an express prohibition on using drink-driving infringement notices for persons who are not first offenders.¹¹⁸ This does not apply to the other licence loss infringements, but it does require the police to keep a record of those who are now barred from receiving infringement notices for any future drink driving offences.

4.6.8 It is one thing for the police to keep a record of those who have received drink-driving infringement notices in the past, and to give effect to a statutory direction not to issue any to them in the future. It is another matter altogether to deem a person to be convicted, when no such judicial determination has been made, as a means of ensuring a record is kept of prior wrongdoing. There is a number of reasons to disapprove of the new conviction paradigm for infringement notices. A conviction is the

¹¹⁶ In *Oliviera v. Roads Corporation & Scott*, Supreme Court of Victoria, Unreported, 19 February 1991, No. 4054/1991, Mr Justice O'Bryan ordered that an infringement notice be cancelled after evidence was given that the notice of objection was not lodged in time through no fault of the recipient. However, the order was made in the Practice Court by consent of the parties and no principles of law governing the situation were enunciated. The alleged offence could still be prosecuted on summons.

¹¹⁷ A person with prior convictions for traffic offences may regret lodging an objection when realising there is a real risk of receiving a higher penalty than the fixed sum, if the infringement is determined by a Magistrates' Court.

¹¹⁸ *Road Safety Act* 1986, s.3 (definition of 'drink-driving infringement').

legal means by which a person's status in law is officially diminished and he or she is made subject to legal disabilities and incapacities.¹¹⁹ Because it is the result of a proven criminal accusation, it also carries significant social stigma. Its consequences are independent of any further penal sanction that may follow by way of imprisonment, fine, or the like. This diminution of legal status has always been regarded as a judicial act. Indeed, it is well understood that although the executive branch may pardon an offender, only the judicial arm can quash the actual conviction.¹²⁰ It is clearly unconstitutional for an infringement or penalty notice issued under federal law to produce, administratively or legislatively, a conviction without the interposition of a court. To do so would breach the constitutional requirement that the judicial power of the Commonwealth be exercised by the judiciary.¹²¹ While the separation of powers doctrine embodied in the federal Constitution does not apply to the States,¹²² it is a retrograde step to reject the proof and deliberation which is behind the judicial act of conviction in the interest of expediently disposing of those whom it is believed would have been convicted in any event. It is tantamount to a bill of attainder to impose punishment directly, without trial, on a person or class of persons. It is particularly regressive when the effects of the conviction go beyond achieving the purposes of the *Road Safety Act*, and when these purposes could have been realised without distorting the character of infringement notices themselves.

4.6.9 The legal and social disabilities which attach to a conviction have been well documented.¹²³ No effort is made in the *Road Safety Act* 1986 to limit the scope of the disabilities occasioned by these automatic infringement notice convictions. The fact of a conviction may produce various forms of legal incapacity and have legal significance beyond the statute imposing the conviction and even outside the jurisdiction. Conviction for crime may be the legal reason for withholding occupational, employment and commercial rights or licences; electoral, political and civic rights; entitlement to migration or citizenship; the capacity to litigate, testify, or act as a juror; or pension and inheritance rights. It may also count as a breach of the conditions of bail, suspended sentences of imprisonment, community-based orders, or forms of conditional adjournment. A conviction also represents an ethical statement

¹¹⁹ *Sheridan* [1937] 1 KB 223, 229; Sir William Blackstone, *Commentaries on the Laws of England*, (1765), Vol 4, 374.

¹²⁰ *Miles and Green* (1983) 33 SASR 211; *Foster* [1984] 3 WLR 401; Smith A.T.H., 'The Prerogative of Mercy' [1983] *Public Law* 398.

¹²¹ *Constitution* 1901, s.71; *Palling v. Corfield* (1970) 123 CLR 52.

¹²² *Clyne v. East* [1967] 2 NSW 483.

¹²³ Fox R.G. and Freiberg A., 'Sentences without Conviction: From Status to Contract in Sentencing' (1989) 13 *Criminal Law Journal* 297.

or judgement of moral culpability which provides a declaration that the defendant is a person worthy of punishment in the interests of suppressing crime. For this reason, the fact of conviction is properly regarded as a major act of condemnation and public stigmatisation and is, without more, regarded as a significant sanction in its own right.¹²⁴ It is also a permanent one.¹²⁵ Over 59 500 such convictions have been recorded in the three years 1990/91-1992/93 alone (*see* Table 4.3).

Table 4.3
**Number of Automatic Convictions
for Drink-driving and Excessive Speed Infringements
under the *Road Safety Act 1986* (Vic.)¹²⁶**

Year ¹²⁷	Drink-driving Infringements	Excessive Speed Infringements	Total
1990/91 ¹²⁸	5006	19553	24559
1991/92	4773	14094	18867
1992/93	4223	12006	16229
TOTAL	14002	45653	59655

4.6.10 The twin dangers of unpredictable effect and permanent stigmatisation are addressed in the Victorian *Sentencing Act 1991*. It takes the view that a conviction is a significant disability and should not be lightly recorded by a court, particularly in relation to less serious offences. The recording of a conviction is optional in relation to community-based orders, fines, release of an accused on conditional adjournment, or dismissal of charges.¹²⁹ The Act requires that, in deciding whether or not to record a conviction, the court should take into account the impact of recording a conviction on the offender's economic or social well-being or on his or her employment prospects. None of this is allowed for in the *Road Safety Act 1986*, s.89A. At minimum, the legislation deeming the conviction to have occurred should have limited it to a conviction for the purposes of the Act.¹³⁰ Tasmania has shown the way by saying that its deemed convictions are only relevant to accusations of other 'prescribed'

¹²⁴ Fox and Freiberg above 303-304.

¹²⁵ There is no spent conviction legislation in Victoria.

¹²⁶ Source: VicRoads, Registration and Licence Information Services.

¹²⁷ For period 1 July to 30 June.

¹²⁸ Includes estimates for the six months to 31 December 1990. The 1990 total of such infringements is known. Six months was taken to be half this figure.

¹²⁹ *Sentencing Act 1991*, s.7 & s.8.

¹³⁰ Or s.90 of the Act.

offences and even then it allows evidence of those convictions to be excluded if the court is satisfied that it would be unjust to use it.¹³¹ Arbitrary conviction is too crude a means of keeping tabs on recidivism. The Victorian State road authority, VicRoads, keeps the central records of licence cancellations, disqualifications and suspensions. These can be imposed judicially without conviction at sentencing¹³² and administratively through accrual of demerit points earned by infringement notices.¹³³ A record of a prior disqualification for a drink-driving or excessive speed infringement or other licence loss offence would have been a sufficient indicator of recidivism to justify an enhanced penalty without the need to treat the infringement notice as a conviction. If the records show that the person has such a 'prior', the prosecution officer could withdraw any fresh infringement notice for a similar offence and initiate proceedings by charge and summons. Alternatively, a second tier of penalties could be included in the Act to apply to those who have previously been disqualified. If that information is not immediately available to the apprehending officer, an infringement notice could be amended within a certain period after being issued in order to specify the increased fixed penalty which is appropriate in the light of the further information on the driver's status obtained from licence records.

4.7 Demerit points and loss of licence to drive

4.7.1 Drivers' licences can be lost through the accrual of demerit points earned for infringements. A demerits point system was introduced into Victoria in 1970 in order to identify drivers with high offence rates and to temporarily withdraw their licence to drive automatically when the offending became intolerable.¹³⁴ The demerit points scheme, in its first twenty years, was relatively ineffectual as a form of sanction. It required that drivers be repeatedly apprehended by police patrols. Licence suspension through loss of demerit points in that period was relatively rare. The major growth in the significance of demerit points has occurred since the introduction of owner-onus legislation and the use of speed cameras. The Victorian Parliamentary Road Safety Committee in its inquiry into the demerit points scheme reported that, in June 1990, there

¹³¹ *Metropolitan Transport Act 1954* (Tas.), s.43C(8); *Traffic Act 1971*, s.43H(6) (Tas.).

¹³² Under *Sentencing Act 1991*, s. 89; *Road Safety Act 1986*, s.28.

¹³³ *Road Safety Act 1986*, s.25.

¹³⁴ Victoria Parliament, Joint Select Committee on Road Safety, *Points Demerit System*, Melbourne, Government Printer, 1969; Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994; Haque M.O., *Evaluation of the Demerit Points System in Deterring Traffic Offences*, Road Traffic Authority, 1987.

were approximately 500 000 demerit points on issue. By March 1993 this number had grown to over 3 million.¹³⁵ The arrangement is that where a holder of a driver's licence is convicted of or expiates specified traffic offences, VicRoads is obliged to record against the driver the number of demerit points allocated by regulation to that offence.¹³⁶ The points are recorded against the licence holder when the infringement notice is paid, or the unpaid penalty is registered with the PERIN Court and an enforcement order is made, or when the matter is disposed of by conviction in open court. It does not matter that, in most infringement notice cases, the person is deemed not have been convicted of any offence.¹³⁷ Once a person incurs twelve demerit points within three years his or her driver's licence is suspended for three months.¹³⁸ This is an administrative action taken by VicRoads as the relevant licensing authority. It is additional to the effect on licences of drink-driving and excessive speed infringements. The motorist may avoid the suspension by electing to extend the demerit point period for a further twelve months,¹³⁹ but if that is done and more demerit points are earned during the extended period, the licence will be suspended for six months.¹⁴⁰ Motorists whose licences have been suspended because of demerit points may appeal against that decision to a Magistrates' Court. The appeal may only be made on the grounds that the demerit points have been recorded against the appellant in error, or because of mistaken identity, or that the points have been miscalculated.¹⁴¹ The decision of the Magistrates' Court is final.¹⁴² Demerit points may be registered against the name of a person who does not hold a driver's licence with a view to applying them to that person if he or she subsequently obtains a licence.¹⁴³

4.7.2 The fusion of the demerit point and owner-onus systems produces a particularly potent sanction. It threatens the licences of persons who may not have been the driver of the vehicle involved in the offence.¹⁴⁴ This combination was so strongly opposed in Parliament that

¹³⁵ Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, xxii. Over 1 million Victorian drivers had accrued demerit points.

¹³⁶ *Road Safety Act* 1986, s.25; *Road Safety (Procedures) Regulations*, 1988, r.230-233, Sch 3. For procedure on appeal to a Magistrates' Court, see r.233. Though the maximum fine is discounted when a matter is dealt with by way of an infringement notice, there is no discounting of the number of demerit points earned.

¹³⁷ *Road Safety Act* 1986, s.89(5).

¹³⁸ *Road Safety Act* 1986, s.25(3D). For appeal provisions see s.26.

¹³⁹ *Road Safety Act* 1986, s.25(3) and *Road Safety (Procedures) Regulations*, r.231(1).

¹⁴⁰ *Road Safety Act* 1986, s.25(3B).

¹⁴¹ *Road Safety Act* 1986, s.26(1) and (2).

¹⁴² *Road Safety Act* 1986, s.26(7).

¹⁴³ *Road Safety (Procedures) Regulations* 1988, r.230(3)&(4).

¹⁴⁴ See above 4.4.

when legislation permitting camera detected speed and red light offences was introduced into the house, a political compromise was reached which removed these offences from the demerits points schedule no matter how they were detected or dealt with.¹⁴⁵ However, following a report by the Road Traffic Authority on the inefficiencies of alternative means of identifying the actual driver photographed,¹⁴⁶ they were re-introduced for these offences in 1989.¹⁴⁷ In fact, the allocation of demerit points for camera recorded infringements is often incomplete. The person who is sent the infringement notice as the deemed or nominated driver does not reveal his or her driver's licence number when the vehicle is photographed. The task of matching the registered owner's name, or that of the nominated person, to a list of licence holders for the purpose of allocating demerit points has its difficulties. These include problems such as two licence holders in the household in which the car is registered having identical or similar names, or the owner/driver using different addresses for vehicle registration and driver's licence renewals, or the names supplied being unable to be matched with confidence because they are incomplete, misspelt, or based on diminutives or nicknames. When the correspondence between identity of driver and licence holder is uncertain, the practice of VicRoads is not to assign demerit points, but to report the nature of the problem to the issuing agency which, in general, is able to do little about it.

4.7.3 Whereas drivers' licences can be lost temporarily for up to six months under the demerit point scheme, they can also be suspended administratively by VicRoads as an indefinite sanction for non-payment of court ordered fines, costs, or orders for restitution arising out of the use of a motor vehicle. This includes court orders in respect of unpaid parking and traffic infringement notices.¹⁴⁸ Before seeking to execute a warrant for imprisonment, the Sheriff's Office routinely refers the names and addresses of fine defaulters (both PERIN registered fines and fines imposed in open court) to VicRoads under this provision in order to place additional pressure on debtors to meet their obligations. In June 1991, the Sheriff's Office indicated that half of those issued with suspension notices had paid up rather than lose their licences. However, there still was a backlog of about 200 000 outstanding traffic and parking fines in Victoria

¹⁴⁵ *Victoria Parliamentary Debates*, Legislative Assembly, 1989, Vol. 380, 2035-2039.

¹⁴⁶ South D.R, Harrison W.A, Portans I. and King M., *Evaluation of the Red Light Camera Program and the Owner-Onus Legislation*, Melbourne, Road Traffic Authority, 1988. See above 4.4.4.

¹⁴⁷ *Road Safety (Miscellaneous Amendments) Act* 1989, s.14.

¹⁴⁸ *Road Safety (Procedures) Regulations* 1988, r.227(3).

and, at that stage, the office was selecting only the most serious offenders for immediate attention.¹⁴⁹

4.7.4 When a seven-day notice of intention to execute a warrant for imprisonment of a fine defaulter is given, a like notice of intention to suspend the defaulter's driver's licence is also given. The two notices, presented together in a single document, advise the defaulter of the amount outstanding, the means of payment and warns of the imprisonment and suspension of licence that will follow if the fine is not paid in full or alternative arrangements for payment are not entered into. At the end of the seven days, a final suspension notice is issued which warns that the licence will be suspended at the end of 28 days. At the expiration of that period, the licence is suspended by the sheriff as a 'proper officer' appointed under the regulations to exercise the authority of VicRoads. The suspension remains in force indefinitely until the amount outstanding is paid or other arrangements are made. An appeal is available to the Magistrates' Court.¹⁵⁰ The alternative arrangements for part-payment which may be accepted by the Sheriff's Office ordinarily require the total amount to be discharged within twelve months or, in exceptional cases, over a longer interval. The suspended licence is reinstated when payment is made in full, or where part-payment arrangements have been entered into after the initial suspension. If there is a further default, the licence is suspended yet again.

4.8 Loss of vehicle registration

4.8.1 Where the owner-onus system identifies that the motor vehicle involved in the traffic offence is company owned, suspension of vehicle registration rather than suspension of driver's licence is the response to non-payment of infringement penalties and court imposed fines, costs etc. arising out of the use of the vehicle.¹⁵¹ The registration may be suspended by VicRoads on advice from the Sheriff's Office that fines have not been paid. However the provision is not widely used because of difficulties with the suspension affecting innocent parties such as bona fide purchasers of the vehicle, or finance companies which have repossessed it. The suspension, if ordered, continues until the fine is paid.

4.8.2 Corporations are also routinely asked to disclose the identity of the driver of any of their vehicles photographed in breach of the law, by a speed or red light camera. If a corporation fails to do so, not only is it

¹⁴⁹ 'Parking Fines: 150 Off the Road', *Sunday Age*, 7 June 1991, p.7.

¹⁵⁰ *Road Safety Act 1986*, s.26(1), *Road Safety (Procedures) Regulations 1988*, r.228. The decision of the Magistrates' Court is final, s.26(7).

¹⁵¹ *Road Safety (Vehicles) Regulations 1988*, r.404A.

liable under the owner-onus provisions for the relevant speeding or red light infringement penalty, but it is also liable to a \$600 infringement notice for not nominating the actual driver. And even if all of the infringement penalties have been paid in these circumstances, administrative suspension of the vehicle registration for three months can take place as further punishment for non-disclosure of the driver.¹⁵² Appeal to a Magistrates' Court against suspension is possible.¹⁵³

4.8.3 The use of drivers' licences or vehicle registration cancellation or non-renewal as a means of forcing payment of unpaid parking and traffic fines, brings with it difficulties other than those relating to the impact on 'innocent' third parties under owner-onus provisions. Delay or refusal of registration or licence renewal reduces government revenue receipts. Drivers' licences or motor vehicle plates have to be returned on default but, until they are collected or handed in, the offender can still present as a licensed driver of a registered vehicle. To overcome the latter by placing a bar on the renewal of the driver's licence is ineffectual because, in Victoria, drivers' licences are ordinarily renewed for 10 years at a time. Vehicle registration and compulsory third party insurance are renewed annually, but declining to do so as punishment can be expected to produce an increase in persons driving unregistered vehicles. This also may have consequences on the driver's current or future insurance cover. Third party property damage policies in Victoria normally exclude damage caused when the vehicle was driven by a person not licensed or authorised to drive when the accident occurred.¹⁵⁴

4.9 PERIN enforcement procedure

4.9.1 In 1984, the Attorney-General was presented with a report of a joint task force of the Law Department and the Victoria Police on alternatives to full summary proceedings in Magistrates' Courts.¹⁵⁵ It was influenced in part by the Second Report of the Scottish Stewart Committee on Alternatives to Prosecution¹⁵⁶ which had been published the year before.

¹⁵² *Road Safety (Vehicles) Regulations* 1988, r.404B.

¹⁵³ *Road Safety (Vehicles) Regulations* 1988, r.409.

¹⁵⁴ Note that in New South Wales under the *Insurance Act* 1902, s.18B, there has to be a causal connection between the subject matter of the exclusion clause and the loss before an insurer can rely upon the exclusion clause. An inexperienced driver who has lost his or her licence through non-payment of a fine, will argue that he or she falls outside the exclusion clause because the loss under the policy would have occurred irrespective of the status of the licence.

¹⁵⁵ Victoria, Joint Task-force Law Department and Victoria Police, *Alternative Procedure*, Melbourne, April 1984.

¹⁵⁶ United Kingdom, Scottish Home and Health Department, *Keeping Offenders Out of Court: Further Alternatives to Prosecution*, Second Report by the Committee on Alternatives to Prosecution (Chairman Lord Stewart), Edinburgh, HMSO 1983, Cmnd. 8958.

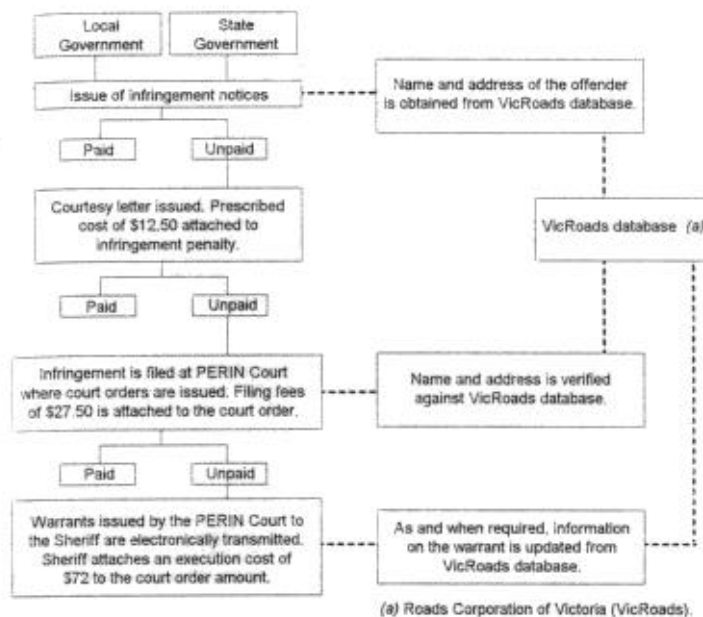
The Committee was also aware of the New South Wales SEINS (Self-Enforcing Infringement Notice System) for registering and enforcing penalties imposed by way of infringement notices introduced into that State in the preceding year. In this report and a separate one dated January 1985, the joint task-force spelt out its ideas for the handling of that part of the alternative Magistrates' Court procedures which was initiated by the issue of an infringement notice.¹⁵⁷ These recommendations produced what is, in essence, the framework of the current PERIN system which came into effect in April 1986¹⁵⁸ (see Figure 4.1) and is now regulated by the *Magistrates' Court Act* 1989, s.99 and Schedule 7. The schedule provides the machinery provisions. The procedures may be used in relation to any infringement or penalty notice issued in the State provided that the offence has been prescribed for the purposes of enforcement under the PERIN system. Not all have been so prescribed.¹⁵⁹ The recommendations aimed to reduce the burden on the lower courts by standardising and automating the processes of enforcing the penalties demanded under infringement notices with a view to minimising the number of offenders who would elect to put the informant to proof of the matter in court, while at the same time invoking the ultimate coercive power of imprisonment to enforce payment of the infringement penalty.

¹⁵⁷ Joint Task-force, Law Department and Victoria Police, *PERIN—Penalty Enforcement by Registration of Infringement Notice*, January 1985. Newspaper reaction at the time PERIN was introduced noted that it was thought that the computerised system would double state government revenue from fines to about \$40 million a year and save the police about \$14 million a year in paper work. Police believed that the reduced paper work would encourage the police to write out more on-the-spot fines. In March 1985, the number of offences which could be dealt with by on-the-spot fines was increased fivefold from 20 to 97, Age, 5 June 1985, p.1.

¹⁵⁸ *Magistrates (Summary Proceedings) Act* 1975, s.89S-s.89ZE and *Magistrates' Courts (Penalty Enforcement by Registration of Infringement Notices) Rules* 1986.

¹⁵⁹ See list in *Magistrates' Court General Regulations* 1990, r.1103 & r.1104.

Figure 4.1
The PERIN Enforcement System (Victoria)¹⁶⁰



4.9.2 The PERIN system took off with a vengeance. From the end of its first full year of operations to the end of 1992, the number of infringement issuing agencies who opted to use it grew fourfold and the number of infringements lodged for enforcement increased threefold (*see* Table 4.4). The number of registered agencies was boosted in mid 1990 when the Melbourne City Council first offered itself as a bureau through which other municipalities and shires could arrange for the processing and lodgement of infringement notices. The spurt in the number of lodgements also coincided with the establishment of the Traffic Camera Office in June 1990 pursuant to a deliberate government policy of increasing the use of photographic devices (particularly speed cameras) in the detection of traffic infringements. In January 1991 it lodged its first batch of unpaid infringements. Its impact can be gauged by the fact that Victorian Police figures on infringements detected by speed cameras reveal a growth of over 1000 per cent from the year 1989/90 to that of 1990/1991 (28 597 to 321 952 cases). Red light camera offences grew by 200 per cent (12 761 to 38 309).¹⁶¹ In the next year speed camera offences grew by a further 38

¹⁶⁰ Auditor-General of Victoria, *Report on Ministerial Portfolios*, May 1994, Melbourne, 1994, Chart 3.9B, para. 3.9.15, reproduced with permission.

¹⁶¹ Victoria Police, *Statistical Review*, 1990/91, p.143.

per cent.¹⁶² Red light camera offences grew by 24.2 per cent in the 12 months from 1990/91.¹⁶³

Table 4.4
Growth in the Use of the PERIN System, 1987-92, Victoria¹⁶⁴

31 December	No. of Registered	Infringements
Year	Agencies	Lodged
1987	36	135000
1988	46	176000
1989	62	235000
1990	109	268000
1991	142	423000
1992	154	422000

4.9.3 Under the PERIN scheme the time recipients of on-the-spot tickets were given to expiate the offence voluntarily by way of payment was standardised at 28 days.¹⁶⁵ A courtesy letter was to follow after the time elapsed reminding the offender that the penalty was still unpaid and of his or her right to have the matter determined by a court. At the expiration of a further 28 days the fact of non-payment could be registered electronically at a special venue of the Magistrates' Court (the PERIN Court). After a further reminder and 28-day extension, the amount of the penalty and accrued costs could be enforced as though it were a judicially imposed fine. This means the imprisonment of the person or, in the case of a corporation, the seizure of its property. The amount levied by way of an infringement notice is described in the legislation as an 'infringement penalty'. Once procedures have been taken for enforcement by registering the infringement penalty with the PERIN Court the exaction changes its designation from 'infringement penalty' to 'fine'.¹⁶⁶

4.9.4 Only unpaid infringement notices issued under specified provisions in the twelve Acts listed in the *Magistrates' Court General Regulations* 1990, r.1103 are enforceable under the PERIN procedure. These are:¹⁶⁷

¹⁶² Victoria Police, *Statistical Review*, 1991/92 p.162 (from 416551 to 576526). The figure for 1990/91 is 94599 higher than the figure given for the same year in the previous year's *Statistical Review*. This is said to be due to a change in the basis of counting.

¹⁶³ There are similar difficulties in reconciling figures for this offence as well.

¹⁶⁴ Source: PERIN Court.

¹⁶⁵ At that time, 14 days were allowed for parking offences and 28 days for traffic infringements.

¹⁶⁶ See *Magistrates' Court Act* 1989, Sch.7, cl.6(2) and definition of 'fine' in cl.2.

¹⁶⁷ *Magistrates' Court General Regulations* 1990, r.1103.

Building Control Act 1981, s.178A
Conservation, Forests and Lands Act 1987, s.91 & s.94
Dog Act 1970, s.22A
Environment Protection Act 1970, s.63B
Housing Act 1983, Sch. 5, cl.5
Litter Act 1987, s.9
Local Government Act 1989, s.40¹⁶⁸
Mineral Resources Development Act 1990, s.106
Marine Act 1988, s.60
Road Safety Act 1986, s.87-88
Tobacco Act 1987, s.38
Transport Act 1983, s.212.

Unpaid notices issued in the State for breaches of federal legislation,¹⁶⁹ or other Victorian Acts which allow for the issue of infringement notices cannot be directly enforced under PERIN. The Victorian Acts are:

Dangerous Goods Act 1985, s.45B
Equipment (Public Safety) Act 1994, s.27
Fruit and Vegetables Act 1958, s.53A
Gaming Machine Control Act 1991, s.151
Local Government Act 1989, s.117¹⁷⁰
Occupational Health and Safety Act 1985, s.47A¹⁷¹
Planning and Environment Act 1987, s.130-132

Under these the only recourse the issuing agency has is to withdraw the infringement notice, file a charge, and summons the alleged offender to answer it in open court at a conventional summary hearing conducted in accordance with the provisions of the *Magistrates' Court Act* 1989, s.51 and Sch.2. The procedure for the PERIN enforcement of infringement penalties in Victoria is as follows.

4.9.5 *Courtesy letter*: If an infringement penalty has not been paid before the end of the standard 28 days stated in the infringement notice, the enforcement agency issuing the original notice may send a 'courtesy

¹⁶⁸ Infringement offences relating to failure to vote in local government elections. These were added to the PERIN list in March 1994, by the *Magistrates' Court General (Amendment) Regulations* 1994, r.11(2), but the regulation doing so is not yet in force, *see* r.3(2).

¹⁶⁹ *See above* 3.6.1.

¹⁷⁰ Infringement notices under municipal local laws.

¹⁷¹ This section, as amended in 1990, allows for regulations providing for infringement notices, but none have yet been made.

letter' to the person on whom the infringement notice was served.¹⁷² This letter must state that the person has a further 28 days in which to pay the infringement penalty together with accrued costs¹⁷³ and must warn of the further action which may be taken if no payment is made. In most instances during this further period, the person continues to have the right to have the matter dealt with in court under a normal summons.¹⁷⁴ However, that right is lost in the case of licence loss infringements¹⁷⁵ because licence cancellation automatically takes effect at the expiry of the initial 28 days, whether or not the infringement penalty has been paid.

4.9.6 *Registration of infringement penalty*: If payment is still not made after the extended period, the enforcement agency may seek to have the infringement penalty registered at the Magistrates' Court of Victoria¹⁷⁶ by certifying the service of both the infringement notice and courtesy letter and the fact that there has been neither payment nor an election to have the matter heard in court. If the agency is relying on owner-onus provisions, or a sworn statement nominating someone else as the person responsible for a parking or driving offence, it must certify this as well. If the certificate is in order and the offence is not barred by any statute of limitation¹⁷⁷ the registrar of the court may register the infringement penalty and accrued costs.¹⁷⁸ The details of unpaid penalties sent for registration are supplied to the court on computer tape. A program automatically checks whether the details are complete and if the proceedings are statute barred. All proceedings are thereafter controlled by computer under the supervision of the registrar of the PERIN Court until the matter reaches the stage of requiring action by the Sheriff's Office.

4.9.7 *Enforcement orders*: When the infringement penalty and the costs are accepted for registration, an 'enforcement order' is made. This is now an order of the Magistrates' Court¹⁷⁹ and the infringement penalty

¹⁷² *Magistrates' Court Act* 1989, Sch.7, cl.3.

¹⁷³ *Magistrates' Court (Fees, Costs and Charges) Regulations* 1990, r. 8, Item 33 (courtesy letter), \$10.60 (as 1/1/90) increased to \$12.20 as at 1/1/92, \$12.50 as at 1/2/93 and \$13.20 from 1/10/94.

¹⁷⁴ *Magistrates' Court Act* 1989, Sch.7, cl.3(6).

¹⁷⁵ *Road Safety Act* 1986, s.89E.

¹⁷⁶ *Magistrates' Court Act* 1989, Sch.7, cl.4. The registration process is ordinarily undertaken electronically at the special venue of the Magistrates' Court designated for this purpose and known as the PERIN Court, *Magistrates' Court General Regulations* 1990, r.402.

¹⁷⁷ Most commonly, the general 12-month limitation on the prosecution of summary offences, *Magistrates' Court Act* 1989, s.26(4).

¹⁷⁸ *Magistrates' Court (Fees, Costs and Charges) Regulations* 1990, r. 8, Item 34 (registration), \$22.50 (as 1/1/90) increased to \$26.50 as at 1/1/92, \$27.50 as at 1/2/93 and \$29.00 from 1/10/94. This is in addition to other accrued costs.

¹⁷⁹ *Magistrates' Court Act* 1989, Sch.7, cl.5.

is able to be enforced under the *Magistrates' Court Act 1989*¹⁸⁰ as a judicially imposed fine.¹⁸¹ In the case of a natural person, the order is that the person pay to the court the amount of the infringement penalty and costs¹⁸² or, in default of payment, be imprisoned for one day for each \$100 or part of \$100 of the amount then still unpaid.¹⁸³ For a corporation in default a warrant to seize property will issue. On the making of an enforcement order, yet another notice spelling out the consequences of non-compliance and granting a further 28 days in which to pay is served on the alleged offender.¹⁸⁴ Because it is now an order of the Magistrates' Court, the registrar may entertain applications concerning time to pay the fine or payment of it by instalments.¹⁸⁵ Where the PERIN Court is still unsuccessful in obtaining payment from the person against whom the enforcement order is made, warrants are issued. The warrant types issued are Warrants to Imprison (individuals with Victorian addresses); Warrants of Apprehension (individuals with interstate addresses) and Warrants to Seize Property (corporations with Victorian or interstate addresses).¹⁸⁶ Warrants to Imprison and Warrants to Seize Property are sent to the sheriff for enforcement. These must not be executed until one week after a demand is made on the person in default by the sheriff's officer executing the warrant.¹⁸⁷ The total effect of this further period allowed for payment is that the minimum statutory period which must pass between the issue of an infringement notice and imprisonment for its non-payment is 91 days. In making the demand, the sheriff's officer must supply the defaulter with a document setting out the situation with respect to time to pay, payment by instalments and applications for revocation of the enforcement

¹⁸⁰ However, these are not the same as the enforcement procedures available for fines under the *Sentencing Act 1991*, s.63; in particular community based orders are not available as an alternative to imprisonment for non-payment of infringement penalties.

¹⁸¹ *Magistrates' Court Act 1989*, Sch.7, cl.6(2) and definition of 'fine' in cl.2. Any amount recovered as a result of the making of an enforcement order is also to be disposed of as though it were a fine on conviction, cl.9(2).

¹⁸² *Magistrates' Court (Fees, Costs and Charges) Regulations 1990*, r. 8 Item 35 (enforcement order), \$12.70 (as 1/1/90), increased to \$14.30 as at 1/1/92, \$15.00 as at 1/2/93 and \$15.80 from 1/10/94. Statutory costs so far are \$45.80 (1990 figures) or \$53.00 (1992 figures).

¹⁸³ *Magistrates' Court Act 1989*, Sch.7, cl.5(1)(a). This default scale is the same as that provided for in the *Sentencing Act 1991*, s.63(1).

¹⁸⁴ *Magistrates' Court Act 1989*, Sch.7, cl.6.

¹⁸⁵ *Magistrates' Court Act 1989*, Sch.7, cl.7.

¹⁸⁶ The *Magistrates' Court (Amendment) Act 1994* introduced the Penalty Enforcement Warrant which allows search and seizure of the personal property of corporate and individual infringement penalty defaulters and also is the vehicle for pursuing the personal assets of directors of defaulting companies, see now *Magistrates' Court Act 1989*, s.82A-82F & Sch.7, cl.8A.

¹⁸⁷ Further costs are incurred on executing a warrant. These were \$11.60 in 1990 and were increased to \$50 on 1/11/90, \$57.50 on 1/1/91, \$69.00 on 1/1/92, \$72 on 1/2/93 and \$75.50 on 1/10/94: *Magistrates' Court (Fees, Costs and Charges) Regulations 1990*, Reg. 8 Item 18.

order.¹⁸⁸ Although an enforcement order has been made and the sanction is now treated as a judicially imposed fine, the legislation expressly declares that, in all instances except licence loss infringements,¹⁸⁹ the person is neither deemed to have been convicted of the offence, nor liable to any further criminal proceedings for it.¹⁹⁰ The making of the order does not in any way affect or prejudice any civil proceedings arising out of the event. On the other hand payment in accordance with the order is not to be regarded as an admission of liability for the purpose of any civil litigation.¹⁹¹ The enforcement of a Warrant of Apprehension interstate takes place under the *Service and Execution of Process Act* 1992 (Cth), Part 7 and the warrant is sent direct from the PERIN Court to the interstate warrant bureau of the relevant local State or Territory police force for enforcement. If it is successfully executed the offender will serve the default period in custody in the State in which he or she is found. Enforcement is also available pursuant to reciprocal arrangements under the *Magistrates' Court Act* 1989, s.98 in relation to the enforcement of fines against interstate corporate bodies. Unexecuted warrants to enforce unpaid fines by imprisonment cease to be valid five years after the date of issue.¹⁹² Although it is always possible for a fresh warrant to be issued by leave of the Magistrates' Court¹⁹³ this cessation of validity is, in reality, when an unpaid infringement penalty is finally written off.¹⁹⁴

4.9.8 *Revocation of enforcement orders*: Even though an enforcement order has been made, the enforcement agency or the person against whom the order was made may apply to the registrar of the court for its revocation before a warrant to arrest or to seize property is executed. In the case of licence loss infringements, *only the enforcement agency* may apply for revocation.¹⁹⁵ On revocation, the enforcement order ceases to have any effect. The registrar is obliged to revoke an order if the enforcement agency makes the request, but has a discretion to do so if the person subject to the order is the applicant. In the latter case, even if the

¹⁸⁸ But no revocation for licence loss infringements, *Road Safety Act* 1986, s.89E.

¹⁸⁹ *Road Safety Act* 1986, s.89E. Until the legislation is fully proclaimed, the section only applies to drink-driving and excessive speed infringements.

¹⁹⁰ *Magistrates' Court Act* 1989, Sch.7, cl.9(1)(a)&(b).

¹⁹¹ *Magistrates' Court Act* 1989, Sch.7, cl.9(1)(c)&(d). The payment of the penalty may, however, be construed as an admission of guilt for the purpose of criminal proceedings relating to the same matter, *Ex parte Newman; re Fischer and McInerny* [1969] 1 NSW 538.

¹⁹² *Magistrates' Court Act* 1989, s.58(2). The five-year limit does not apply to warrants to seize property.

¹⁹³ *Magistrates' Court Act* 1989, s.58(3).

¹⁹⁴ See below 5.7.2.

¹⁹⁵ *Magistrates' Court Act* 1989, Sch.7, cl.10; *Road Safety Act* 1986, s.89E. This revocation only applies to the enforcement of the monetary penalty; it has no effect on the automatic loss of licence or conviction which accompanies these infringements.

application is denied, the accrued costs may be varied.¹⁹⁶ A person aggrieved by the refusal of the registrar to revoke the order, may require the application for revocation to be referred to the Magistrates' Court for hearing. If the registrar agrees to revoke the enforcement order, the enforcement agency and the person against whom the order was made must be notified of the revocation and also advised that the offence alleged in the original infringement notice will now be referred to the Magistrates' Court for hearing and determination. VicRoads is also notified by the registrar of the PERIN Court of the revocation in order to cancel any demerit points which were allocated to a licence holder when the enforcement order was originally made.

4.9.9 *Procedure after revocation*: If an enforcement order is revoked or, on refusal to revoke it, a request has been made to have the application heard by a Magistrates' Court, the papers relating to the matter are filed with the court. A formal charge is then deemed to have been filed in relation to the alleged offence.¹⁹⁷ The enforcement agency may still prevent any action being taken on an enforcement order, or any court hearing taking place, by a formal notice of non-prosecution.¹⁹⁸ If this does not occur and the matter proceeds to a hearing, the magistrate may determine the matter of the alleged offence in the normal summary fashion even though a charge-sheet has not been served on the defendant, or he or she has not been served with a notice of the time and place of the hearing, provided that the court is satisfied that the defendant has that information or would not be prejudiced by the non-service, or is avoiding service of the notice or cannot be found after reasonable search and inquiry.¹⁹⁹

4.9.10 *Application to penalty notices*: In general the procedures described above apply to penalty notices and any other specially prescribed offences as well as to infringement notices. However, particularly with corporate offences, there is a problem in imposing penalties for continuing offences (i.e ones which involve a single ongoing failure to perform some duty imposed by law, e.g. lodging a return). Because, for such offences, fines are calculated by reference to each day the offending act or omission continues, the legislature normally does not permit them to accrue until at least an initial conviction has been obtained. However, if the matter has been dealt with by the issue of a penalty notice, and whether or not an enforcement order has been issued for non-payment, there is no conviction and the continuing penalty can be

¹⁹⁶ *Magistrates' Court Act* 1989, Sch.7, cl.10(3)&(4).

¹⁹⁷ *Magistrates' Court Act* 1989, Sch.7, cl.11.

¹⁹⁸ *Magistrates' Court Act* 1989, Sch.7, cl.12.

¹⁹⁹ *Magistrates' Court Act* 1989, Sch.7, cl.13.

avoided. To prevent this it is provided in *Magistrates' Court Act 1989*, Sch.7, cl.16 that:²⁰⁰

If a penalty notice has been served on a person in relation to a prescribed offence constituted by a failure to do a particular act or thing and —

- (a) the person pays the infringement penalty together with any prescribed costs after the end of the period specified in the penalty notice but before an enforcement order is made under this Part in relation to the prescribed offence but does not do the act or thing and at the date of payment that act or thing was still able to be done, the obligation to do that act or thing continues and the relevant continuing offence provision applies in relation to the continued failure to do the act or thing as if, on the day on which the person made the payment, the person had been convicted of an offence constituted by a failure to do the act or thing; or
- (b) an enforcement order is made and at the date on which the enforcement order was made that act or thing had not been done and was still able to be done, the obligation to do that act or thing continues and the relevant continuing offence provision applies in relation to the continued failure to do that act or thing as if, on the day on which the enforcement order was made, the person had been convicted of an offence constituted by a failure to do the act or thing.

4.10 Payment of penalty

4.10.1 Payment may be made by mail or delivering it in person to the address specified in the notice or as otherwise prescribed.²⁰¹ The effect of payment of the infringement penalty within the standard 28 days (or any longer period allowed by an authorised officer of the issuing agency) is that: (a) the offender is taken to have expiated the infringement; (b) no further criminal proceedings can be taken in respect of the infringement; and (c) except for drink-driving and excessive speeding infringements, no conviction for the infringement can be regarded as having been recorded.²⁰² Penalty payments are to be applied in the same manner as if

²⁰⁰ See also *Magistrates' Court Act 1989*, Sch.7, cl.15.

²⁰¹ *Road Safety Act 1986*, s.89(3) and *Road Safety (Procedures) Regulations 1988*, r.806. This allows for payment through banks.

²⁰² *Road Safety Act 1986*, s.89(1). Similar wording is to be found in the sixteen other Acts permitting the issue of infringement notices (see above 4.2.1), e.g. *Conservation, Forests and Lands Act 1987*, s.93(1); *Dog Act 1970*, s.22A(9); *Environment Protection Act 1971*, s.63D(1);

the offender had been convicted and fined in the Magistrates' Court on a charge filed by the agency which served the notice.²⁰³ This allows prosecuting agencies which normally retain a share of court imposed fines in prosecutions initiated by them to keep a like share of on-the-spot fines. For example, under the *Litter Act 1987*, s.13, infringement penalties under the Act are paid to the Council's municipal fund if proceedings have been taken by a municipal council, to consolidated revenue if action has been taken by a member of the police force or to the fund of the particular public authority which initiated the proceedings.

4.10.2 If payment is not made in time, or the infringement notice has been formally withdrawn, the initiating agency is free to bring a prosecution in open court for the offence in question.

4.11 Time to pay and payment by instalments

4.11.1 Agencies issuing infringement notices have a discretion to grant persons willing to pay the infringement penalty additional time to pay. Providing the agency's record keeping can cope, it only requires delaying the registration of the infringement with the PERIN Court until the period of extension has lapsed. The normal twelve-month bar on initiating court proceedings acts as a brake on too generous an exercise of this discretion. Agencies relying on the PERIN system to enforce unpaid fines cannot accept part payments because it will prevent them pursuing the balance through PERIN. Only the entire statutory fixed penalty can be registered for enforcement. However, once the full penalty has been registered, the person against whom the enforcement order has been made may make an application to the registrar of the PERIN Court for additional time to pay, or payment of the outstanding amount by instalments.

4.11.2 Neither the issuing agency nor the registrar of the PERIN Court has power to allow the amount owing to be discharged by service of unpaid community work under a community based order. The failure of the offender to respond to the enforcement order leads to a warrant to imprison being directed to the sheriff under *Magistrates' Court Act 1989*, Sch.7, cl.8(1)(a). Because it is not a warrant issued under the general fine enforcement provisions of s.62 of the *Sentencing Act 1991*, and the person is not one who has been fined within the meaning of s.3 of this latter Act, the general power found in s.62(9)&(10) to substitute a community based order does not apply to infringement penalties enforced

Litter Act 1987, s.9(4)(b); *Marine Act 1988*, s.61(1); *Occupational Health and Safety Act 1985*, s.47A(6); *Transport Act 1983*, s.213(1). See also *Magistrates' Court Act 1989*, Sch.7, cl.9(1)(a).

²⁰³ E.g. *Magistrates' Court Act 1989*, Sch.7, cl.9(2); *Conservation, Forests and Lands Act 1987*, s.93(2); *Dog Act 1970*, s.22A(10); *Environment Protection Act 1971*, s.63D(2); *Marine Act 1988*, s.61(2); *Road Safety Act 1986*, s.89(2); *Transport Act 1983*, s.213(2).

as fines. Nor does the power of the registrar of the court to substitute a community-based order under s.55(d)²⁰⁴ apply.²⁰⁵ However, when the defaulter is actually imprisoned under warrant, the Director General of Corrections may exercise a discretion to issue a ‘custodial community permit’ to allow the person leave from prison to engage in unpaid community work for any period including the whole of the term owing.²⁰⁶

4.12 Withdrawal of notices

4.12.1 An infringement notice may be withdrawn after being issued. A formal withdrawal may be made even if the infringement penalty has been paid. The withdrawal may result in no further action, or may be followed by an official warning, or may lead to a prosecution in open court. In most instances withdrawal can only occur within 28 days of the issue of the infringement notice and the alleged offender must be given a written notice of withdrawal.²⁰⁷ Where only police can issue certain types of traffic infringement notices, only they may withdraw them.²⁰⁸ If, despite the notice of withdrawal, the penalty has already been paid it must be refunded.²⁰⁹ If the alleged offender is prosecuted without the infringement notice having been formally withdrawn, any conviction imposed by the court as a consequence is deemed not to be a conviction for any purpose (including any form of disqualification or disability, or the imposition of a higher penalty on recidivists) except in relation to the conviction itself or subsequent proceedings such as an appeal.²¹⁰ The discretionary power possessed by prosecution officers to withdraw their infringement notices must be exercised within 28 days of service of the notice.²¹¹

4.12.2 Even when an infringement notice is being enforced under the PERIN system, the enforcement agency can take steps to stay the proceedings by applying for revocation of the enforcement order and may either bring the matter to a Magistrates’ court for hearing or give a

²⁰⁴ As inserted by the *Sentencing Amendment Act* 1993, s.12.

²⁰⁵ The section only applies to ‘an offender who has been fined by a court’.

²⁰⁶ *Corrections Act* 1986, s.57(5). This is not strictly a community-based order. The power is regularly used.

²⁰⁷ E.g. *Conservation, Forests and Lands Act* 1987, s.92(1); *Dog Act* 1970, s.22A(4); *Environment Protection Act* 1971, s.63C(1); *Marine Act* 1988, s.60(3); *Occupational Health and Safety Act* 1985, s.47A(4); *Road Safety Act* 1986, s.88(3) & s.89A(7)(c); *Transport Act* 1983, s.212(3).

²⁰⁸ *Road Safety Act* 1986, s.88(1A)&(3A).

²⁰⁹ E.g. *Conservation, Forests and Lands Act* 1987, s.92(3)); *Dog Act* 1970, s.22A(5); *Environment Protection Act* 1971, s.63C(4); *Marine Act* 1988, s.60(4); *Occupational Health and Safety Act* 1985, s.47A(5); *Road Safety Act* 1986, s.88(4); *Transport Act* 1983, s.212(4).

²¹⁰ E.g. *Conservation, Forests and Lands Act* 1987, s.93(5); *Dog Act* 1970, s.22A(12); *Environment Protection Act* 1971, s.63C(5); *Marine Act* 1988, s.61(4); *Road Safety Act* 1986, s.89(4); *Transport Act* 1983, s.213(4).

²¹¹ *Road Safety Act* 1986, s.88(3).

direction to the registrar of the PERIN Court not to refer the matter to court.²¹²

4.12.3 Persons who receive infringement notices frequently write to the issuing agency seeking to be excused from liability by either denying liability outright, or offering material in mitigation of penalty. The agency has a number of options. It may withdraw the infringement notice and abandon further action in the matter. Alternatively it may withdraw the infringement notice and caution the offender about the consequences of future wrongdoing.²¹³ Under Victorian police standing orders a system of formal cautions in relation to less serious offences committed by first offenders is in place.²¹⁴ In the Traffic Camera office, a Traffic Offence Caution Notice may be substituted for an infringement notice if the penalty review section recommends that the discretion to withdraw the original infringement notice be exercised.²¹⁵ Generally, in that office, if the correspondence involves an outright denial of guilt, the adequacy of the evidence in support of the infringement is re-assessed and, if the justification for the notice is confirmed, the person will be advised that any dispute as to guilt will have to be determined by a court if the person making the plea refuses to pay the penalty. No agency has power to reduce the level of the statutory penalty, but may grant time to pay.²¹⁶ No pleas are entertained by the Victoria Police in relation to drink-driving or excessive speed infringements. Persons who submit such documents are advised to lodge a Notice of Objection formally with a view to having the matter dealt with by a court.²¹⁷

4.13 Proof of prior convictions

4.13.1 The fact that a person has been the recipient of infringement notices for a similar offence on previous occasions, if known to the issuing officer, is relevant to the discretion whether to issue a ticket or proceed by summons, or to the later discretion to withdraw the notice and take alternative action. As is commonly the case with parking

²¹² See above 4.9.8.

²¹³ Victoria Police, Force Circular Memo, 92-2-9, *Penalty Notices*, 1 July 1992, para. 23.

²¹⁴ Victoria Police, Force Circular Memo, 92-2-28, *Cautions*, 1 July 1992.

²¹⁵ No criteria are published. Situations requiring the withdrawal of the notice are ones of diplomatic immunity or where police or other emergency vehicles are acting in the course of their duty under *Road Traffic Regulations* 1988, r.204(3). In the case of speeding infringements, the discretion to withdraw is normally exercised if it is the driver's first traffic infringement notice and the speed recorded is below 75 km/h.

²¹⁶ See above 4.11.

²¹⁷ Victoria Police, Legal Liaison/Penalty Review Sections, *Legislation and Procedure in Relation to Penalty Notices Issued by Police*, Traffic Support Groups, 412 St. Kilda Road, Melbourne 3004, 24 July, 1990, p.4.

infringements, a person may accumulate numerous tickets but is treated constantly as a first offender and subject to the same penalty per offence. For moving vehicle offences demerit points accumulate and will ultimately lead to the suspension of the repeat offender's driver's licence.

4.13.2. Only in relation to drink-driving and excessive speed infringements is the infringement notice deemed to be a conviction. This allows reference to be made to the infringement notice in subsequent proceedings as a conviction and thus produces higher penalties. Provisions exist in a number of Acts creating infringements, for a summons in relation to an infringement to attach a document alleging prior convictions for infringements.²¹⁸

4.14 Juveniles

4.14.1 Unlike Western Australia, which expressly sets sixteen years (at the date of the alleged offence) as the minimum age at which a person can be the recipient of an infringement notice,²¹⁹ Victoria sets no lower age limit. A litter infringement notice²²⁰ could, for instance, be served upon anyone above the minimum age of criminal responsibility, i.e. ten years.²²¹ At least one statutory provision contemplates infringement notices being issued to persons under twelve years of age.²²² The age jurisdiction of the Children's Court does not serve to limit the issue of such a notice because the infringement notice procedure is administrative, not judicial, in nature. However, an infringement penalty imposed upon anyone under eighteen years of age cannot be enforced. It is unenforceable as a fine under the PERIN system because the Magistrates' Court has no authority over persons still under that age, and in the Children's Court, which is the correct jurisdiction, the fine enforcement procedures have no PERIN equivalent.²²³ The infringement notice must be withdrawn and a summons issued. The high frequency with which false names are given by juveniles, particularly in relation to public transport infringements and their lack of the means to pay a fine in any event, militates against this action being taken.

4.14.2 It is the policy of the police not to issue infringement notices to persons under fourteen years of age and the Victoria Police Code Book

²¹⁸ E.g. *Marine Act* 1988, s.62; *Road Safety Act* 1986, s.90; *Transport Act* 1983, s.214.

²¹⁹ *Justices Act* 1902 (WA), s.171BB.

²²⁰ *Litter Act* 1987, s.9.

²²¹ *Children and Young Persons Act* 1989, s.127.

²²² *Marine Act* 1988, s.17(1) (person less than 12 years of age operating vessel with an engine).
See also s.17(2) (person between 12 and 16 years of age operating vessel with an engine).

²²³ *Children and Young Persons Act* 1989, s.3(1) (definition of child); s.155 (enforcement of fines).

for infringement notices pursuant to a Force Circular Memo states this.²²⁴ When infringement notices are issued to persons under eighteen, payment will be accepted from them and a courtesy letter will issue if payment is not received. However, if the juvenile fails to pay the penalty and refers to the fact that he or she is under age, the notice will be withdrawn and the original informant will be invited to reconsider the matter with a view either to taking no further action, or issuing a caution notice under the official police cautioning program,²²⁵ or formally charging the child and preparing a brief for prosecution. The last is likely if two or more cautions have previously been given. The matter will then be dealt with on summons in the Children's Court. The sanction imposed there will normally be less severe than that allowed for under the infringement notice: dismissal, an undertaking, good behaviour bond, a lesser fine, or, most commonly, probation for up to 12 months.²²⁶

4.15 Effect of infringement notices on corporations

4.15.1 Corporations may commit offences against any of the Acts which are punishable by way of infringement notice. The normal procedures apply in respect of enforcement, save for two major differences. Enforcement against corporations is by way of distress warrant and, where a company owned car is used to commit an offence, the vehicle registration may be suspended for non-payment of court imposed fines etc. arising out of the use of the vehicle.²²⁷ If that company fails to disclose the identity of the driver of one of its vehicles photographed by a speed or red light camera, a similar administrative suspension of the registration for three months can occur.²²⁸

4.15.2 Where a corporation receives a penalty notice in relation to one of the offences prescribed under the Corporations Law, the operation of the penalty notice has a more complex effect depending upon whether the offence consisted of a failure to do a particular act or not. Where the notice relates to an offence of omission, the obligation to remedy the omission continues despite the service of the notice and the payment of the prescribed penalty. In the case of an omission the notice calls for the offender both to pay the prescribed amount and remedy the omission within the period specified in the notice.²²⁹ The legislation is framed so as

²²⁴ Victoria Police, *Force Circular Memo*, 92-2-9, 1 July 1992; Victoria Police, *Penalty Notice Offences and Codes*, Revised 5 August 1991, VP Form 508A.

²²⁵ Victoria Police, *Force Circular Memo*, 92-2-28, 1 July 1992.

²²⁶ Or until the person turns 18, whichever is sooner, *Children and Young Persons Act* 1989, s.158.

²²⁷ *Road Safety (Vehicles) Regulations* 1988, r.404A.

²²⁸ *Road Safety (Vehicles) Regulations* 1988, r.404B.

²²⁹ Being at least 21 days, *Corporations Law*, s.1313(1)(c).

to allow action to be taken against the defendant for payment of the fine and for remedying the omission. Payment does not bring an end to the liability to act as required by legislation nor does remedying the omission extinguish the obligation to pay. Ongoing failure to remedy the defect may constitute a continuing offence under *Corporations Law*, s.1314. Note that under s.1316 a five-year time limit is placed on an initiating proceedings against the Act or, with the minister's consent, proceedings may be initiated at any later time. For normal infringement notices, a one-year time limit applies.

4.16 Remission of penalties

4.16.1 The Governor of Victoria may exercise the royal prerogative of mercy by pardoning, remitting, or respiting sentences imposed upon any offender. It is made clear by the *Sentencing Act* 1991, s.108 that the Governor may also remit the whole, or any part, of a monetary penalty or term of imprisonment imposed in default of payment of a fine. This means that if a person is imprisoned for non-payment of an infringement penalty that has been registered for enforcement as a fine under the PERIN system, an application can be made for the royal prerogative of mercy to be exercised to remit this punitive measure. This is common in New South Wales.²³⁰

4.16.2 In 1940, in *Standard Insurance Company Ltd v. Macfarlan*,²³¹ the then Victorian *Motor Car Act* provided for the automatic cancellation of a driver's licence on conviction of a drink-driving offence. It was held by Gavan Duffy J. that the Governor's purported remission of the statutory cancellation was ineffective. His exercise of the prerogative of mercy was subject to any limitation contained in his Letters Patent. As they were framed at the time, he was only authorised to pardon or respite 'sentences', or remit 'fines, penalties or forfeitures' due to the Crown. Since the automatic cancellation was not a 'sentence' in the sense of a judicially imposed sanction, and the cancellation was not something 'due to the Crown', he could not remit it. This authority appears still to apply to the modern automatic statutory conviction which occurs 28 days after the issue of an infringement notice for a drink-driving, or excessive speed infringement under the *Road Safety Act* 1986. In 1986, the Letters Patent for the Victorian Governor were

²³⁰ New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986, p.28.

²³¹ [1940] VLR 74.

redrawn and the former ones revoked.²³² The current wording neither expressly refers to nor imposes any limit on the exercise of the prerogative of mercy, save that the Premier has a general right to tender advice to the Governor. The prerogative of mercy exercisable by the Governor is now co-extensive with that of the Sovereign, but it is still not unfettered. While any monetary, custodial or other penalty imposed judicially may be remitted, the prerogative of mercy may not be adequate to reverse the underlying conviction.²³³ It is even less certain that a sanction in the form of a statutorily created conviction can be remitted or pardoned.²³⁴

4.16.3 The prime reason for granting remissions of on-the-spot penalties in New South Wales has been police error. On figures given to the New South Wales Public Accounts Committee for 1984 and 1985, about 80-90 per cent of applications for remission of the penalty turned on one or other of the following factors: in 36 per cent of cases a claim that the car had been sold prior to the commission of the offence which suggested police or central motor vehicle registration error; in 37 per cent a claim that the fine had already been paid suggesting error in police records; 5 per cent other police error; and in 1 per cent of cases the person claimed that the fine had already been discharged by service of a default period in prison. According to the Attorney-General's Department, 40 per cent of the applications for the remission of on-the-spot penalties were initiated by the Police Department itself.²³⁵

²³² *Letters Patent Relating to the Office of Governor of Victoria Issued by Her Majesty the Queen on 14 February 1986* (operative 3 March 1986).

²³³ Foster [1984] 2 All ER 679; cf. *Hay v. Justices of Tower Division of London* (1890) 24 QBD 561. It may depend on the form of the pardon, Smith A.T.H., 'The Prerogative of Mercy, The Power of Pardon and Criminal Justice' [1983] *Public Law* 398, 417-421.

²³⁴ It is arguable that to do so falls within the 1688 Bill of Rights prohibition on the regal power of dispensing with laws, *Imperial Acts Application Act* 1980, Part II, Division 3.

²³⁵ New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986, para. 5.10 and Table 5.4.

Statistical Picture

5.1 Scope, sources and quality of the data

5.1.1 The number of infringement notices issued in Victoria since they became available as an alternative to prosecution is not known. Nor is it known how many are issued state-wide over any set period. What happens to them afterwards is a little better understood, but because no central record or count of issued notices is assembled by any government authority, basic data is missing. No-one has hitherto made a count. While some measure of the extent of non-payment of notices can be gauged by the number later registered with the PERIN Court for enforcement, this does not disclose the extent of prior withdrawals. The business of that court, and ultimately that of the sheriff, is linked to the number of 'on-the-spot tickets' written. It is important to know what that linkage is, whether the proportion of business sent for enforcement varies from agency to agency, and what is the rate at which business flows through this part of the criminal justice system. Growth in the base figure as the result of changes in ticket writing policies will inexorably add to demand for the more labour intensive enforcement side of the system. Steps will then be taken to improve the efficiency of the enforcement processes, but even these may be insufficient to prevent an unmanageable backlog of cases. No forward planning or cost-benefit analysis can be undertaken without measures of the scope of the enterprise.

5.1.2 In an effort to fill the gap, the empirical component of this research aimed at obtaining a count of all infringement notices issued in this state during a single twelve-month period. The financial year 1 July 1990 to 30 June 1991 was selected to allow the outcome of notices issued in this period to be later tracked for 18 months from the last infringement notice issued in the sample. An opening difficulty was that, though notices could be issued in Victoria under eighteen different local Acts at the time of the study, unpaid infringement penalties could be registered at the PERIN Court for enforcement under only nine of them. Some

enforcement agencies issue on-the-spot tickets, but do not use PERIN for follow up either because the legislation under which they are acting is not on the list of nine,¹ or because they choose, for other reasons, to deal routinely with defaulters by withdrawing notices and proceeding by way of summons and a hearing in open court. It was decided not to attempt to explore the wider range of infringement notices not capable of being brought to the PERIN Court for enforcement. Nor was an effort made to trace figures on infringement notices issued by agencies that were empowered to do so, but which choose not to use the PERIN system. For instance, there are a total of 210 local government authorities in Victoria. At the end of the 1990/91 financial year, the PERIN Court had 102 of them registered with it as users. The remainder included four regional cities² and numerous smaller country shires which, at that time, had either not made use of the infringement notice system to deal with relevant matters falling within their jurisdiction, or if they were issuing notices, had never recorded that fact with the PERIN Court nor forwarded unpaid matters to it for enforcement. It was decided that, since enforcement through PERIN Court registration arrangements has been an integral part of the infringement notice system in Victoria since 1986, the objective of this study would be amply realised if the count of infringement notices issued during the financial year 1 July 1990 to 30 June 1991 was confined to all notices issued by enforcement agencies registered with the PERIN Court at the end of that period.

5.1.3 With the approval of the Court Management Division of the Victorian Attorney-General's Department,³ a list of 123 users as at 30 June 1991 was supplied by the Registrar of the PERIN Court.⁴ It comprised three police agencies; fifty metropolitan local government councils; fifty-two country local government councils; eight tertiary institutions; two hospitals; and eight other agencies.⁵ Each of these bodies was sent a written request for statistics on infringement notices issued by them in the 12 months commencing 1 July 1990 showing the number issued, withdrawn, and sent to PERIN for registration. The letter also requested a breakdown of the information by the class or category of offence. In the case of local government authorities, the minimum categories suggested were parking infringements, litter infringements, dog infringements and 'other'. Over six months were spent extracting the information by

¹ E.g. infringement notices in relation to breach of local laws made by municipalities under the *Local Government Act 1989*, s.117.

² Ararat, Castlemaine, Maryborough and Portland.

³ Now the Department of Justice.

⁴ See full List of Agencies, *below* chapter 12.

⁵ In the 'other' category were: Alpine Resorts Commission; Corporate Affairs Office; Department of Conservation and Environment; Environment Protection Authority; Melbourne Wholesale Fruit and Vegetable Market; Ministry of Finance; Roads Corporation; and the Health and Safety Authority of the Department of Labour.

numerous follow-up letters, telephone calls, faxes, and visits. Much time was spent identifying who, within the agency, was responsible for the relevant record keeping, a task which was often fragmented between different units within the bureaucracy. Thus it was common to find within a municipality the by-laws department keeping records of parking and dog infringements, the health department of litter infringements, and the accounts department being responsible for sending unpaid matters on to the PERIN Court. If the agency was highly computerised, the best contact for data was often the computer operator, but this person might often be reluctant to release information without a direction from someone in senior management with no direct familiarity with the enforcement processes or records kept.

5.1.4 With perseverance, statistical information was ultimately obtained from every one of the issuing agencies from which it was requested. It produced a count of 2342913 cases. The information on those cases, as derived from the agencies themselves, forms the *Agencies data-base* in this study. Since three agencies had issued no notices during that year and had nothing to report, the number of issuing bodies in that data-base was reduced to 120. However, the format in which the information was supplied varied from telephoned estimates to extensive and fully detailed computer printouts. The diversity in the form of presentation of the data indicated there were not only marked differences between agencies in the sophistication of their information processing, data retrieval and accounting systems, but there was also a significant variance in underlying attitudes to the relevance of the whole question of issuance and enforcement of infringement notices. On the one hand there were agencies which clearly regarded the revenue raised from the issue of infringement notices as an appropriate and important component of their annual budget (to be included in programme budgeting) while, on the other, there were those who regarded infringement notices as simply one of the tools to be used in enforcing good order and considered the keeping of detailed statistics as irrelevant if that objective had been achieved. A considerable body of personal comment and anecdotal data on aspects of the use and enforcement of infringement notices was also generated by the requests and responses.

5.1.5 The issuing agencies were also asked how many unpaid infringement notices they sent to the PERIN Court for registration and enforcement in the period under study. This produced a figure of 387252. The PERIN Court was asked how many such notices had been lodged in the same period. Its records showed a total of 391975. The figures are within 1.2 per cent of each other and this high degree of correspondence supports the reliability of the other data supplied by the issuing agencies,

even when in the form of estimates.⁶ The agency figures on cases sent to PERIN for enforcement in the sample period did not necessarily relate to tickets written in that period. This was because of statutory and administrative delays in waiting for payment. Referrals to PERIN early in the sample period included cases from the preceding financial year, and referrals at the end of the sample period did not cover the most recently issued infringement notices. While the aim was to track the enforcement history of each infringement notice issued in the sample period, it was too difficult a task to do through the records of each of the 120 issuing agencies given the variability of their record-keeping systems.

5.1.6 Since the Information Systems Branch of the Victorian Attorney-General's Department maintained a central computerised record of the enforcement history of all infringements sent to the PERIN Court⁷ and could readily identify all those with issue dates falling within the sample period irrespective of when they were actually registered with the PERIN Court, this source rather than agency records was used to identify the subsequent history of the cases. This produced a count of 377 531 cases which forms the *PERIN data-base* in this study. This data-base contained information on the outcome of infringement notices bearing the issue date 1 July 1990 to 30 June 1991 which had been sent by agencies to PERIN for enforcement. It represents 16.11 per cent of the 2 342 913 cases reported as having been issued. The outcome was separately sorted by agency codes, offence codes, and postcodes. The information was compiled as at 14 April 1992, ten months after the last infringement notice in the sample was issued and its status was re-checked as at 13 January 1993, a little over eighteen months after the last notice. The detailed Offence Code listing covering this period was also obtained. It provided codes for 785 separate offences, but the infringement notices in the *PERIN data-base* for the sample year only related to 358 of the offences. There was a further sub-set of 107 934 cases referred to the PERIN Court between 12 March 1991 and 30 June 1991.⁸ It coincided with the introduction of a new computer system at the Information Systems Branch. It was used in this study to identify the distribution of various offence types for which agencies referred matters to the PERIN Court. Information was also available on the first million infringements which had been lodged with the PERIN court.⁹

⁶ The discrepancy between agency and court figures of numbers lodged is due to factors such as agency figures including numbers based only on estimates (12.5% of the 120 agencies supplied referral figures derived from estimates) and the agency not including withdrawn and late payment cases in the count of lodged matters even though the matters were not withdrawn until after registration was effected.

⁷ Part of the Reeves Project (Recovery, Enforcement and Execution in Victoria by Employees of the Sheriff).

⁸ This amounted to 28.78% of the 377 531 infringements referred in the 1990/91 period.

⁹ Covering the approximate period 1 January 1988 to 1 April 1991.

5.1.7 The data obtained in this study allows a count of the number of notices subject to PERIN enforcement issued during the financial year 1990/91 and a description of their main features. It also allows for a follow up of the outcome of the enforcement process. Nonetheless, there are some significant limitations in the data presented:

- *Computer changeover at the Attorney-General's Department, Information Systems Branch*—there was a change in the computer system being used to process the registration of infringement notices for enforcement in the PERIN Court and their subsequent progress through the system. Data ceased being added to the PERIN I system in January 1991. When the PERIN II system came on line, on 11 March 1991, the backlog was processed on the new computer. There was no loss of data, but the latter programme, containing information on almost half of the sample period, provides a greater wealth of detail than the former for infringement notices sent for registration in the period from early 1991.
- *New agencies added during the sample period*—the sample is based on all 123 enforcement agencies registered as users of the PERIN system at the closing date of the sample period, namely 30 June 1991. Three were not on the books at the commencement date and made no contribution to the issuing of infringement notices enforceable under the PERIN system until later in the year. Their issues still counted as part of the total for the twelve months under study.
- *Not all agencies were active*—three enforcement agencies which had registered with the PERIN Court as actual or potential users were wholly inactive in the study period. In one case a hospital, which had previously issued parking infringements, had closed down; in another a government agency was awaiting necessary regulations to be promulgated; and in the third, a small country municipality, though a user, reported that it did not issue any infringement notices in the year in question.
- *Not a profile of all law enforcement activities of agencies*—for some agencies the data presented was extremely detailed, even to the point of listing individual offences. Others were able to supply only a gross figure for the major categories of infringement notices issued, withdrawn and sent to the PERIN Court, without an offence breakdown. While some of this detailed data was captured and provided insights into the activities of agencies, for the purpose of making overall comparisons, a simpler global view of the data usually had to be taken. Because the data assembled only includes those offences in respect of which infringement notices could be

enforced through the PERIN Court, it cannot be taken as a picture of all infringement notices issued or of the agency's general crime control priorities.

- *Not an indicator of growth trends*—Because only one year was examined, there is no data from which growth trends can be detected in the use of the infringement notices system as a whole. However, there is some information on the increased frequency with which certain offences are being pursued by particular enforcement agencies.

5.1.8 Because the incoming data from issuing agencies came from such a diversity of sources, in such a variety of forms and, in some instances, was based on estimates, an effort was made to test how reliable it was. The steps taken were these. If the arriving set of data on notices issued was detailed to the point of identifying individual offences, or categories of offence, and in particular if it was in the form of computer output, it was accorded its face value as reliable data. If the set of incoming figures was declared to be based on an estimate, it was categorised as requiring further review. If it did not fall into either of these groups, it was also treated as requiring review. Included in such data were responses in which the set of numbers had obviously been rounded, or where subsidiary figures (such as the number of withdrawals) were whole number percentages of the total shown as having been issued, leading to the inference that the numbers were estimates.

Table 5.1
**Review of Issuing Agency Data for Reliability,
1990/91, Victoria, First Round**

Category	No. Agencies	% Agencies	No. Infringements	% Infringements
Total active agencies	120	100.00	2342913	100.00
Initially categorised as providing reliable data	91	75.83	1489859	63.59
Initially categorised as requiring review	29	24.17	853054	36.41

5.1.9 In the first round, the figures supplied by three-quarters of the agencies, accounting for 63 per cent of the infringement notices issued in the sample period, were accepted as providing reliable data (*see* Table 5.1). These figures were then used as a reference point to assist in assessing the reliability of the data requiring further review. This assessment involved comparing the pattern of the relationship between notices issued, notices withdrawn and those sent to the PERIN Court in

the reference group with those in the group under review. Agencies were grouped according to their type (e.g. police, country local government authorities, tertiary institutions etc.) for the purpose of this comparison. The 853 054 notices which were regarded as requiring review were distributed across the 29 agencies as shown in Table 5.2.

Table 5.2
**Distribution of Agencies Categorised as Requiring Review,
1990/91, Victoria**

Stated Number of Notices	Number of Agencies
Fewer than 10	0
100	2
1000	8
10000	11
100000	6
500000	1
Over 500000	1
Total	29

5.1.10 These 29 agencies were individually reviewed commencing with the one which had a stated number of notices issued in excess of 500 000. It was a police agency and had been included for review only because the numbers it supplied of notices withdrawn and of cases referred to the PERIN Court were offered as estimates, though the figures on the number of notices issued met the acceptance criteria. The explanation for the inability to provide more precise figures related to the distribution of internal record keeping within the department and the difficulty of running specific programs to extract the information requested within the time frame of this project. The next seven highest issuing authorities were all major local government councils. Again, each had been initially categorised as requiring review because they had stated that their figures of notices issued were estimates. These estimates were reviewed by reference to the manner in which the estimate was arrived at (e.g. 'experience' versus extrapolation of year-long figures from a sample of detailed monthly records), by comparisons with reference figures from adjoining municipalities and with municipalities of a comparable size or profile, and by comparison with court records.

5.1.11 Agency figures on referrals to the PERIN Court were always checked against information provided by the court itself on the number of cases received from the same agency. This was done on the assumption that if an individual agency's record of what it had registered with the

PERIN Court squared with the court's record, then there was increased justification for accepting the reliability of the agency's records generally, even if based wholly or partially on an estimate. In practice, even when there were significant discrepancies, data could be accepted as reliable if the source of the discrepancy could be identified. For instance, a number of agencies use the Melbourne City Council as a lodging bureau to prepare the necessary computer tapes for registering unpaid infringement penalties with the PERIN Court. They tended to treat unpaid penalties as having been referred to the court once the data had been provided to the Melbourne City Council for this purpose when in fact it had not yet been processed by the Council or received by the court. In another situation, an agency had made three attempts at referring the same set of unpaid notices on computer tape to the PERIN Court for registration. The tape was rejected by the court for technical reasons on two occasions before it was accepted on the third. However, the agency treated each referral as a separate set of unpaid infringement notices thus producing a count of referrals three times higher than the court's. Once problems such as these had been sorted out and agencies responded to requests to re-check the statistics originally supplied, the revised data was accepted as reliable for the purposes of the study.

5.1.12 The results of this second round of categorisation after individual review are set out in Table 5.3. In the end, one major local government council and twenty-one other smaller agencies (predominantly lesser country local government councils) failed to produce figures on the number of infringement notices issued by them that met the reliability checks. As shown in Table 5.3, these account for 3.69 per cent of the total number of notices issued. It must, however, be stressed that there is no suggestion that the 86 537 notices constituting this 3.69 per cent were never issued, nor that the figures provided by the agencies issuing the notices were not substantially correct. They simply remain agency estimates whose accuracy for the purposes of this study could not be independently corroborated. However, as the percentage difference between what all agencies claimed to have referred to the PERIN Court and what the court recorded as having been referred to it in the period under study was no more than 1.2 per cent on almost 400 000 cases this is a strong pointer to the overall reliability of the data supplied by the issuing agencies.

Table 5.3
**Review of Agency Data for Reliability,
 1990/91, Victoria, Second Round**

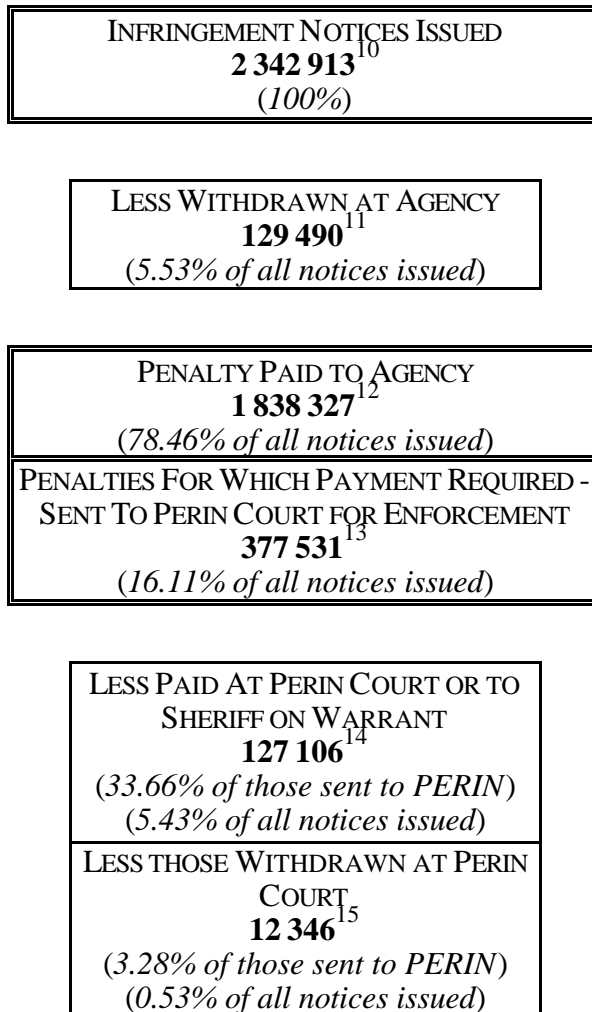
Category	No. Agencies	% Agencies	No. Infringements	% Infringements
Total active agencies	120	100.00	2342913	100.00
Re-categorised as providing reliable data	98	81.67	2256376	96.31
Not included in categorisation as reliable	22	18.33	86537	3.69

5.2 Case flow

The information garnered from each of the data bases outlined above (and subject to the qualifications which attach to those sources) gives an idea of the extent to which citizens confronted with infringement notices in 1990/91 chose to expiate the offence by payment immediately, or were subject to further persuasion. Of the 2.3 million notices issued, over 78 per cent (or over 83 per cent if one subtracts those that were withdrawn by the agency itself) were paid in the minimum time or in response to the agency's courtesy reminder. A further 5 per cent responded to reminders from the PERIN Court. Despite further attrition by way of withdrawals, discontinuances, or default periods of imprisonment served, eighteen months after the last on-the-spot ticket was written in the 1990/1991 financial year, just on 10 per cent of all the tickets issued and over 60 per cent of those sent to PERIN for enforcement remain unexpiated by payment or discharged by default imprisonment.

Figure 5.1

**Flow Chart: Infringement Notices Issued 1 July 1990 to 30 June 1991, Victoria
Results as at 13 January 1993**



¹⁰ Source: Agencies data-base, *see above* 5.1.4.

¹¹ Source: Agencies data-base. Includes withdrawal and the abandonment of the matter and withdrawal in order to prosecute in open court at the instigation of either the enforcement agency or the alleged offender.

¹² Estimate based on number of notices issued, less those withdrawn or sent on for enforcement.

¹³ Source: PERIN data-base, *see above* 5.1.6.

¹⁴ Source: PERIN data-base.

¹⁵ Source: PERIN data-base. Reasons for withdrawal at this late stage include late acceptances by issuing agency of excuses or nomination of another person as driver, or a late request by the defendant for a hearing in open court.

<p>LESS THOSE DISCONTINUED DECEASED¹⁶ DEFECTIVE¹⁷ SENT TO OPEN COURT¹⁸ 6 573 (1.74% of those sent to PERIN) (0.28% of all notices issued)</p>

<p>DEFAULT IMPRISONMENT SERVED¹⁹ 1 601 (0.42% of those sent to PERIN) (0.07% of all notices issued)</p>
<p>INFRINGEMENT NOTICES STILL UNPAID²⁰ 229 905²¹ (60.90% of those sent to PERIN) (9.81% of all notices issued)</p>

5.3 Who issued infringement notices and for what offences?

5.3.1 In the year 1 July 1990 to 30 June 1991, 2 342 913 infringement notices capable of being registered for enforcement under the PERIN system were issued by 120 Victorian enforcement agencies.²² The 120 consisted of three police services; fifty metropolitan local government authorities, fifty-one country local government authorities; eight tertiary institutions; one hospital; and seven government departments or statutory corporations. Local government authorities are the principal issuers of infringement notices, accounting for 56.42 per cent of the 2.3 million issued. The police are the next heaviest users with 41.54 per cent and all remaining agencies combined tally little more than 2 per cent (*see* Figure 5.2).

¹⁶ E.g. a motor vehicle owned by a deceased person has been detected in an offence. The executor has not yet disposed of the vehicle and is unable to identify which family member was the driver at the relevant time.

¹⁷ E.g. details incomplete; matter statute barred.

¹⁸ Source: PERIN data-base.

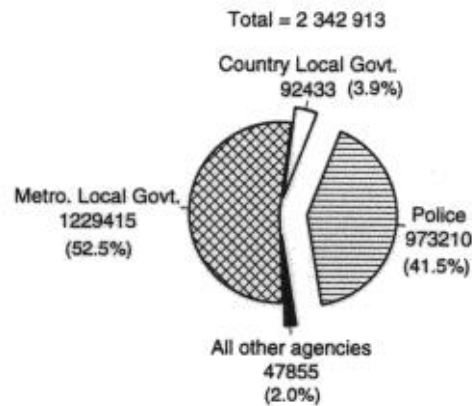
¹⁹ Source: PERIN data-base. Includes persons imprisoned in default of part payment.

²⁰ As at 13 January 1993. It is not known how many separate persons account for the 229905 unexpired penalties. Figures compiled by the Traffic Camera Office on 4 February 1992 on cases processed by that office to date showed that 415 686 drivers accounted for 513 699 offences with 81.34% having received only one infringement notice from that office, 14.87% two and only five having received ten or more. Figures on parking offenders are expected to show a much higher rate of multiple offences.

²¹ Source: PERIN data-base.

²² The validity of this figure is supported by the fact that in New South Wales in 1992/93, 1 988 746 infringement notices were issued by police alone, New South Wales Police Service, *Annual Report 1991-1992*, 79.

Figure 5.2
Infringement Notices—Who and How Many?
Notices Issued, 1990/91, Victoria



5.3.2 Of the 2.3 million infringement notices issued, the overwhelming proportion was for motoring offences. These cover both parking and moving traffic violations and accounted for 95.8 per cent. Dog and litter offences together accounted for less than 0.5 per cent of all issued, the remainder were reported simply as undifferentiated ‘other’. Only when country local government authorities were considered in isolation, did any of the non-traffic categories assume any significance—dog infringements reaching a noticeable 3 per cent. The high ratio of motoring infringements was maintained in the distribution of 377 531 unpaid infringement penalties that were referred to the PERIN Court for enforcement. An almost identical 95.6 per cent were for such offences.²³

5.3.3 The police services were all based in Melbourne and consisted of the Victoria Police Traffic Camera Office, the Victoria Police Fixed Penalties Payment Office and the Transit Police. At the time of the study the Traffic Camera Office was a public service unit of the then Ministry of Police and Emergency Services, but later became part of the Victoria Police establishment. It is primarily concerned with the police use of red light, speed and bus or transit lane cameras to detect moving traffic offences and makes use of some 54 cameras and 3000 sites throughout Victoria.²⁴ It coordinates the use of the photographic detection devices, verifies offence and alleged offender by inspection of the photographs and matching the visible vehicle registration plate with Roads Corporation ownership records, and arranges the mailing of the resultant infringement

²³ See below 5.6.3 and Figure 5.4.

²⁴ Chief Inspector Peter Keoh, Acting Head of Traffic Camera Office, ‘Cameras credited with safety boost’ *Age* 31 December 1992, 5. All bus or transit lane cameras and all but one of the red light cameras are located in the Melbourne metropolitan area. Geelong has the only country red light camera site.

notices. In the period under study 8 545 235 vehicles²⁵ were routinely screened by speed cameras. Of these, 12.66 per cent or 1 082 122 were recorded as travelling above the relevant speed limit. The Traffic Camera Office issued 416 551 infringement notices in respect of these violations after exercising its discretion not to take action unless the detected speed was 10 per cent above the legal limit plus a further 3 km/h as allowance for any imprecision in the instrument's measurement of speed. The office sent 22 604 notices to the PERIN Court because of non-payment in 1990/91 and estimates that it withdraws approximately 4 per cent of notices before it does so. It does so on compassionate grounds and also on legal ones. For instance, apart from any claim of immunity which might be made by consular or diplomatic officials, police and emergency services vehicles may breach traffic regulations if they are responding to an emergency situation.²⁶ Figures released by the Traffic Camera Office in January 1992²⁷ indicated that 1109 emergency vehicles were caught on film speeding or running red lights in 1991. The vehicles included police cars, ambulances, fire brigade vehicles and ones belonging to the Roads Corporation. If the photograph clearly indicated the vehicle was proceeding with its lights flashing and apparently responding to an emergency, the assumption of immunity was made, but drivers of emergency vehicles in other circumstances were asked to explain their excessive speed, etc. Of the 800 police drivers in this group, 10 were fined, 29 were cautioned and 72 were subject to investigation at the time of the report. Of the other emergency vehicles 100 drivers were fined, 79 cautioned and 106 were still under investigation.

5.3.4 The Fixed Penalties Payment Office is responsible for administering all infringement notices issued by Victorian police other than those handled by the Traffic Camera Office as a consequence of the use of photographic detection devices. In theory this office covers notices issued by police for any infringement under each of the nine Acts prescribed for PERIN purposes. The total supplied by the Fixed Penalties Payment Office on the number of infringement notices issued for the year ending 30 June 1991 was 507 760, but the office was not in a position to provide a breakdown by infringement type. It estimated a withdrawal rate of 3 per cent. However, the statistics on unpaid matters sent to the PERIN Court by the Fixed Penalties Payment Office for enforcement showed that infringements for general motor vehicle offences accounted for 95.43 per cent. Within this percentage, speed offences, detected by aerial surveillance, digitectors, electrotectors, hand held radar, or highway interception accounted for 35.64 per cent of the total. Other moving

²⁵ Source: Traffic Camera Office monthly figures.

²⁶ *Road Traffic Regulations* 1988, r.204(3).

²⁷ 'Cameras nab 800 police cars' *Age* 5 January 1992, p. 9.

offences contributed 31.59 per cent; licence offences 16.95 per cent; parking 3.98 per cent and drink-driving 1.43 per cent.

5.3.5 At the time of the study, the Transit Police consisted of two groups. First, the *Victorian Police Transit Police District* and secondly, the *Transit Patrol Department* of the Public Transport Corporation (formerly Railway Police).²⁸ The combined enforcement group, under the supervision of a Chief Superintendent of Police, was responsible for issuing infringement notices in relation to offences committed on any form of public transport and covered breach of ticket regulations, offensive behaviour, creation of dangerous situations and damage to property. Tickets could also be written for parking offences committed on railway or other public transport property. This agency wrote 69 762 on-the-spot tickets in 1990/91. An estimated 3 per cent were subsequently withdrawn. PERIN was sent 16 204 for enforcement. Fare related offences accounted for 70.83 per cent; conduct offences for 29.08 per cent and the balance was for parking infringements.

5.3.6 Of the 101 local government authorities in the study, half were located in the Melbourne metropolitan area. They ranged in size from the Melbourne City Council, the largest in the state, which wrote 427 252 infringement notices in the 1990/91 financial year, to the smallest Boroughs or Shires such as the Shire of Heytesbury which issued three for the year. Local government authorities are virtually confined to use of the PERIN system for parking infringements under the *Road Safety Act 1986*, litter infringement notices under the *Litter Act 1987* and dog infringement notices under the *Dog Act 1970*. Section 117 of the *Local Government Act 1989* which would have allowed municipalities access to the court to enforce infringement notices issued for breaches of their local laws (which cover such matters as use of council land; local resident parking schemes; sale of goods; keeping of animals; health matters; and the general protection of the amenity of the municipal district), has not yet been added to the list of provisions enforceable under the PERIN system. In city municipalities, parking offences predominate. While the picture is similar in the country, the more rural municipalities occasionally have dog infringement numbers which exceed all other categories (*see* Table 5.4). Withdrawal rates varied markedly amongst local government authorities. These included nine authorities with withdrawal rates of 25 per cent or higher²⁹ and a further nine with under 1 per cent. The latter were country municipalities. There was a higher average rate of withdrawal of notices in the city (7.15 per cent) than in the country (5.36 per cent). The reasons for withdrawal, other than compassionate grounds, include: error in offence details; insufficient or incorrect vehicle identification; the fact that the

²⁸ The Transit Patrol was abolished in October 1992.

²⁹ The highest was 33% in a medium sized metropolitan council.

vehicle involved was stolen; apparent immunity (council, police, other service vehicle, diplomatic); the fact that the matter was out of time; legal advice not to proceed; and the fact that local or interstate motor vehicle registration records are inadequate to locate owner of vehicle. The latter is a common complaint from municipalities relying on Roads Corporation records of owners of vehicles involved in parking infringements.

Table 5.4
**Type of Infringement Notice Issued by Local Government Authorities,
1990/91, Victoria³⁰**

Type of Local Government Agency	Infringement Type								
	Traffic		Dog		Litter		Other		Total
	No.	%	No.	%	No.	%	No.	%	No.
Metro Local Govt	1223067	99.48	5642	0.46	482	0.04	224	0.02	1229416
Country Local Govt	89241	96.55	2886	3.12	293	0.32	13	0.01	92434
TOTAL	1312309	99.28	8528	0.65	775	0.06	237	0.02	1321850

5.3.7 The eight tertiary institutions are all located in Melbourne. The only infringement notices issued by them were for parking offences (total 15 927). Some of the smaller institutions have withdrawal rates in the order of 30 per cent which is markedly higher than that of most other agencies. It indicated a willingness to extend leniency to their special clientele of students and staff. This was also true of the single major inner-city hospital which also issued parking infringement notices (total 976).

5.3.8 The remaining seven agencies were either government departments or statutory corporations which used infringement notices to regulate parking in areas falling within their domain, i.e. Alpine Resorts Commission (700 infringements), Ministry of Finance (2066) and the Melbourne Wholesale Fruit and Vegetable Market (505), or were instrumentalities answerable for the enforcement of special legislation which authorised the issue of infringement notices to protect distinctive interests, e.g. Department of Conservation and Environment (1997) and the Environment Protection Authority (1994). Interestingly, the former agency had a withdrawal rate of 8.46 per cent while the latter was 1.65 per cent. The office of Corporate Affairs Victoria issued 15 186 penalty notices in respect of breaches of the Companies Code and related legislation. However, in the year under study, that office ceased to be responsible for corporate affairs. They were taken over by the Australian Securities Commission under the new Corporations Law. While penalty notices may still be issued under this federally enforced legislation, they

³⁰ Source: Agencies data-base.

do not fall within the purview of the PERIN system.³¹ The Roads Corporation is essentially responsible for the enforcement of the *Transport Act 1983*, though its officers may also exercise some powers under the *Road Safety Act 1986* and the *Litter Act 1987*. The Road Traffic Authority (now the Roads Corporation) is more obviously involved in the regulation of commercial vehicles, particularly large vehicles, tow trucks and taxis. It issued 8504 notices in 1990/91 of which 10.23 per cent were withdrawn. The Corporation's infringement business was 58.80 per cent concerned with commercial vehicles; 40.20 per cent with general motor vehicle infringements; and 1 per cent was to do with regulation of taxis.

5.4 What was their value?

5.4.1 The returns supplied by the individual agencies of infringement notices issued by them were not consistently detailed enough to allow the face value of the 2342913 infringement penalties they had imposed to be calculated. However, the *PERIN data-base* of unpaid notices was sufficient to permit their total value to be calculated by matching them to the legislative penalty. If, as occurred in a large number of cases, the penalty for a particular offence had been changed during the sample period,³² a new penalty value was assigned to the offence to accommodate the change on a pro-rata basis. Thus, in the case of the infringement of leaving a vehicle in a no standing area (code 521), the penalty had been increased on 19 November 1990 from \$30 to \$40. For the purpose of calculating the face value of infringement notices for all such offences in 1990/91, the penalty was treated as being \$36.11 for the entire year. The average infringement penalty based on the apportioned values was \$60.83. The average penalty based on the new penalties levels in effect at the end of the 1990/91 financial year was higher at \$67.12. On the latter figure, an analysis of average penalties by type of agency gave the average face value of individual infringement notices shown in Table 5.5.

5.4.2 The face value of all 377531 of the 1990/91 unpaid infringement notices registered with the PERIN Court was \$22965210 if

³¹ See above 3.6.2.

³² There were both increases and decreases in penalty levels.

Table 5.5
Average Value of Infringement Penalties
by Type of Agency, 1990/91, Victoria³³

Type of Agency	Average Penalty
Police	\$120
Country local government	\$40
Hospitals	\$40
Tertiary institutions	\$39
Metropolitan local government	\$38
Other agencies	\$37

calculated on the basis of the apportioned average penalty value of \$60.83, or \$25 339 880 if based on the average penalty of \$67.12 as it stood at the end of the sample period. Since it was known that this group of infringement notices constituted 16.11 per cent of the total issued in that period, it was estimated that the total value of the 2.3 million notices issued in that year must have been between \$142.5 and \$157.2 million.³⁴ The risk in extrapolating a value for the total from the PERIN figures is that the research has not been able to confirm that the offence pattern of non-paying recipients of infringement notices approximates that of those who do pay on time. What is known, however, is that very few offences account for most of the parking infringements which is the primary business of the local government agencies. And while the police do refer a lower proportion of matters to the PERIN Court than others, those which they do send there carry higher penalty values. This suggests that the differences between the two sources of data are either negligible, or are cancelled out when estimating the total monetary value of the on-the-spot tickets written.

5.5 What costs accrued?

5.5.1 Costs are levied at each stage of enforcing, or attempting to enforce, unpaid infringement notices. Those costs as indicated above³⁵ accrue at various stages. If an infringement penalty has not been paid within the standard 28 days allowed, a courtesy letter follows by way of reminder. It offers a further 28 days' grace, but demands payment of the first of the statutory costs which are now added to the liability. Those

³³ As at 30 June 1991. Source: PERIN data-base.

³⁴ The validity of this figure is supported by the fact that in New South Wales in 1991/92 revenue collection from almost 2 million infringement notices issued by the police alone amounted to \$126.7m, New South Wales Police Service, *Annual Report 1991-1992*, 79.

³⁵ Above 4.9.

were \$10.60 at the time the study commenced, but increased to \$12.20 on 1 January 1992. All matters referred to the PERIN Court would have incurred them. Again, because of the change in value in the course of this study, an apportionment was made for the purpose of calculating the costs which accumulate in the course of the process of enforcement. For the courtesy letter stage this was taken to be \$11.05 during the year under study and would have produced revenue of \$4 144 810.

5.5.2 The next stage occurs when payment is not made and the issuing agency obtains registration of the infringement penalty. The fees here must be paid up-front by non-police agencies registering their infringements for enforcement. These were set at \$22.50, but increased to \$26.50 from 1 January 1992. The apportioned cost was taken to be \$23.75 for 1990/91 and this produces a total of \$8 966 361. However, as police are exempt from these filing fees and account for 35 per cent of the infringements sent to PERIN³⁶ a lower figure of \$5 828 134 is the estimate for these filing fees.³⁷ The latter is 'risk money' so far as the municipal enforcement agencies are concerned since the recouping of the fees paid by them depends on the success or otherwise of the enforcement process. Two-thirds of users are municipalities. Once registration has occurred, the next step is to have an enforcement order made. This allows the penalty to be enforced by the sheriff under the *Magistrates' Court Act* 1989 as though it were a judicially imposed fine. It orders the payment of the fine and all accrued costs, including \$12.70 (increased to \$14.30 as at 1 January 1992—average \$13.10) for the enforcement order itself. For all the cases in which a warrant of imprisonment was actually issued in the group of cases under study, the total liability for costs was \$3 604 386.

5.5.3 When the sheriff's officer comes to execute the warrant for imprisonment or seizure of goods pursuant to the enforcement order, there are supplementary costs. At the beginning of this study these were \$11.60, but were raised in stages to \$57.50 (average \$40.32). The data available does not clearly indicate whether an attempt had been made to execute a warrant in all cases of outstanding sums due since 1990/91, but on the assumption that it was attempted in all cases in which an enforcement warrant was issued, the costs entitled to be recovered at that stage would have been in the order of \$11 million. This means that the accrued costs in relation to the enforcement of the 1990/91 cases which were still incomplete in the PERIN system in April 1992 were already in excess of \$27 million. This exceeds the total face value of infringement

³⁶ See below 5.6.1.

³⁷ Cf. Attorney-General's Department of Victoria, *Annual Report 1991*, Appendix 1, Part B, *Attorney-General's Department Public Account Program Receipts for the Year Ended 30 June 1991*, Item 16, Note (M) Fees and Charges, PERIN, Filing Fees collected, \$5971 848.

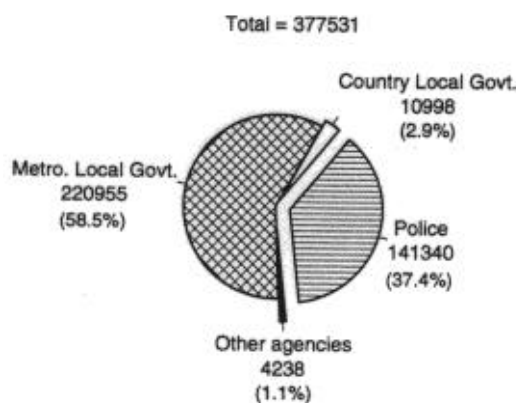
penalties involved (\$22 million) by over \$5 million³⁸ and illustrates the rapidity with which the accrued costs soon overtake the primary monetary sanction. Ten months after the last infringement notice in the 1990/91 financial year had been issued, the infringement penalties still unpaid were worth \$15.8 million, but the costs which had been added to them had reached \$22.7 million.³⁹

5.6 Who registered unpaid infringement penalties with PERIN and for what offences?

5.6.1 Although metropolitan local government agencies issued 52.5 per cent of notices, they were responsible for 58.5 per cent of the 377 531 of unpaid matters lodged with the PERIN Court. On the other hand, police who contributed 41.5 per cent of the original issues, only sent 37.4 per cent of the referrals (see Figure 5.3).

Figure 5.3

Who Uses Perin? Use of PERIN by Agency Type, 1990/91, Victoria



5.6.2 The percentage of offenders who, overall, did not pay within the time allowed by the original infringement notice and the courtesy letter was 16.11 per cent. But there was marked variation from agency to agency. For 17 agencies (14.17 per cent) there were no referrals to PERIN in the period under study. This meant that either all notices issued were disposed of by payment or withdrawal, or if still unpaid, were not lodged for enforcement until after 30 June 1991. All but two of the 17 agencies had issued fewer than 1000 tickets.⁴⁰ The highest referral rates of 58.33

³⁸ Theoretically each infringement notice can attract enforcement costs of \$109.30 which means that the \$22 million of penalties could attract costs of \$41 million.

³⁹ These costs exclude obligations to pay costs avoided by defendants who expiated their fines and discharged their costs by serving a default period of imprisonment.

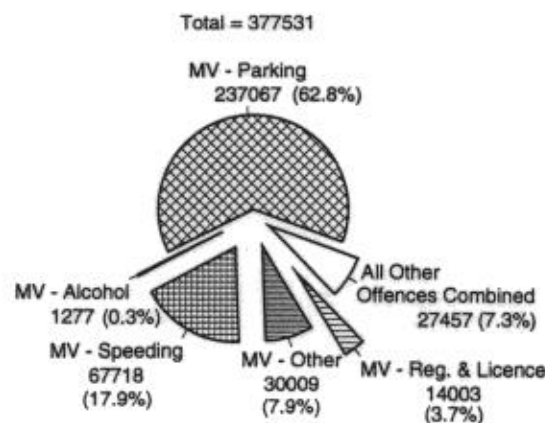
⁴⁰ In the remaining two, the agency had issued fewer than 2000 infringement notices.

per cent and 47.89 per cent were reported from country municipalities with ticket numbers under 100.⁴¹ Within the police agencies, the Transit Police referred 23.23 per cent, the Fixed Penalties Office 21.63 per cent, but the Traffic Camera Office only sent 5.71 per cent. However, this lower figure is probably an artefact of the batch processing of unpaid infringements by that office. The City of Melbourne as the largest single municipal agency had a referral rate of 20.06 per cent and this was similar for most inner city councils.

5.6.3 The preponderance of motor vehicle infringements was maintained in the unpaid group with over 93 per cent for such offences. Parking offences contributed 63 per cent and speeding 18 per cent. Alcohol-related ones only amounted to 0.3 per cent of the total referred (see Figure 5.4).

Figure 5.4

What is PERIN Used For? Use of PERIN by Offence Type, 1990/91, Victoria



The 'other' category in the figure includes infringements relating to animals (0.95 per cent), environment protection (0.03 per cent), fishing/wildlife/parks (0.15 per cent), litter (0.14 per cent), marine (0.10 per cent), taxis (0.02 per cent), and tobacco and towing (<0.01 per cent).

5.6.4 An examination of the most common offences referred to the court for enforcement reveals that three alone covered over 45 per cent of all referrals. Each of these was a parking offence; namely, *leaving a vehicle in a no standing area* (code 521) carrying a \$40 infringement penalty⁴²—92 287 cases (24.44 per cent); *leaving a vehicle standing in a*

⁴¹ The Office of Corporate Affairs reported sending 66.11% of its 1990/91 cases to PERIN, but this was primarily due to it clearing its books prior to the office transferring its functions to the Australian Securities Commission.

⁴² *Road Safety (Traffic) Regulations* 1988, r.1101(1)(b), maximum penalty if tried in open court, 2 penalty units (\$200).

parking area for a period longer than fixed (code 503) penalty \$25⁴³—41 026 (10.86 per cent); and *leaving a vehicle at an expired parking meter* (code 501) penalty \$25⁴⁴—38 384 (10.16 per cent) (see Figure 5.5). This pattern is consistent with that found in the first million cases referred to PERIN where these were also the top three offences accounting for 50.63 per cent of all cases with individual referral rates of 26.81 per cent, 12.47 per cent and 11.34 per cent respectively. A third of the total of these three offences occurs in the jurisdiction of the Melbourne City Council. It and four other inner city municipalities (Fitzroy, Prahran, South Melbourne and St Kilda) between them account for almost two-thirds of that total.

5.6.5 So far as the monetary value of the unpaid notices was concerned, the offences which had the largest outstanding amount owing in the group sent to the PERIN Court were those shown in Table 5.6. The lower level speeding infringements and the parking offence of leaving a vehicle in a no standing area head the list. The ten offences shown in the table account for almost 70 per cent of the total value of unpaid infringement penalties and almost 76 per cent of the total number of infringements sent to the court for enforcement.

5.7 What happened to the unpaid infringement penalties sent for enforcement?

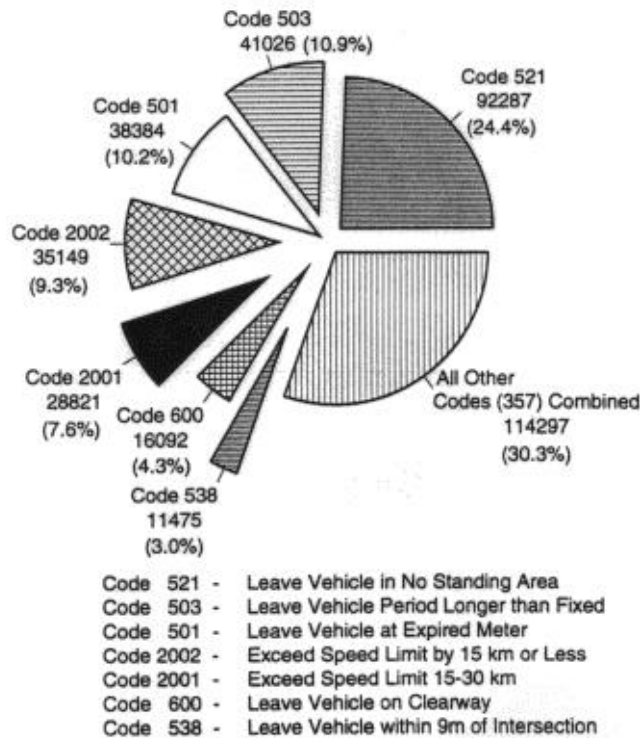
5.7.1 In the past, the Sheriff's Office was responsible primarily for the execution of civil process (i.e. orders for the enforcement of civil judgments—usually for debt) issued out of the Supreme, County and Magistrates' Courts. The police enforced fines. The sheriff was given the task of executing warrants pursuant to enforcement orders made by the PERIN Court since its inception and, from 1 July 1991, took over complete responsibility from the Victorian Police for the execution of warrants for the enforcement of unpaid fines whether imposed in open court or registered under the PERIN system. The Sheriff's Office has an

⁴³ *Local Government Act* 1958, s.555A(5F)(a), maximum penalty if tried in open court, 1 penalty unit (\$100).

⁴⁴ *Local Government Act* 1958, s.555A(6)(a)(iv), maximum penalty if tried in open court, 1 penalty unit (\$100).

Figure 5.5

PERIN's Top Seven: Seven Offence Codes represented 70 per cent of all Referrals to PERIN, 1990/91, Victoria



establishment of approximately 320 persons, of which 250 are uniformed officers engaged in enforcement and 70 are support staff. It inherited a large backlog of unexecuted warrants worth \$15.6 million from the police,⁴⁵ but for the PERIN system alone, almost \$30.5 million was outstanding and \$5.6 million was regarded as unenforceable as at 30 June 1991.⁴⁶ The difficulties of handling the large volume of work coming through the PERIN system is indicated by the fact that 12 months later the figures on outstanding fines had risen by a third to \$40.9 million and the value of the unenforceable ones had more than doubled to \$11.37.⁴⁷

⁴⁵ See below 6.9.9 - Auditor-General's reports.

⁴⁶ Attorney-General's Department of Victoria, *Annual Report 1991*, Appendix 1, Part D, Appendix B, *Supplementary Information and Statement of Balances as at 30 June 1991*, Item 16, Note (BM) Debtors of the Administrative Unit—Court Fines.

⁴⁷ Attorney-General's Department of Victoria, *Annual Report 1992*, Appendix 1, Part E, *Notes to Administrative Unit Financial Statements*, Note (BL) Debtors of the Administrative Unit—Court Fines.

Table 5.6
**Top Ten Infringements by Value Sent to PERIN Court for Enforcement,
 1990/91, Victoria**⁴⁸

Code	Description of Offence	\$ Value	% of Value	Cum %
2001	Exceeding speed limit >15km/h <30km/h	3870990	17.06	17.06
521	Leave vehicle in no standing area	3189430	14.06	31.12
2002	Exceeding speed limit <15km/h	2950520	13.00	44.12
503	Leave vehicle longer than period fixed	1416776	6.24	50.36
501	Leave vehicle at expired meter	1326929	6.24	56.60
2091	Failure to wear a seatbelt	964920	4.25	60.85
600	Leave vehicle in a clearway	775117	3.42	64.27
538	Parking within 9m intersection	552170	2.43	66.70
3106	Journey without a ticket	310750	1.37	68.07
522	Vehicle in no parking area	297619	1.31	69.38
TOTAL		15655221	69.38	–

5.7.2 Except where the defendant is dead, or the liability is discharged by payment or imprisonment, the sheriff does not write off infringement penalties. If infringement notices are not withdrawn by the issuing agency and enforcement orders not revoked in order to bring the matter to open court, warrants to imprison the offender or to seize property will be left current in the hope that the person liable to the fine and accrued costs will be located at some stage. However, the *Magistrates' Court Act 1989*, s.58(2) provides that warrants cease to be valid five years after the date of issue. In theory, agencies must be prepared to wait until that date before the quest for their unpaid infringement penalties is legally abandoned. It is always open to the sheriff to apply to the Magistrates' Court for the issue of a fresh warrant after five years.⁴⁹ The 1992 annual report of the Attorney-General's Department⁵⁰ shows the following age analysis of unpaid PERIN penalties for the most recent five years, *see* Table 5.7.

5.7.3 The outcome of all 377 531 unpaid infringements referred to PERIN was examined on two occasions. The first was ten months and the second eighteen months after the last infringement notice in the 1990/1991

⁴⁸ Source: PERIN data-base.

⁴⁹ *Magistrates' Court Act 1989*, s.58(3).

⁵⁰ Now the Department of Justice.

Table 5.7
Warrants Issued by PERIN Court
Year of Warrant and Value of Unpaid Fines, 1988-1992, Victoria⁵¹

1988	1989	1990	1991	1992	Total
\$3.8m	\$7.2m	\$5.1m	\$23.1m	\$13.1m	\$52.3m

sample period had been issued. At the ten-month point, 26.0 per cent of the referrals had been expiated by payment either before a warrant for the imprisonment of the defaulter or the seizure of corporate property had been issued, or in response to the threat of imminent execution of such a warrant. Only 0.1 per cent of the unpaid infringements had been expiated by either imprisonment, or imprisonment and part payment; 73.9 per cent remained unexpiated. This amounted to 11.84 per cent of all 2.3 million notices issued in the year under study. As was to be expected, the recovery of penalties had improved at 18 months. It had reached 33.67 per cent of total referrals with expiations by full or part imprisonment rising to 0.42 per cent⁵² (*see* Figures 5.6 and 5.7). The unpaid infringement notices at this later stage still represented a high proportion of referrals, 65.91 per cent (248 824 of 377 531) and constituted 10.62 per cent of original issues. Their face value was between \$15.1 million and \$16.7 million.⁵³

5.7.4 There were marked differences in the rate of referrals to the PERIN Court by the type of agency. Hospitals and tertiary institutions, for example, referred only slightly more than 7 per cent of all notices issued by them to the court for enforcement compared to 17.81 per cent for metropolitan municipal councils, 15.27 per cent for the police agencies, and 11.27 per cent for country municipal agencies.

5.7.5 Once matters had been referred to PERIN, there was less divergence in the outcome. Warrants were issued but remained unenforced in 60.49 per cent of cases. Metropolitan municipalities fared slightly better than the average, with only 57.96 per cent of their referred matters reaching this stage. The excess was borne by the police who had 65.63 per cent of matters fall into this category. Country municipal agencies had a better success rate with payment being made either prior to a warrant

⁵¹ Attorney-General's Department of Victoria, *Annual Report 1992*, Appendix 1, Part E, *Notes to Administrative Unit Financial Statements*, Note (BL) Debtors of the Administrative Unit—Court Fines.

⁵² This was in relation to 1601 infringement notices. The actual number of individual defaulters imprisoned in relation to these notices is estimated to be 400.

⁵³ For method of calculation, *see above* 5.4.2.

Figure 5.6
Expiation of Referrals to PERIN^{3/4} Summary as at 31 December 1992, Victoria

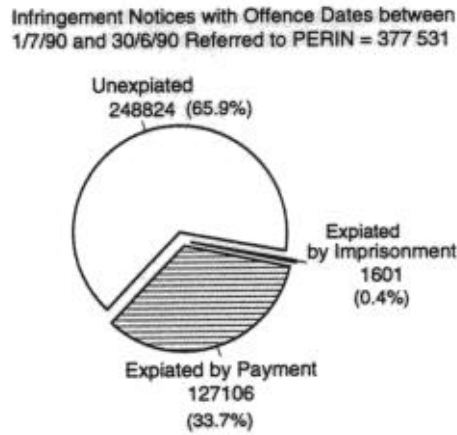
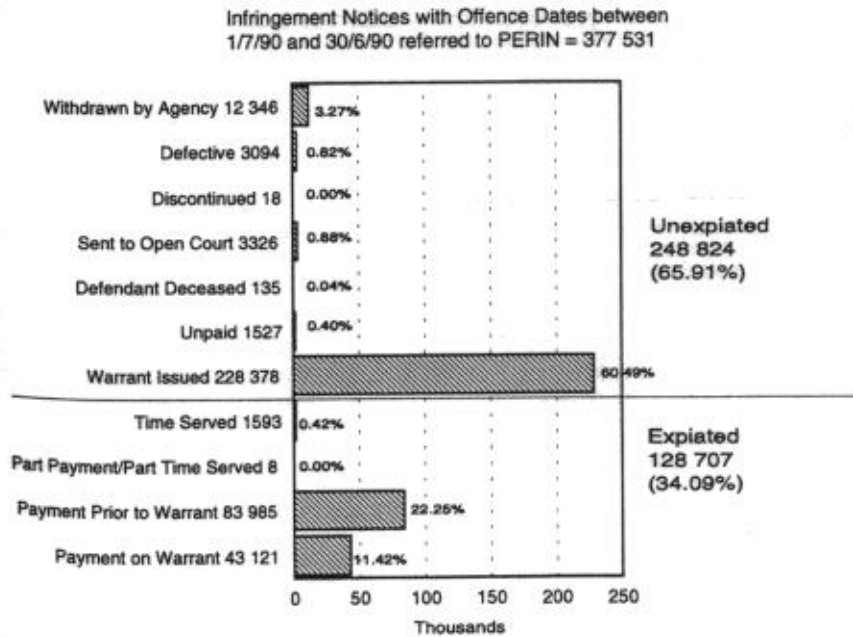


Figure 5.7
What happened to Referrals to PERIN^{3/4} Status as at December 1992, Victoria



being issued or upon a warrant being issued with the result that only 48.67 per cent of their referrals remained unsatisfied even after a warrant had been issued. Only 0.07 per cent of all infringement notices issued (amounting to 0.42 per cent of all matters referred to the PERIN Court) resulted in the person defaulting in payment of an infringement penalty being imprisoned. By agency group, the police accounted for the highest percentage, with 0.11 per cent of their matters resulting in imprisonment compared to 0.04 per cent for metropolitan municipal councils, 0.02 per

cent for country municipal bodies and none for tertiary institutions or hospitals.

5.7.6 As has been mentioned, at the 18-month follow up 33.67 per cent of all the cases referred to PERIN had resulted in payment—22.25 per cent of referrals were paid prior to a warrant being issued and 11.42 per cent afterwards. Overall 60.49 per cent of all referrals had at least reached the stage of a warrant being issued. Within these categories, however, there were variances depending on the type of offence. Persons who received infringement notices in respect of motor registration offences appeared to have been the most intractable since 100 per cent of the penalties imposed remained unpaid at the time of the follow up. However, as these only represented four offences out of the 377 531 referred, their statistical significance is negligible. The next least compliant group with 73.42 per cent of referred penalties still unpaid at 18 months were those whose offences did not involve motor vehicles at all.

5.7.7 The single biggest offence category, motor vehicle parking offences, showed 24.23 per cent of offenders paying prior to warrant and 12.31 per cent paying after one was issued. This rate of payment ran slightly ahead of the overall average. Offences related to speeding fell slightly below the average with 20.28 per cent being paid prior to a warrant and 10.94 per cent afterwards. Similarly, other offences involving moving motor vehicles resulted in 21.81 per cent paying prior to warrant and 10.10 per cent paying after a warrant was issued. Offences pertaining to commercial vehicles went against this trend. Payment in respect of speeding by commercially registered motor vehicles was generally resisted, with only 13.27 per cent being paid prior to warrant, but 20.40 per cent deciding to pay after a warrant was issued. This might reflect the commercial drivers' better understanding of how long they can hold off payment without risk of affecting their livelihood, or the higher visibility to the sheriff of commercial registered vehicles. This same type of recalcitrance was evident with other moving offences involving commercial vehicles. With this group of offences only 18.18 per cent of referrals produced payment before a warrant was issued, but a higher recovery rate of 24.30 per cent was achieved once this had occurred. The difference between commercial and non-commercial vehicle infringements at the PERIN stage is quite marked. While general moving offences had a combined recovery rate of 31.91 per cent, moving offences in respect of commercial vehicles had a combined rate of 42.48 per cent. While commercial drivers (or owners) take their time paying, more of them do meet their obligation than ordinary drivers.

5.8 Where do the defaulters live?

5.8.1 Based on the information extracted from the notices which were subsequently referred to PERIN, infringement notices were issued to defendants whose registered addresses encompassed at least 2046 postcode locations throughout Australia. Of these 96.03 per cent were issued to persons with addresses in one of 885 Victorian postcode locations. The remaining 3.97 per cent were issued to those with interstate addresses in any of 1161 postcode localities. There are no figures available to indicate whether interstate visitors have a greater or lesser rate of default which results in the notices issued against them being referred to PERIN. Once they do default on payment to the issuing authority, their reaction to PERIN proceedings is not markedly different to their counterparts showing Victorian addresses. A fractionally smaller proportion pay prior to a warrant being issued: 18.29 per cent compared to the 22.43 per cent of Victorians who do so. On the other hand, 14.95 per cent of notices issued in respect of interstate addresses are paid on warrant compared to 11.25 per cent from Victorian addresses. When it comes to the non-payment category, there is virtually no difference. Of notices issued in respect of Victorian addresses, 60.48 per cent have a warrant issued because they remain unpaid compared to 60.67 per cent for interstate. Somewhat surprisingly, 0.33 per cent of notices referred to PERIN for persons with interstate addresses result in imprisonment compared to 0.43 per cent in respect of Victorian addresses. However, as this 0.33 per cent represents only 50 infringements, the figures cannot be accurately interpreted. It is probable that this figure on imprisonment represents a single individual, or only a few persons with multiple outstanding infringement penalties.

5.8.2 Of all the notices referred to PERIN, 22.87 per cent related to defendants with addresses in just 20 Victorian postcode areas. That is, 22.87 per cent of defaults were limited to less than 2.25 per cent⁵⁴ of the geographical areas represented by the addresses of the persons upon whom an infringement notice had been issued. Predictably, of the 20 most defaulting postcode locales, all were in the Melbourne metropolitan region where the largest population lives and the most active enforcement of infringement offences takes place. St Kilda, Richmond/Burnley and South Yarra areas head the list because of the density and transient nature of their local populations as well as the vigorous parking enforcement policies applied in those inner city areas. However, it is not possible from the data available in this study to give a fuller account for the particular geographic distribution of defaulters. However, once at PERIN, those who came from these 'top 20' areas showed a slightly higher degree of

⁵⁴ I.e. 20 of 885 Victorian postcode areas.

intransigence with 64.32 per cent failing to pay even after a warrant had been issued compared with the overall percentage of 60.48 per cent.

Table 5.8
Referral to PERIN Court by Postcode Area, Victoria
Top Twenty Areas

POSTCODE	SUBURBS	NUMBER	%	CUM %
3182	St Kilda	6860	1.82	1.82
3121	Burnley, Richmond	5966	1.58	3.41
3141	South Yarra	5659	1.50	4.91
3175	Dunearn, Dandenong	5029	1.34	6.25
3073	Keon Park, Regent, Reservoir	4633	1.23	7.48
3056	Brunswick	4623	1.23	8.70
3181	Prahran, Windsor	4517	1.20	9.90
3021	Albanvale, Kealba, St Albans	4497	1.19	11.10
3199	Baden Powell, Frankston, Karingal	4493	1.19	12.29
3058	Batman, Coburg	4381	1.16	13.46
3000	Melbourne City	4153	1.10	14.56
3065	Fitzroy, St Vincents Hosp	3819	1.01	15.57
3072	Northland Centre, Preston	3723	0.99	16.56
3205	City Road PO, Montague, South Melbourne	3544	0.94	17.50
3174	Noble Park	3445	0.92	18.42
3070	Dennis, Croxton, Northcote, Westgarth	3419	0.91	19.33
3020	Albion, Sunshine	3392	0.90	20.23
3030	Chartwell, Derrimut via Werribee	3391	0.90	21.13
3150	Glen Waverley, Syndal via Glen Waverley	3292	0.87	22.00
3184	Elwood	3255	0.86	22.87

Costs and Benefits

6.1 An economic approach

6.1.1 It was not within the capacity of this project to attempt a cost-benefit analysis of the extent to which the use of infringement notices can be justified in terms of producing a net community benefit, yet it would be wrong to ignore the emerging literature which encourages economic analyses of crime and crime control.¹ Since economics is about how limited resources may be distributed in the interest of achieving alternative ends, it is a discipline which may be useful in providing concepts and data needed in balancing aims and means in the criminal justice system. Its power is to illuminate the choices that have already been made, or that will have to be resolved if change is being contemplated. Economic analyses of the criminal justice system have examined such matters as the economics of law enforcement and criminal procedure; the relative merits of custodial and non-custodial sanctions; deterrence as a function of the risk of apprehension and the severity of punishment; and risk allocation in the criminal justice system. They tend to focus on group behaviour, rather than individual criminal motivation. Economic models treat all offenders, or potential offenders, as acting as though actuated by rational self-interest. They assume that people modify their behaviour in response to changes in the expected costs and benefits of their action.² Since policies

¹ See Hann R.G., 'Crime and the Cost of Crime: An Economic Approach', (1972) 9 *Journal of Research in Crime and Delinquency* 12; Sullivan R.F., 'The Economics of Crime: An Introduction to the Literature', (1973) 19 *Crime and Delinquency* 138; Rogers A.J., *The Economics of Crime*, Hinsdale, Illinois, Dryden Press, 1973; Andreano R. and Siegfried J.J., *The Economics of Crime*, New York, John Wiley, 1980; Ehrlich I., 'On the Usefulness of Controlling Individuals: An Economic Analysis of Rehabilitation, Incapacitation and Deterrence', (1981) 71 *American Economic Review* 307; Buchanan C. and Hartley P.R., *Criminal Choice: The Economic Theory of Crime*, St Leonards, NSW, Centre for Independent Studies, 1992.

² See Becker G.S., 'Crime and Punishment: An Economic Approach', (1968) 76 *Journal of Political Economy* 169; Tullock G., 'An Economic Approach to Crime', (1969) 50 *Social Science Quarterly* 59 (dealing with the economics of illegal parking and other motor vehicle

towards crime must be set by legislators and correctional officials by reference to the expected aggregate effects, economic approaches drawing on the patterns of group behaviour can be useful in helping to understand how changes in one part of the system may produce effects elsewhere.

6.1.2 Evaluations of the overall utility of local alterations to road safety and traffic policies have recently been undertaken by the Victorian Road Traffic Authority³ and the Monash University Accident Research Centre.⁴ For instance, the Accident Research Centre was particularly interested in the various initiatives which appeared to have contributed to significant reductions in deaths and injuries on Victoria's roads between 1989 and 1992. These included improvements in the detection of offending through the use of speed cameras and increased random breath testing; better safety measures, such as compulsory wearing of safety helmets by cyclists, lowering of the 110 km/h freeway speed limit and improvements in the road system; and special publicity and enforcement campaigns. While some of these changes involved greater reliance on infringement notices as the principal means of enforcement, the impact of on-the-spot tickets was not a main feature of the research. No study sought to evaluate their role in the punishment of traffic offenders in particular, or summary offenders in general.

6.1.3 In part, the absence of a comprehensive evaluation is due to the fact that responsibility for the detection of infringement offences, the issuing of notices, and follow-up enforcement is spread between so many agencies of government. This fragmentation of responsibility makes it difficult to mount the type of coordinated study needed to produce a global assessment of the efficacy of the infringement notice system in fiscal, crime reduction, and equity terms. Already there are indications of

laws); Polinsky A.M., 'Private Versus Public Enforcement of Fines', (1980) 9 *Journal of Legal Studies* 105; Wilson J.Q., *Thinking About Crime*, (2nd edn), New York, Basic Books, 1983, Ch. 7: 'Penalties and Opportunities'; Fletcher G.P., 'A Transaction Cost Theory of Crime?', (1985) 85 *Columbia Law Review* 921; Posner R.A., 'An Economic Theory of the Criminal Law', (1985) 85 *Columbia Law Review* 1193; Shavell S., 'Criminal Law and the Optimal Use of Nonmonetary Sanctions as a Deterrent', (1985) 85 *Columbia Law Review* 1232; Posner R.A., *Economic Analysis of Law*, Boston, Little, Brown and Company, 1988.

³ Road Traffic Authority, *Cost-benefit Analysis of Programs Which Contribute to Road Safety and Traffic Management*, Melbourne, Road Traffic Authority, 1986; Harrison W., South D., Portans I., Armour M., Lau H. and Haque O., *An Evaluation of the Effects of the Motor Car (Photographic Detection Devices) Act 1986 on Police Costs and Efficiency and Road Safety*, Melbourne, Road Traffic Authority, 1987.

⁴ Cavallo A. and Cameron M., *Evaluation of a Random Breath Testing Initiative in Victoria, 1990 & 1991*, Monash University Accident Research Centre, Report No.39, December 1992; Cameron M.H., Cavallo A. and Gilbert A., *Crash-based Evaluation of the Speed Camera Program in Victoria 1990-1991, Phase 1: General Effects; Phase 2: Effects of Program Mechanisms*, Monash University Accident Research Centre, Report No. 42, December 1992; Vulcan P., *The Road Toll in Victoria—An Objective Analysis*, Paper Presented to Road Safety Forum 25/26 August 1993, Melbourne.

significant problems at the enforcement end of the infringement notice system, even though, overall, significant benefits appear to have been gained through savings in prosecutorial and court time and apparent reductions in offending in certain areas. The latter seem to have been offset by a public perception of unfairness regarding the means used to detect some of the infringement offences and cynicism about the true objectives of the exercise. The usefulness of an economic analysis is that it serves to check whether policy makers are ignoring the high costs and low benefits of some aspects of a program and the lower costs and higher benefits of possible alternatives. The infringement notice system is clearly designed to generate lower costs. Yet, so far, there have been no rigorous cost-benefit studies, nor fully quantified systems analyses. The purpose of this chapter is to advocate that such studies be undertaken and to indicate the major factors which must be taken into account in doing so. The difficulties are considerable, but any such endeavour would help explicate relationships between the system's components and provide better insight into the implications of shifting even more offences into the infringement notice scheme.

6.2 Cost-benefit analysis

6.2.1 Economists do not propose that crime can be eradicated altogether. From their point of view, one of the reasons for regarding this as an unrealistic goal is that the cost of doing so would be too high. The hoped for social benefit is regarded as not worth the price either in actual monetary terms, or in the loss of civil liberties that would be incurred in achieving it. That is not to say that offences cannot be targeted selectively to the point of elimination, but this involves maximising the benefits of applying limited enforcement and prosecutorial resources. Economists would say that there is some 'optimal amount of crime'⁵ acceptable to the community at any particular time. They point to the fact that policy makers are always implicitly engaged in trading-off the 'costs' of crime against the 'costs' of preventing it. The 'benefits' of crime reduction always come at a price. In the case of the infringement notice system, even though modern technological efficiencies have brought the costs of detecting offences down, and the streamlining of procedure produces a majority of offenders who respond to the invitation to expiate their offence without demanding a court hearing, for the 20 per cent or so recalcitrants, penalty recovery is labour intensive, costly and inefficient.

⁵ Or, conversely, an optimal level of deterrent threat.

6.2.2 Hellman states that:⁶

Basically, cost-benefit analysis involves adding up all the benefits, or potential benefits, generated by a program; adding up all the costs; and then constructing a ratio of benefit to costs. Since in grouping and comparing benefits and costs a common denominator is required, benefits and costs are measured in dollars. This, as we will see, leads to some difficulties.

This warning of difficulties refers to the problem of finding somewhere, within a method of analysis which essentially emphasises dollar values, for the unquantifiable and intangible factors which represent the value which society attributes to the preservation or enhancement of the ethical, moral, or political values which provide the framework within which the system under analysis operates. Causation issues also pose problems since it is necessary to try to separate outcomes which can be attributed to the change in criminal justice policy from those which would have occurred in any event. Furthermore, gains have to be distinguished from transfers. Gains mean that, overall, society is better off. Transfers refer to the fact that a benefit in one area may be offset by a loss elsewhere. Then again, some benefits may not appear in the short-term. How are these long-range gains to be predicted and calculated?⁷ Cost-benefit analysis also aims to ensure that all relevant costs and benefits are properly entered. Yet there is a whole world of hidden costs. The diverse agencies which form the criminal justice system understandably tend to be unaware of or ignore costs which fall outside their immediate domain or area of responsibility. Thus the 'costs' of a police 'blitz' on a particular type of crime have flow-on effects throughout the entire criminal justice system and beyond. Then there are problems with the quality of the data. Uncertainty about the number of crimes actually committed; ignorance of the degree to which the incidence of offending detected varies according to type of crime or geographical area; and lack of consensus in public attitudes and values means that the information upon which any analysis will be based must inevitably be incomplete. Even the financial and social accounting data assembled by government agencies or policing authorities crumbles around the edges under close examination because of the lack of common accounting or financial procedures, or does not square with information available elsewhere on the same or similar matters. Good cost-benefit analysis also needs data collected over a sufficient time span to

⁶ Hellman D.A., *The Economics of Crime*, St Martin's Press, New York, 1980, 79. See also Sugden R. and Williams A., *The Principles of Practical Cost-benefit Analysis*, Oxford, Oxford University Press, 1978; Chapman J.I. and Nelson C.W., *A Handbook of Cost-Benefit Techniques and Applications*, Washington, American Bar Association, Correctional Economics Centre, 1975.

⁷ If future benefits are measurable, they have to be discounted to their present value when added into the calculations in order for their present worth to be evaluated.

determine whether alterations to the system retain their impact despite public familiarity with the measures, shifts in communal attitudes, and/or changes in the probabilities of apprehension, prosecution and punishment.

6.2.3 One of the insights offered by economic theories of crime is that the deterrent effect may remain the same despite different configurations in the certainty of apprehension and the severity of punishment. A high chance of detection may require a less severe penalty to achieve the same crime prevention effect as a low level of detection accompanied by severe punishment of the few apprehended. But though the latter combination may be cheaper to implement in monetary terms, it is likely to work more injustice than the former. If technological advances are able to produce very high levels of detection of offending, economists would argue that it is no longer necessary to insist on high levels of punishment.⁸ But if high levels of punishment produce high revenue from fines, there will be a tendency to maintain that form of punishment and, indeed, the practice of regular increments in penalty levels. This is a problem of conflicting goals.

6.2.4 Cost-benefit analyses similar to the one being suggested have been undertaken in the United States by planners and analysts working in the Department of Justice. One specific aim was to estimate the cost of implementing recommendations of the 1973 National Advisory Commission on Criminal Justice Standards and Goals which recommended the use of citations (i.e. on-the-spot tickets) and summonses instead of traditional forms of arrest.⁹ Standard 4.3 of the Commission's *Corrections* report¹⁰ called for each criminal justice jurisdiction in the United States to prepare a list of minor offences for which a police officer should be required to issue a citation rather than making an arrest or detaining the accused. Underlying the *Corrections* report was the desire to use the least drastic measure of intervention so as to produce the 'minimum penetration' of an accused into the criminal justice system. The cost-benefit analysis of alternatives to arrest looked at the difference in cost likely to result from undertaking the new

⁸ See generally Cooter R. and Ulen T., *Law and Economics*, Illinois, Harper Collins, 1988, 539-45.

⁹ Weisberg S., *Cost Analysis of Correctional Standards: Alternatives to Arrest* (Vols. I & II), National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, US Department of Justice, Washington DC, 1975. The project aimed to identify the cost and revenue implications of certain recommendations that included a recommendation favouring citation over summons or arrest. The document provides a typology of costs and eventually concludes that field citation was 70% cheaper than arrest. The cost of giving a citation at a station house was found to approach the cost of the arrest procedure. See also Watkins A. M., *Cost Analysis of Correctional Standards: Pretrial Diversion*, (Vols. I & II), National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, US Department of Justice, Washington DC, 1975.

¹⁰ National Advisory Commission on Criminal Justice Standards and Goals, *Corrections*, Washington DC, GPO, 1973, 116-17.

recommended action of citation and/or summons rather than the traditional response of arrest and court hearing.¹¹ The work provided a conceptual approach to the costing which must be made.¹² The report found that, in estimating costs involved in a program, administrators too readily limited themselves to figures of income and expenditure based on their own budgetary allocations. This neglected other significant costs:¹³

- These must cover the services of private, as well as government agencies and volunteered, as well as paid services.
- the costs of legal aid which might have to be provided if court time is utilised, and the cost of those court services.
- the costs of supporting administrative services, including ones which are necessary, even though they do not benefit the offender clientele directly, e.g. accounting and auditing services.
- the 'cost' incurred by society. For instance, the 'cost' in terms of loss of personal freedom for some individuals if a greater proportion of offenders are incarcerated, versus the social cost in terms of added risk of danger to citizens or their property if offenders are allowed to remain at large in the community. This is relevant to questions of the optimal distribution of costs between offender and the community.
- Opportunity costs, i.e. the cost that results from the fact that when one activity is undertaken, another one must be foregone.

6.2.5 Though Hellman, in his definition of cost-benefit analysis, emphasised the importance of calculating the direct dollar costs of operating the particular area of the criminal justice system under study and its infrastructure support, other, more indirect, numerical indicators can be used. For instance, measures of effectiveness (i.e. benefit) can be based on the rates of offending; frequency and duration of court appearances; use of dispositions of different degrees of severity; the levels of fine recovery and the extent to which imprisonment in default is used. Each of

¹¹ Weisberg S., *Cost Analysis of Correctional Standards: Alternatives to Arrest*, (Vols. I & II), Washington DC, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, US Department of Justice, 1975.

¹² The detailed cost estimates of issuing citations are peculiar to the American scene and are, in any event, out of date.

¹³ Weisberg S., *Cost Analysis of Correctional Standards: Alternatives to Arrest*, (Volume II), Washington DC, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, US Department of Justice, 1975, 4 & 9. *See also* Weisberg S. and Watkins A.M., *Cost Analysis of Correctional Standards: Comprehensive Pretrial Programs*, Washington DC, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, US Department of Justice, 1975.

these can, ultimately, be translated into dollar terms. However, it would be wrong to rely on an assessment that user's techniques capable of only being brought to bear on those features of the system amenable to quantification. As the Department of Justice studies emphasise, non-quantitative considerations, such as the values attributed to justice, individual liberty, rights of privacy and freedom from fear of victimisation must also be looked at. The cost-benefit approach does not mean that there has to be an artificial quantification of the unmeasurable interests and values traditionally protected by the legal system. Rather, by setting out the factors that are quantifiable, and drawing attention to those that are not, it permits a sharper focus on the competing social interests at stake.

6.3 Efficiency v. equity

6.3.1 This highlights the fact that, in examining the efficiency, or otherwise, of any aspect of the legal system, a vital question to be asked is 'what are the ethical constraints within which society wishes the criminal justice system to be efficient?'¹⁴ As indicated above, these relate to the values of justice, fairness, and personal liberty which are counted to be central to social cohesion by those who are the collective beneficiaries of the protection offered by the system. It is always possible to achieve large gains in law enforcement efficiency if the legal framework of basic rights is ignored. The requirement that efficiency be viewed in the context of equity is redolent of Herbert Packer's two competing models of the criminal justice system, namely, crime control versus due process.¹⁵ The tension between these two models is illustrated by the fact that while the punishment of people who are probably innocent in an effort to increase the deterrent value of the law is regarded as unacceptable on due process grounds, vicarious liability and strict liability is relied on as aids to the efficiency of the infringement notice system. Similarly, for most offenders, due process dictates that a conviction only follow a judicial hearing. However, for certain traffic infringement offences, it comes automatically. While the ethical base of the criminal law requires that punishment be proportionate to the seriousness of the wrongdoing and the personal culpability of the offender,¹⁶ for infringement offences individual motivation or mitigatory circumstances are disregarded in favour of the expediency offered by flat-rate penalties and automated enforcement steps. The infringement system is not interested in the tailoring of penalties

¹⁴ Thurrow L., 'Equity vs. Efficiency in Law Enforcement', (1970) 18 *Public Policy* 451; Cooter R., 'Liberty, Efficiency and Law', (1987) 50(4) *Law and Contemporary Problems* 141.

¹⁵ Packer H.L., *The Limits of the Criminal Sanction*, Stanford, Stanford University Press, 1968.

¹⁶ *Veen (No. 1)* (1979) 143 CLR 458; *Veen (No. 2)* (1988) 164 CLR 465.

to achieve an equal correctional impact on all offenders after adjustment for differences in the means of those who have been ticketed. But equity considerations are not exclusive to the offender's interests. Victims, or potential victims, also want the system to be fair to them. They might wish to have speed cameras deployed on suburban streets, close to schools, in shopping areas, and in zones immediately affecting them, rather than on major arterial roads and freeways. They might want the revenue raised by infringement penalties to be applied to compensate victims of crime, rather than to pay for the costs of enforcement. Their preference might be for the system to make use of costly custodial sentences, rather than non-custodial fines which generate income.

6.3.2 The infringement notice scheme cannot be counted as a success, even if the dollar sums show that income exceeds expenditure, if the price paid for that profit has been a reduction in the value of the fundamental rights which are the 'normative resources' of the system. The streamlining of criminal procedure cannot be claimed as an improvement in efficiency if those subjected to it feel they are being unfairly treated. Even simple economic sanctions, such as fines, have to be evaluated in terms beyond their mere pecuniary value, for, in addition to economic deprivation, they produce a loss of personal esteem and social utility through shame, social disapproval, and other disabilities.

6.4 Clarity of aim

6.4.1 Effective cost-benefit analyses are frustrated if the objectives of the program or system under study are opaque. Realisation of objectives helps define whether something should be counted as a cost or benefit. There are a number of common problems.¹⁷ Outright failure to state objectives; vagueness in their formulation; objectives stated as political rather than operational goals; inter-agency differences in the formulation of the objectives; and the existence of multiple objectives all create difficulties. Multiple objectives also make evaluation difficult either because they are mutually inconsistent, or if all are equally attainable, one goal may be more demanding in costs than another. The relative weight which competing objectives should carry is rarely articulated. This is certainly true in relation to the infringement notice scheme which aims both for crime reduction and revenue. Economically inefficient programs, i.e. those in which expenditure exceeds income, may still be defensible on a cost-benefit analysis, provided that their other objectives, e.g. the reduction of offending and/or the maintenance of certain procedural standards of fairness, are achieved. If these additional purposes are not

¹⁷ Hellman D.A., *The Economics of Crime*, St Martin's Press, New York, 1980, 81.

articulated, it should come as no surprise to find that they are ignored by auditors more comfortable with numerical and quantifiable objectives.

6.5 Causation

6.5.1 Issues of causation appear in two ways. First, they appear in the assessment of whether particular outcomes are due to the policy changes under study, or to other factors. This brings in subsidiary questions of remoteness. Secondly, they appear in the need to recognise that inaction, as well as action, comes at a cost. Could the resources applied to developing one aspect of the system have produced greater benefits if spent elsewhere within it? For instance, would the funds applied to purchasing technology to enhance the rate of detection have been better utilised if given over to assist the sheriff collect the millions of dollars of outstanding fines? Causal arguments are particularly intense in relation to economic approaches to crime because the underlying theories assume that offenders are actuated by rational self-interest. They build on the simple proposition that aggregate crime rates respond to alterations in the risks and benefits of offending because the population of offenders or potential offenders acts rationally. This ‘deterrence hypothesis’ asserts that change can be achieved simply by manipulating the deterrents available to the criminal justice system without any need to make reference to individual psychopathology, or the criminogenic features of the social structure. It holds that increasing the resources applied to the detection, determination of guilt, and punishment of offenders is the best policy for reducing the extent and social costs of crime. The contrary view is that:¹⁸

Criminals are not deterred by variations in the certainty and severity of criminal justice system variables rather . . . crime is caused by a complex set of socio-economic and biological factors and that the appropriate way to reduce the amount of crime and thus to lower the costs of crime is to divert resources into channels that attack these root causes of crime: for example, into job creation, income maintenance, family counselling, mental health, and other programs designed to alleviate the biological, economic and sociological origins of crime.

6.5.2 In truth, the cause and effect relationships in the real world of criminal justice are so complex and intricately inter-woven that any mathematical description of them in the form of a deterrence hypothesis is bound to be a simplification. Even the most basic relationships are poorly understood and the causal relationships are probably changing constantly. The problem of untangling causal relationships is not unique to criminal justice. For the purposes of evaluating the infringement notice system, it

¹⁸ Cooter R. and Ulen T., *Law and Economics*, Illinois, Harper Collins, 1988, 524.

would be enough to look for correlations between particular policy initiatives and designated outcomes. Explanations set in causal terms usually rely on no more than statistical estimates of the strength of association between specified variables.

6.6 Problems in assessing the infringement notice system

6.6.1 The fact that no single agency of government is responsible for the spread of infringement notices or the manner in which they are used, is fundamental to an understanding of the ad hoc development of such notices and the lack of adequate data upon which to undertake a cost-benefit analysis. The Victorian Department of Justice¹⁹ is responsible for general policy formulation in respect of the introduction and design of the infringement notice system and for the administration of the PERIN system through its Courts Management Division and the Sheriff's Office. The Ministry for Police and Emergency Services is, through the police department, responsible for the Traffic Camera Office and the Fixed Penalties Office which, between them, process infringement notices issued by the police. The Public Transport Corporation and the Roads Corporation through the Ministry of Transport are other major policy formulators and users of infringement notices and the Office of Corrections is ultimately responsible for any fine defaulters sent to prison. In addition, the Department of Local Government and more than a hundred individual municipalities have an interest in infringement notices at the local level. Other agencies of government such as the Alpine Resorts Commission, the Department of Conservation and Environment, the Ministry of Finance, the Environment Protection Authority and the Department of Labour, as well as hospitals and tertiary institutions, are also affected by any changes in law or administration that have an impact on their workings.

6.6.2 In 1986, an attempt was made by the Public Accounts Committee of New South Wales to identify the allocation of costs and revenue between New South Wales departments responsible for the collection of parking and traffic fines. It was unsuccessful. The committee discovered that little had been undertaken by way of quantitative analysis of the costs involved, even in the main departments of government directly involved, i.e. the police and the Attorney-General's Department. Neither the Police Commissioner, nor the Attorney-General, was able to supply reliable or comprehensive information regarding the costs of collection or the amount of revenue raised by parking and traffic fines. Even the Department of Corrective Services had difficulty in producing accurate

¹⁹ Formerly Attorney-General's Department.

information on the savings which might be achieved by diverting parking and traffic fine defaulters from imprisonment.²⁰ The best estimate produced was based on 1983 costs for three of the four main departments. It suggested that the outgoings involved in the collection of parking and traffic fines was at least \$56 million. This did not include the expenditure incurred by municipalities in issuing and enforcing their own on-the-spot fines. As to the total revenue raised in New South Wales from traffic enforcement and fine collections, the best estimate was in the range \$60-\$85 million. Again, this did not include data on infringement notices issued by municipalities. On these figures, there did appear to be a net monetary benefit, but the committee noted that the figures were so unreliable and there was such a serious deficiency in statistical and other information on costs, performance efficiency, and revenue in all the departments of government concerned, that it was not possible for it confidently to assess the performance of the overall system in New South Wales.²¹

6.6.3 This experience illustrates the need for undertaking such an exercise in Victoria. There are a number of criteria that could be applied in attempting to explore the success or otherwise of the infringement system.²² There is no single measure of achievement. Since equity considerations, as well as those concerned with the rate of offending, administrative efficiency and fiscal returns are to be taken into account, regard must be had to:

- Whether the process of detecting offenders involves excessive surveillance or intrusion into their privacy, unfair investigatory practices, the prosecution of purely technical breaches of the law, or action being taken for purposes not related to the public interest to which the offence relates.
- Whether police, by-laws officers, or other enforcement officials have continued to use warnings or other alternatives to the writing of an on-the-spot ticket. Have the ease and speed with which infringement notices can be issued encouraged their use in preference to less punitive and more educative, approaches?
- Whether, as a consequence, the quality of police-public relationships has been adversely affected.

²⁰ New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986, paras 6.1-6.5.

²¹ See Public Accounts Committee Report, Table 6.2 and para 6.8.

²² See generally, Sugden R. and Williams A., *The Principles of Practical Cost-benefit Analysis*, Oxford, Oxford University Press, 1978.

- Whether the amount and seriousness of offending have decreased. Care must be taken to ensure that effectiveness in enforcing the law is measured, not merely in terms of the number of detected offences, but in terms of the level of compliance and ultimately, the safety or benefit to the community.²³ This means there should not only be a count, in absolute and relative terms (e.g. offences per head of population), but also an assessment of the economic and social consequences of reduced offending. However, while the medical and social costs of a fewer number of road accidents and the environmental savings of less littering and pollution offences might be open to calculation, the economic significance of fewer dogs at large between sunset and sunrise, or of failing to obey a police direction to abate the noise of a party, will be more difficult to estimate.
- Whether the revenue from penalties for breach of the law exceeds expenditure on detecting the offences and enforcing the penalties. The latter costs should include the initial capital costs of the enforcement technology, as well as the salary costs of the enforcement staff and their administrative supports.
- Whether there has been a diminution in demand for court hearings and other court services (e.g. applications to registrars for time to pay or payment by instalments). This demand may come either from defendants seeking to exercise their full legal rights or informants who have decided that the matter is not an appropriate one to be dealt with by way of an infringement notice.
- Whether the response rate to the invitation to expiate the offence by way of payment of the fixed penalty is high, and the extent to which the PERIN system, or other enforcement measures have to be invoked. The actual costs of default penalties such as community service orders, or imprisonment, would have to be included in the calculations.
- Whether there has been adherence to fundamental principles of the common law. These include the concept of personal, rather than vicarious liability for crime; the requirement of fault in the form of intentional or reckless behaviour, rather than strict liability; and the principle of proportionality in punishment.

²³ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 33.

- Whether there are any opportunities for sanctions to be individualised, and in particular whether account can be taken of the absence of the means to pay as a mitigating consideration.
- Whether the system, though purporting to reduce stigma, actually produces long-term civil disabilities, either through the recording of a conviction, the acquisition of a ‘record’, or some other label of deviancy.

6.6.4 It is to be noted that one of the criteria is whether the system returns a net profit to the state. Though the ethic that prisons should pay their way and that ‘prisoners should earn their bread by the sweat of their brow’ has been a feature of Victoria’s criminal justice system since its inception,²⁴ the prosecution and punishment of offenders has, hitherto, never been dictated by the profit motive. The infringement notice system now provides a novel opportunity for part of the administration of criminal justice to depart from the goals of deterrence, retribution, or rehabilitation, in order to serve the fiscal needs of the state. The drive to reduce the costs of providing prosecution and court services and the eagerness of cash-strapped governments to mine the rich lode of penal revenue, has diverted attention from questions regarding what fundamental rights and values should be preserved in the justice system, to concern with the economics of running it. The question has shifted from whether the system is ‘just’, to whether it can be made to turn a profit. The criminal justice system already tolerates policing for profit in the private security sector²⁵ and punishing for profit in privatised prisons.²⁶ Now the new technology allows the detection of minor offences on a scale that allows the possibility of profit by selling alleged offenders the option of *not* being prosecuted.

6.7 Detection costs and benefits

6.7.1 One feature of a cost-benefit analysis would be to establish the extent to which efficiency in the detection of offences has improved. Economists see this as raising the level of ‘expected punishment’,²⁷ which is a function of both the likelihood of being caught and the severity of resultant punishment. The measurement must not only take in changes in the actual rate of detection, but also alterations in the public’s perception

²⁴ Victoria, *Annual Report of the Inspector of Penal Establishments and Gaols*, Melbourne, 1884, 3.

²⁵ South N., *Policing for Profit: The Private Security Sector*, Sage, London, 1988.

²⁶ Ericson R.V., McMahon M.W. and Evans D., ‘Punishing for Profit: Reflections on the Revival of Privatisation in Corrections’, (1987) 29 *Canadian Journal of Criminology* 355.

²⁷ Cooter R. and Ulen T., *Law and Economics*, Illinois, Harper Collins, 1988, 518.

of the risk of being caught. Increasing the level of expected punishment by raising the actual or perceived rate of detection, should, in theory, improve the deterrent effect of the law:²⁸

When considering the deterrent effect of the law, the risk of detection as perceived by the road user is even more important than the actual risk. Clearly the two will be linked, but it is the road user's perception of the chances that a breach of the law will be detected which is likely to influence his conduct. . . . Bearing in mind that so many road users have a high opinion of their own ability to avoid an accident, the perceived risk of detection becomes all the more significant.

However, to be effective, deterrence requires the threat of apprehension to be visibly maintained. This adds greatly to costs if it involves a visible patrol presence on the road. In dealing with the major infringement offences, technological innovation has been used to improve and lower the costs of detecting of offences and, through the deliberate use of dummy detection devices, to elevate the perceived risks of being identified as an offender. It is sometimes thought that the probability of punishment increases with the seriousness of the crime because more serious crimes attract greater investigatory efforts. However, the surveillance techniques which accompany the expanded use of infringement notices are directed towards improving the probability of detecting and punishing lesser offences. Whether this produces greater relative efficiency in apprehending offenders committing summary offences than those committing indictable ones, is not known. The absolute number of infringement offences committed is far greater than that of serious crimes, but the dark figure of crime prevents a comparison of detection ratios. Thus, even though new surveillance techniques have been applied to both theft and traffic offences, it is not known whether the ratio of offences detected to offences committed is better for one crime than for the other.

6.7.2 One way of checking effectiveness in detection is to record the number of cases identified as an apparent offence within a certain time frame. False positives, false negatives, or observations incapable of a clear interpretation would be regarded as evidence of inefficiency. There is already some evidence that, despite the technology, a large number of detected traffic infringement offences are incapable of being acted upon legally. This has shown up as one of the significant weaknesses in the speed camera system. Audit examination of the operation of the Traffic Camera Office during the 14 months from December 1989 to January 1991, indicated that 4.3 million vehicles had passed through the speed camera detection zones. These cameras produced some 550 000

²⁸ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 33.

photographs of vehicles exceeding the speed threshold.²⁹ However, the Auditor-General's figures showed that infringement notices had been issued only in relation to 47 per cent of vehicles exceeding the threshold (261 000 cases). The explanation given for rejecting the remaining 53 per cent of offences detected was that there were technical and legal difficulties associated with the operation of the cameras, the quality of the photographs and the accuracy of the information supplied by the motor vehicle registration authority in relation to the ownership of the vehicle.³⁰ Some of these problems are being addressed by improvements in the technology and better training of the operators, but the problem of inaccurate motor vehicle registration information has been a persistent one affecting all motoring offences which depend upon owner-onus provisions.

6.7.3 Although high or rising numbers of offences detected can be counted a success, so too can low or falling numbers. After all, if every offence committed is evidence of the failure of deterrence, every offence deterred must be treated as a success. Thus, if bus or transit lane cameras detect no offenders in the morning and evening rush hours and, as a result, no infringement notices are issued and no revenue collected, the enterprise has been triumphant. It has achieved its purpose of keeping private cars out of the special road lanes in order to maintain traffic mobility and to give preference to public transport vehicles. Of course, the absence of bus or transit lane violations must be a true reflection of the actual level of offending, but where the possibility of an offence is severely constrained by locality and time, as in the case of bus lane offences, and the level of surveillance is high, it is relatively easy to check the correspondence between offences committed and offences detected.

6.7.4 Economists would not be surprised if the reaction to increases in the level of penalties was a reduced rate of detection. The same level of expected punishment will be maintained if higher penalties are counteracted by less vigorous enforcement. In May 1987, new heavier infringement notice penalties were introduced for a range of traffic offences. Portans, working at VicRoads, looked at the effect of these higher penalties on subsequent enforcement levels in relation to seven offences.³¹ By altering penalty levels, the government of the day was attempting to signal to the driving public that it wanted the behaviour to be considered a more serious form of wrongdoing. However, that perception was not wholly acted upon by the police and other enforcement officers

²⁹ The detection rate during this period fell from 22.8% in December 1989 to 13% in January 1991.

³⁰ Auditor-General of Victoria, *Report on Ministerial Portfolios*, April 1991, Melbourne, 1991, 3.15.1-3.15.5.

³¹ Portans I., *The Effect of Penalty Severity on the Behaviour of Traffic Enforcement Officers*, Melbourne, VicRoads, 1989.

whose job it was to detect the offences. It is known that if penalties, particularly ones that impose minimum levels of punishment, are introduced which are considered too severe by those called upon to enforce them, compensatory mechanisms will come into play to moderate their effect. Instead of producing changes in driver behaviour and attitude, the raised penalty may produce changes in enforcement behaviour.³² The desired impact may be neutralised by issuing warnings instead of tickets, issuing tickets for lesser offences, or overlooking less serious examples of the offence. When this happens, the detection figures will show less offending than actually occurred. Portans was not able to identify any shift in the balance between use of infringement notices and the issuing of warnings for the offences for which penalties had been increased. The lack of data on the issue of warnings prevented the comparison being made. However, she was able to compare the number of infringement notices issued before and after the introduction of the harsher penalties.

6.7.5 She found that, after the penalties had been increased, the average number of notices issued for the offences under examination fell by 12 per cent. This might have suggested that the new set of increased penalties had led to a reduction in the overall level of offending.³³ However, a closer analysis of the exact nature of the relationship between increases in penalty magnitude and the number of tickets written, did not show that the reduction in enforcement levels varied in a way that could have been predicted from the level of change in the penalty itself (*see* Table 6.1). Thus, while the penalty for seat belt offences increased by 175 per cent, no change in the level of enforcement occurred. At the other end of the scale of penalty increases, the offence of making an incorrect turn was subject to an increase of only 9 per cent, yet enforcement levels dropped by 24 per cent. While this might have been due to an actual change in the behaviour of drivers in response to their awareness, if any, of the change in applicable penalties, Portans did not think this was so. Though the data is skimpy and the research was inadequate to isolate the factors operating to produce the patchy reductions, she regarded the findings as warning that alterations in procedures or penalties may not necessarily achieve the desired end if, despite being directed to upgrade their perceptions of the seriousness of certain offences, those responsible for enforcing the law consciously, or unconsciously, feel unable to maintain their previous enforcement rate. This phenomenon is well illustrated by Western Australian experience of the decade. Enforcement officers there were reluctant to issue traffic infringement notices for seat

³² Ross H.L., 'The Neutralization of Severe Penalties: Some Traffic Law Studies', (1976) 10 *Law and Society Review* 403.

³³ Portans I., *The Effect of Penalty Severity on the Behaviour of Traffic Enforcement Officers*, Melbourne, VicRoads, 1989, para 5.0.

belt offences because they regarded the applicable fine as too severe. They tended to issue warnings instead. When the penalty was subsequently reduced by 50 per cent from \$20 to \$10, the pattern of enforcement changed and more offences resulted in the issue of infringement notices than in warnings.³⁴

Table 6.1
**Change in Enforcement Levels following
Increased Penalties introduced in 1987, Victoria**³⁵

Traffic Infringement Notice	Percentage Change in Penalty	Percentage Change in Enforcement
Incorrect turn	\$55 to \$60 +9%	-24%
Cross double lines	\$40 to \$135 +42%	-8%
Exceed speed zone	\$55 to \$85 +55% ³⁶	-7%
Stop/Give way signs	\$55 to \$135 +145%	-40%
Fail to keep left	\$55 to \$135 +145%	-4%
Seatbelt offences	\$40 to \$110 +175%	0%

6.7.6 Portans' findings are supported by those in the United States. Ross, an American sociologist, has observed that when criminal penalties are suddenly and significantly increased, the increase tends to be subverted by prosecutorial adjustments in the enforcement practices of those who have to apply the law.³⁷ Both empirical observations and the contributions of theory support the 'homeostatic principle', or hydraulic theory of reaction, which predicts that when discretion is removed from, or reduced in one part of the criminal justice system, e.g. the sentencing discretion of the courts, it tends to reappear elsewhere within it, e.g. in prosecutorial discretion. He adopts the view that change is never just an 'alteration of pattern', but an alteration *by the overcoming of resistance*.³⁸ His survey of evidence from four diverse studies of increased penalties for traffic offences suggests that, whenever the penalties were raised, there was a realignment of discretion towards enforcement officers which

³⁴ Smith D.I., *Effect of Lowering Penalty for Non-wearing of Seat Belts on Issuing of Cautions and Infringement Notices*, Perth, Road Traffic Authority, 1977.

³⁵ Based on Portans I., *The Effect of Penalty Severity on the Behaviour of Traffic Enforcement Officers*, Melbourne, VicRoads, 1989, 3.1.

³⁶ Exceeding the speed limit by under 15 km/h; for exceeding the limit by between 15 km/h and 30 km/h, the penalty increased from \$90 to \$135, i.e. by 50%. The figures on % change in enforcement are for both types of excessive speed offence.

³⁷ Ross H.L., 'The Neutralisation of Severe Penalties: Some Traffic Studies', (1976) 10 *Law and Society Review* 403.

³⁸ Parsons T., *The Social System*, Glencoe, Ill., The Free Press, 1951, 491.

produced a mitigation, or even an annulment, of the intended legislative effect. He was able to produce comparable findings in both traffic and general criminal law. He speculated that there were two mechanisms at work.³⁹ First, a sense in the enforcement officers that the sanction had now exceeded the current norms of fairness. Secondly, their awareness that, because the sanction had become more severe, it was more likely, in doubtful or marginal cases, that the alleged offender would seek to have the matter dealt with by a court. As this would inconvenience the enforcement officers, who probably would have to appear as witnesses and incur added costs, the officers tended to dispose of these marginal matters in less formal ways.

6.8 Revenue v. reduction

6.8.1 The ultimate goal of the criminal justice system is crime reduction. If both the absolute and relative amounts of offending fall and the gravity of the wrongdoing declines, the justice system can be regarded as a success. This goal and these criteria also apply to the on-the-spot ticket arrangements. Because the aim is reduction, rather than the eradication of crime, the criminal justice system cannot be relied upon, alone, to produce the hoped for amelioration of crime rates and severity levels. Other action, such as publicity and education, are significant. This is widely recognised in relation to motoring behaviour. By increasing motorists' awareness of the reasons for deploying the new technology to detect traffic offenders, the road safety benefits achieved by direct enforcement can be enhanced. An even more potent form of crime reduction is to decriminalise the offending behaviour altogether. This has been advocated in relation to minor drug offences. The use of infringement notices for such crimes, as occurs in South Australia,⁴⁰ may be seen as partial decriminalisation. But if the earning of revenue is a major consideration, alternative forms of social control, or complete decriminalisation, are less likely to be entertained. The former Victorian government clearly saw infringement notices as a source of supplementary revenue going beyond mere cost recovery, or the needs of deterrence. If monetary penalties are not being set by reference to correctional objectives, but by fiscal considerations outside the criminal justice system, the prohibition amounts to no more than a tax on certain recurrent forms of misconduct. The perception that this is the government's actual motivation is widespread in relation to behaviour for which there is a high degree of community tolerance and in relation to

³⁹ Ross H.L., 'The Neutralisation of Severe Penalties: Some Traffic Studies', (1976) 10 *Law and Society Review* 403, 410-11.

⁴⁰ See above Ch. 3.

which enforcement is patchy, e.g. parking, speeding and drink driving offences and minor illicit drug use. On this view, penalties are being cynically exacted by government without any real underlying desire to change the offending behaviour.⁴¹ Indeed, it provides an incentive to government *not* to decriminalise lesser offences because of the benefits they produce to revenue. If the rate of offending drops, or the pattern of offending shifts towards offences which attract lesser penalties, the threshold of intervention may be raised, or penalties increased, solely in order to maintain receipts at their previous level. Far from being designed to deter, the prohibition serves as a predictable source of revenue. Municipalities using infringement notices to enforce parking prohibitions already make allowance in their annual budgets for the estimated revenue to be raised in this fashion. They would be financially embarrassed if citizens became law abiding.⁴²

6.8.2 The strength of the belief that on-the-spot tickets are being used to serve revenue purposes was revealed in a survey conducted in 1990 on police attitudes to traffic law enforcement.⁴³ Telephone interviews were conducted with 500 members of the Victoria Police (83 per cent male, 17 per cent female) comprising all ranks up to superintendent and involving personnel located throughout metropolitan and regional Victorian areas. Almost half of those in the interview sample (45 per cent) responded by indicating that they regarded the main purpose of speed cameras to be that of raising revenue. Only 26 per cent reported that they considered its main purpose to be that of reducing motor vehicle speed.⁴⁴ This impression has been fuelled by the former Victorian government's actions in both raising penalty levels and in encouraging a higher rate of enforcement by police. In 1987, the government increased traffic infringement penalties by between 9 per cent and 175 per cent; in 1989, it ordered that all money raised through traffic fines be paid into consolidated revenue, rather than one-third being made available to the Transport Accident Commission for road safety equipment and programs, as occurred previously;⁴⁵ and, in 1991, a further 20 per cent

⁴¹ Letters to editor, 'Police cameras are putting revenue before road safety' *Age*, 16 April 1993, p.12; 'Traffic penalty system unjust', *Age*, 30 April 1993, p.10; O'Neill J., 'Highway Robbery' *The Independent Monthly*, October 1993, 36-41.

⁴² See 'Council gets less from parking fines' *Waverley Gazette*, 15 January 1992, p.7 noting the effect of a loss of revenue of \$28 000 to the Waverley Council because 1690 fewer parking tickets had been written in the 1991 financial year than in the preceding one when 8527 had been issued.

⁴³ Gunn K. and MacLean S., *Survey Report on Police Attitudes to Traffic Law Enforcement*, prepared for VicRoads by AGB McNair, August, 1990, *Part 2 Summary Report on a Quantitative Study: Police Attitudes to Traffic Law Enforcement*.

⁴⁴ Gunn & Maclean, above, 3.9, Table 12.

⁴⁵ *Road Safety Act 1986*, s.77(5). See also *Road Safety (Procedures) Regulations 1988* (Reprint 1991), r.903.

increase in penalty levels across the board was ordered without any effort to reassess the deterrent efficacy of any of the previously applicable fine levels.

6.8.3 Suspicions that the boost in the use of speed cameras was a ploy to raise revenue were also raised when early use of the cameras saw some being set up in settings suggestive of entrapment, e.g. at the bottom of steep hills, in unmarked police cars disguised with 'For Sale' and 'Board of Works' decoy signs and in other contexts in which motorists claimed that they were doing no more than keeping up with the main flow of traffic.⁴⁶ The fact that over 80 per cent of infringement notices have been issued to motorists for exceeding the speed limit by 15 km/h or less, lends force to the belief that the cameras are being pointed at high volume marginal traffic offenders, rather than at the smaller group of more serious offenders who pose a real danger to the public. The 20 per cent increase in penalties occurred in 1991 after the Traffic Camera Office had reported that the speed camera detection rate had fallen from 22 per cent in December 1989 to 13 per cent in January 1991. A cynical interpretation would see this as preserving the level of receipts by raising fines to cover the short-fall occasioned by improvement in driver behaviour. A cost-benefit analysis would test this hypothesis and explore whether other action, such as lower thresholds for issuing notices, more hours devoted to detection and reduced use of warnings has also been utilised to maximise monetary returns. This is not to say that fiscal returns are not a proper objective of the infringement notice scheme. Rather, the issues are whether these efforts to recover costs, reduce expenditure and gain additional revenue have been cost effective and, even if so, whether they go beyond what is fair and equitable in efforts at reducing the less serious forms of crime.

6.9 Fiscal objectives

6.9.1 The core fiscal objectives are to raise revenue through the collection of fines and to reduce outlays on police, prosecutorial services and the courts in their handling of minor summary offences. If the infringement notice system is to 'pass muster', so to speak, on the fiscal front, a number of conditions have to be met: (a) a high rate of payment in response to the original infringement notice; (b) a high rate of payment in response to registration of the infringement penalty with the PERIN Court in relation to those who do not comply with the original infringement

⁴⁶ The Victoria Police has formulated site selection criteria designed to address these matters, Victoria Police Speed Camera Program, *Site Selection Criteria and Camera Operator's Manual*, Version 2, December 1993.

notice; (c) the least need to use the powers of the sheriff to enforce the remaining unpaid infringement penalties; (d) the least number of offenders who opt to have the allegation dealt with by a court. Although Treasury figures on state revenue raised through fines are available, these are inadequate to describe the growth in the infringement notice system because they do not include figures on fines collected by local government authorities. Furthermore, data is lacking both on the costs involved in producing this revenue, and on the cost savings that have been achieved not only by keeping matters out of the courts, but also by avoiding the harm against which the prohibitions are directed.

6.9.2 Between 1991 and 1992, budget figures indicated that the government was expecting to increase fine collections by over 85 per cent. In the fiscal year 1990/91, the total receipts from fines were \$52.8 million. The budget estimate for fines in the next year, 1991/92, was \$98 million. In her June 1991 economic statement the then Premier of Victoria, Mrs Joan Kirner, announced a 20 per cent increase in traffic infringement notice fines. She conceded that they were a means of raising revenue and hoped that the increase would bring in an extra \$5 million for the remainder of the current financial year and \$8 million in a full year. In August 1991, newspaper reports⁴⁷ indicated that the government was making more than \$1 million a week from on-the-spot fines, after significantly increasing the number of such offences. They had more than doubled in number since 1985 and public feeling on the issue was strong. The then Victorian Opposition Spokesman for Roads claimed that the police were being forced to fine motorists who had only marginally exceeded the speed limit in order to meet the government's revenue target from road camera fines.⁴⁸ In the same month, newspaper reports claimed that the then Police Minister had reached an agreement with the government's Expenditure Review Committee and the then Chief Commissioner of Police, that 'police will hand out more traffic fines to increase revenue'⁴⁹ with half the increase from fines flowing back to the police ministry and the other going to the government's consolidated revenue. This was alleged to have taken place during discussions of the budget for the Ministry for Police and Emergency Services which was claimed to be facing cuts of \$20 million. Further documentation of this alleged arrangement has not been obtained.

6.9.3 **Cost recovery:** The infringement notice system is concerned with cost recovery. Unlike the situation in relation to the trial of indictable offences, where the Crown neither accepts costs nor pays them,⁵⁰ costs

⁴⁷ 'Bad driving: a fine revenue raiser', *Sunday Age*, 11 August 1991, p.6.

⁴⁸ Mr Bill Baxter, *Australian* 19 October, 1991, p.8. He claimed that some cameras were being triggered at speeds of 63 km/h in 60 km/h areas.

⁴⁹ 'Police beat staff cuts with traffic fine rise', *Age*, 10 August 1991, p.3.

⁵⁰ *A-G of Queensland v. Holland* (1915) 15 CLR 46.

are added at every stage with a view to defraying the costs to the state which flow from providing the machinery for enforcing the infringement penalties. This is consistent with the general approach to costs in the Magistrates' Court where, under *Magistrates' Court Act 1989*, s.131, it is practically automatic for the court to order a convicted defendant to pay the informant's costs of the proceedings. The PERIN system aims to transfer the cost of enforcement either to the offender, or to the agency requesting the registration and enforcement of its unpaid infringement penalties. It is a source of complaint by councils and other non-police agencies that they are required to pay an up-front fee on registering each unpaid infringement penalty. That fee may not be recovered if the offender cannot be located, or does not respond to any of the further demands for payment. It is also lost if the offender is imprisoned in default. Government agencies, such as the police and the Public Transport Corporation are exempt from paying this registration fee. But despite this exemption, the fees that would ordinarily have been paid are added to the costs incurred by the defendant. The cost recovery charges include ones which are probably unlawful and certainly unfair. For speed camera and traffic offences, there appears to be no regulation supporting the charge of \$7.50 for the photograph which the registered owner of the vehicle needs to view in order to identify who was driving at the time of the offence. In the case of detection of an infringement offence by way of a speed camera, two photographs are taken, one upon the vehicle entering and one upon leaving the intersection and this will involve an outlay of \$15. While it is true that persons may inspect these photographs free of charge at the Traffic Camera Office in Bourke Street Melbourne, the opportunity for inspection is not as readily available to those who reside outside the immediate Melbourne area. If the person named in the infringement notice wishes to obtain legal advice on the significance of the photographs with a view to deciding whether to pay the infringement penalty or call for the matter to be tested in court, he or she must purchase a copy of the incriminating evidence. In normal summary proceedings before a court, the accused is supplied with a free copy of his or her own statement and of any of the photographs intended to be used as exhibits in the case. The present arrangements are tantamount to requiring alleged offenders to pay to see the evidence against them.

6.9.4 Saving of prosecutorial and court time: The main aim of the alternative procedure for hearing summary offences in a Magistrates' Court in the absence of the defendant and of the further simplification of procedure to allow accusations to be disposed of by way of infringement notices, has been to reduce the load which routine minor cases place on prosecution and court services. This objective seems to have been largely realised. Before the infringement notice scheme was established, figures

on offences brought before the lower courts from 1954 onwards in Australia⁵¹ supported United Kingdom estimates⁵² that 50-70 per cent of Magistrates' Court time was devoted to road traffic offences.⁵³ For instance, in 1971 in Victoria, of 270 045 convictions recorded in the Magistrates' Courts, 69.4 per cent (187 328) were for driving offences.⁵⁴ Twenty years later, in 1991, after infringement notices were well in place in the state, these offences amounted only to 28.8 per cent of all offences charged.⁵⁵ In New South Wales, a drop in the number of summons cases disposed of in the Sydney metropolitan region from 352 000 in 1984 to 92 000 in 1988 (a reduction of 73.8 per cent) was largely attributed to the introduction of SEINS.⁵⁶ These figures are a sound indication of cost savings achieved by relieving the lower courts of these relatively minor matters.⁵⁷

6.9.5 From a different angle, it can be seen that if the offences for which the 2 342 913 infringement notices were issued in 1990/91 had to be prosecuted in court, as those who received them were entitled to insist, these additional cases would have represented a *sevenfold* increase in the business of the Magistrates' Court of Victoria in that year. Neither the prosecutorial services, nor the court could have been able to cope with the load. Every election to have the matter dealt with by a court would have placed a burden on the informant and the prosecutor to prepare a case for prosecution, and witnesses would have had to be ready, whether or not the defendant chose to appear and irrespective of whether he or she later opted to plead guilty. Preparation of summary prosecutions is much more onerous since the alternative procedure was abolished in Victoria.⁵⁸ Any cost-benefit analysis should be able to estimate the savings achieved by avoiding all these summary prosecutions. In calculating the benefits gained

⁵¹ When the *Commonwealth Year-book* first started to list the number of convictions recorded in Magistrates' courts.

⁵² United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988.

⁵³ Traffic offences (excluding those involving death or injury or ones dealt with by way of an infringement notice) alone accounted for 50-60% of charges before Australian lower courts in the 1970s, Mukherjee S., *Crime Trends in Twentieth Century Australia*, Canberra, Australian Institute of Criminology and Allen and Unwin, 1981 40, 84-86.

⁵⁴ *Victorian Year Book* 1975, 874.

⁵⁵ Accounting for 90 299 of a total of 312 900 counts: Victoria Attorney-General's Department, Court Management Division, *Sentencing Statistics Magistrates' Courts, Victoria, 1991*, Table CR 4.4 - *Disposition of offences and type of penalty imposed for each offence charged*.

⁵⁶ Coopers and Lybrand W.D. Scott, *Report on a Review of the New South Wales Court System*, May 1989, cited in Australian Law Reform Commission, Report No. 57, *Multiculturalism and the Law*, Sydney, ALRC, 1992, 9.12.

⁵⁷ Nowadays, the main business of the Magistrates' Court of Victoria is property crime (theft, obtaining property by deception and burglary) and minor drug offences (possessing a drug of dependence).

⁵⁸ *Magistrates' Court Act* 1989, s.52.

by speeding up the procedure, allowance must also be made for the further savings that are realised by avoiding the extended delays and adjourned proceedings which inevitably occur when bringing matters to hearing in congested courts. Of the 2.3 million cases in this study, the actual number electing for a court hearing is unknown. However, the percentage of notices withdrawn by the issuing agencies was a mere 5.5 per cent.⁵⁹ This included withdrawal for all discretionary reasons, as well as cases withdrawn because the enforcing agency was now going to prosecute the matter in court, either upon its own initiative or because the alleged offender had elected a formal hearing. Since the discretionary reasons were estimated to account for 3 per cent of the withdrawals, it appears that no more than 1 per cent or 2 per cent of those receiving infringement notices sought a full hearing.

6.9.6 Discounted penalty as a cost: The infringement notice system claims to offer discounted penalties as an incentive to payment. The idea is that by fixing the amount of the infringement penalty at something less than the statutory maximum, or the penalty which was likely be imposed by a court for a common instance of the same offence, the criminal prosecution system will be freed of a large number of minor cases. Discounts are normally regarded as a cost, but this may not be wholly justified. However, in any cost-benefit analysis, the discount from the statutory maximum penalty cannot properly be regarded as a cost to the system, because the statutory maximum is practically never applied in practice. Nor is it clear that the fixed penalty is inevitably less than the most commonly imposed penalty. There is no evidence that fixed infringement penalties bear a consistent relationship to either the statutory maximum or the most common penalty imposed. Any attempt to set the infringement penalty by reference to the most common court imposed penalty must assume that the sentences imposed by the courts will remain stable over time despite changing numbers of cases. There is clear evidence that there are marked variations between individual offences in the relationship between the infringement penalty, the statutory maximum and the most common penalty imposed for such an offence by a Magistrates' Court.⁶⁰ In some instances it appears that no discount is being offered at all, while in others, the fixed penalty is considerably below the normal judicial tariff. If a cost-benefit analysis indicates there are real gains to be obtained through some form of penalty discount, the question must be asked whether a discount should also be provided in relation to the demerit points which also accrue for certain motoring offences. At the moment, there is no discount involved and the points build up to licence

⁵⁹ See above Figure 5.1.

⁶⁰ See below Table 10.2 and accompanying discussion.

suspension at the same rate, whether the alleged offence is dealt with by way of an infringement notice, or by a court hearing. It is arguable that discounting demerit points would add a further incentive to the speedy expiation of the offence by payment of the fixed penalty. Non-payment, or late payment, could result in a reversion to the higher demerit points scale. Whatever efficiency this brings, there is the countervailing consideration that this would slow or prevent the progression towards loss of licence which is one of the few ways in which recidivism is recorded within the infringement system. It would mean that incompetent drivers would continue to be entitled to use the roads. That increase in risk to other road users would have to be counted as a social debit in any economic analysis.

6.9.7 Imprisonment in default: The ultimate sanction for non-payment of an infringement penalty registered with the PERIN Court is imprisonment on a warrant executed by the sheriff. When detention for fine default occurs, the period of detention is calculated at the rate of one day for each \$100, or part of \$100, of the amount then still unpaid.⁶¹ In undertaking any analysis of the true costs of imprisoning on-the-spot fine defaulters, account must be taken of three main considerations: First, there is the revenue foregone by the use of detention as the default penalty. This may have to be ignored as a cost for the defaulters who are imprisoned because they genuinely cannot afford to pay, but not for those who wilfully refuse to do so. Secondly, it must be recognised that the cost of detention is a function both of the number of days spent in prison by defaulters and the capital and maintenance costs of the prisons themselves. Therefore, the unit cost of detention will vary according to the level of security provided at the institution in which the person is detained. It is also influenced by the likelihood of the Office of Corrections exercising its discretion to release defaulters through use of custodial community permits as permitted under the *Corrections Act* 1986, s.57.

6.9.8 A third factor is that most prison costs are of a fixed nature which continue whether or not defaulters are detained there. If abandoning imprisonment in default as an option for persons dealt with by on-the-spot tickets is to have any real impact on the prison cost structure, it would require a level of reduction in prison numbers sufficient to justify closing down an entire gaol or, if there is already prison overcrowding, obviating the need to build a new one. The New South Wales Parliamentary Public Accounts Committee estimated that parking and traffic fine defaulters only contributed 1.5 per cent of the total prison population. The number was probably less after the introduction of the SEINS enforcement system. Even if all defaulters were immediately removed from custody, the cost

⁶¹ *Magistrates' Court Act* 1989, Sch.7, cl.5(1)(a).

savings were estimated to be little more than \$1.5 million.⁶² If it is contemplated that imprisonment in default be replaced with some form of non-custodial community-based order, the set-up and running expenses of any such order will have to be set off against savings effected by the abandonment of imprisonment. While, in general, community-based programs are regarded as cheaper to run than imprisonment, the relative costs of short-term default imprisonment versus longer term community-based sanctions will have to be carefully weighed in any cost-benefit analysis.

6.9.9 Fine collection—Auditor General's Reports: Any cost-benefit analysis must take into account the serious inefficiencies which have been revealed by Victorian Auditor-General's reports on the mechanisms of fine collection in the state. Since 1986, the state Auditor-General has qualified his reports on the recovery of outstanding fines. These qualifications relate to deep rooted deficiencies which have persisted for at least a decade. The 1985/86 financial statements of the then Law Department (now Department of Justice) were subject to the auditor's caveat that the Department did not have the necessary systems in place to identify the total amount due to revenue for outstanding court fines. The Department estimated that the amount owing was \$21 million, but the actual figures were not available for auditing. At that time, responsibility for fine enforcement was in the hands of the police. It was noted that the general computerisation of police records had commenced in 1978. However, the ability of the police to use this computerised data to recover, or to write-off, outstanding penalties was restricted because the warrants issued against the fine defaulters in earlier years did not contain sufficient information to identify the defaulters. The information which had been converted from manual to computerised files had not been verified for accuracy. At the end of 1986, over 12 000 warrants for the enforcement of fines were outstanding. This backlog was exacerbated when the PERIN enforcement system came on line in the same year. It added a further 18 000 warrants for unpaid parking and traffic infringement notices. The Auditor-General recorded that the new warrants were accumulating at the rate of approximately 1500 per week.⁶³ These were all the responsibility of the police who, in theory, not only had to serve them, but were also charged with the responsibility for enforcing all outstanding warrants. This required them to find the offender and make a demand for

⁶² But it could rise to \$5.5 million per annum if a new institution was required. These figures are based on 1985-86 figures. New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986, para 7.3.

⁶³ Office of the Auditor-General of Victoria, *Second Report of the Auditor-General for the Year 1985-86*, Melbourne, Government Printer, 1987, 3.3.

payment, and, on default, to arrange with the Sheriff's Office for the sale of any property to meet unpaid fines, or to apprehend the defaulter in order to allow the fine to be discharged by imprisonment in default.

6.9.10 By 1989, in his *Report on Ministerial Portfolios*, the Auditor-General advised the Victorian Parliament that the total number of outstanding warrants still with the police for enforcement on behalf of the Attorney-General's Department had reached \$42.2 million in value. He complained that no improvement had been made in relation to the system for handling these warrants, or enforcing the fines, other than plans to move responsibility for executing all warrants for monetary fines from the police to the sheriff by the end of the 1988/89 financial year. Control over warrants issued prior to the transfer would remain with the police for action.⁶⁴ The report expressly mentioned that this very large backlog was now creating obstacles to the follow-up of unpaid infringement penalties which were subject to enforcement orders under the new PERIN system.

6.9.11 The situation continued to deteriorate. By May 1990, the Auditor-General was faced with a police figure of outstanding warrants which had grown to \$46 million as at 30 June 1989. It was symptomatic of the level of disorganisation within government, that the Attorney-General's Department advised the auditor that its assessment of the outstanding amount was no higher than \$26.8 million. The Auditor-General was extremely critical of the failure of the police during 1988/89 to actively pursue the enforcement of all the outstanding court fines.⁶⁵ The report noted that the transfer of responsibility from the police to the Sheriff's Office under the Attorney-General's Department in respect of warrants for parking and traffic fines enforceable under the PERIN system was only effective from 4 April, 1989.⁶⁶ At this stage, it became clear that the government was beginning to realise that it was incapable of retrieving the situation. It was now prepared to write off a large proportion of the unpaid fines. In the newly enacted *Magistrates' Court Act 1989* a warrant to imprison, or detain in a youth training centre, for non-payment of a fine (whether issued before or after the commencement of the Act), was to be null and void if not executed within five years of being issued.⁶⁷ In other words, warrants for outstanding fines became stale and of no effect if

⁶⁴ Auditor-General of Victoria, *Report of the Auditor-General on Ministerial Portfolios, May 1989*, Melbourne, Government Printer, 1989, 3.15.8-3.15.15.

⁶⁵ Auditor-General of Victoria, *Report on Ministerial Portfolios, May 1990*, Melbourne, Government Printer, 1990, 3.16.11-3.16.12.

⁶⁶ *Magistrates (Summary Proceedings) (Sheriff) Act 1989*.

⁶⁷ *Magistrates' Court Act 1989*, s.58(2). However, a warrant can be re-issued with leave of the court notwithstanding that it has become null and void under *Magistrates' Court Act 1989*, s.58(1). This five-year time limit does not apply to warrants to seize property under *Magistrates' Court Act 1989*, s.73(1). This is of significance for the enforcement of fines imposed upon corporations.

more than five-years-old. The Auditor-General's report of May 1990 again called for the police to pursue outstanding warrants to minimise the potential loss to the state of millions of dollars worth of unpaid fines.

6.9.12 At the end of June 1990, the value of the pre-1989 warrants held by the police for outstanding court fines had now grown to \$47.3 million. Faced with the effect of the *Magistrates' Court Act 1989*, s.58(2), which would begin to make these warrants unenforceable once they were five-years-old, all outstanding warrants were reissued so as to start the clock running anew. The police then set up an accelerated warrant execution project. Instead of using their own officers, they used private sector enquiry agents, on a commission basis, to pursue what were estimated to be approximately 150 000 outstanding warrants less than five-years-old. On the basis that at least half the offenders against whom these warrants had been issued could be located, and that 95 per cent of the warrants executed against them could result in the payment of the outstanding fine,⁶⁸ it was estimated that at least \$16.9 million would be raised. In fact, only 11.3 per cent of the offenders could be located. And only 7.1 per cent of the offenders against whom warrants had been issued made any monetary payment. The Auditor-General concluded that the recoupment of outstanding warrants was more likely to produce \$1.6 million than the estimated \$16.9 million. In fact, by December 1990, the project's net return was in the order of \$220 000.⁶⁹ In August 1991, the Victoria Police transferred to the Sheriff's Office 97 477 warrants with a face value of \$16.3 million. These were warrants in relation to which defaulters could not be located under the police accelerated warrant execution program.

6.9.13 The sheriff was no better than the police at locating fine defaulters. Between August 1991 and June 1992, a period of almost a year, the Sheriff's Office was only able to execute 323 of these warrants. The Victorian Attorney-General's Department was forced to concede in its Annual Report for 1992, that 99 per cent of the remaining 97 154 warrants were unable to be collected.⁷⁰ So great is the backlog that the Attorney-General's Office has stated that although the Sheriff's Office is able to enforce 60 per cent of warrants by obtaining payment or other form of execution when actually able to locate a fine defaulter, this group against whom warrants are actually executed represents only 15 per cent of the total number of warrants held by the office. The Attorney-General has acknowledged that 85 per cent of the fines represented by those

⁶⁸ Rather than a warrant for their imprisonment.

⁶⁹ Auditor-General of Victoria, *Report on Ministerial Portfolios, April 1991*, Melbourne, 1991, 3.15.35-3.15.47.

⁷⁰ Attorney-General's Department of Victoria, *Annual Report 1992*, Appendix 1, Part E, *Notes to Administrative Unit Financial Statements*, Note (BM) Allowance for Doubtful Debts.

warrants, and the accrued costs, may not be collected.⁷¹ The Auditor-General noted that, even when a defaulter was found and imprisoned for non-payment, the *Penalties and Sentences Act* 1985, s.15, provided that any custodial sentences imposed in default of payment of fines had to be served concurrently with other incomplete terms of imprisonment. As the legislation then stood, there was a positive disincentive to discharge multiple fines by any sort of payment when threatened with the execution of a warrant, particularly if the person was already serving a sentence for an existing offence. A relatively short period of concurrent imprisonment would be sufficient to discharge all liability in relation to the outstanding fines. An example was given by the Auditor-General of one offender with over 200 parking fine warrants carrying a face value of \$24 000 serving only three days' imprisonment in order to discharge them all.⁷² This concurrency provision was later modified in the new *Sentencing Act* 1991, s.16(2) so as to make multiple fine default terms of imprisonment cumulative, but as the legislation was not retrospective, warrants issued prior to the *Sentencing Act* 1991 coming into force continued to be subject to the earlier concurrency provisions.

6.9.14 Ongoing problems in the Sheriff's Office: The problems at the Sheriff's Office continue. The progress of the particular sample of infringement notices in this study provides evidence of those difficulties. Of the 377 531 infringement notices registered at the PERIN Court for enforcement in relation to tickets written in the 1990/91 financial year, 73.9 per cent remained unexpiated ten months after the last infringement notice in the sample period had been written. Eighteen months later, 65.9 per cent (representing 248 824 of 377 531 referrals for enforcement) still remained unpaid or undischarged by full or part imprisonment. This amounted to 10.6 per cent of the original number of on-the-spot tickets issued and involved ones with a face value of between \$15.1 and \$16.7 million.⁷³ The most usual explanation given for the sheriff's failure to enforce these outstanding warrants is the problem of locating the defaulters. This squares with the reasons given by the police for failing to execute outstanding warrants. Though the Sheriff's Office has been attempting to improve its efficiency in pursuing fine defaulters,⁷⁴ the weakness of the infringement notice system at the enforcement end remains a significant source of revenue loss to the state.

⁷¹ Attorney-General's Department of Victoria, *Annual Report 1992*, Appendix 1, Part E, *Notes to Administrative Unit Financial Statements*, Note (BM) Allowance for Doubtful Debts.

⁷² Auditor-General of Victoria, *Report on Ministerial Portfolios, April 1991*, Melbourne, 1991, 3.15.50.

⁷³ See above 5.7.3.

⁷⁴ Despite falling staff numbers, the ratios of warrants actioned and executed per head of staff at the Sheriff's office have increased in the financial years after 1990/91, see Auditor-General of Victoria, *Report on Ministerial Portfolios, May 1994*, Melbourne, 1994, 3.9.52 & Table 3.9H.

6.9.15 In the 1994 *Report on Ministerial Portfolios*, the Auditor-General's Office,⁷⁵ reported yet again on the ineffectiveness of fine enforcement processes in respect of those offenders who did not settle their on-the-spot fines within the stipulated periods. In relation to fines arising out of the use of motor vehicles in Victoria, these defaulters represented 7 per cent of motoring offenders who had received fines.⁷⁶ The office reported that the accumulated uncollected fines due to the state had reached \$208.9 million in value.⁷⁷ This comprised \$131.7 million in uncollected fines and \$77.2 million in execution costs.⁷⁸ To this had to be added a further \$61.2 million payable to local government authorities. The grand total of accumulated uncollected fines was \$270.1 million.⁷⁹ This was 6.5 times greater than the figure of \$41.3 million which had originally been identified when the issue of uncollected fines was first raised by the Auditor-General's office in 1986/87.⁸⁰ Despite the steady growth of accumulated uncollected fines, the level of fine collection during each of the financial years since 1986/87 has remained largely unchanged (see Figure 6.1).

⁷⁵ Auditor-General of Victoria, *Report on Ministerial Portfolios, May 1994*, Melbourne, 1994, 3.9.4-3.9.53.

⁷⁶ Auditor-General of Victoria 1994, above 3.9.8.

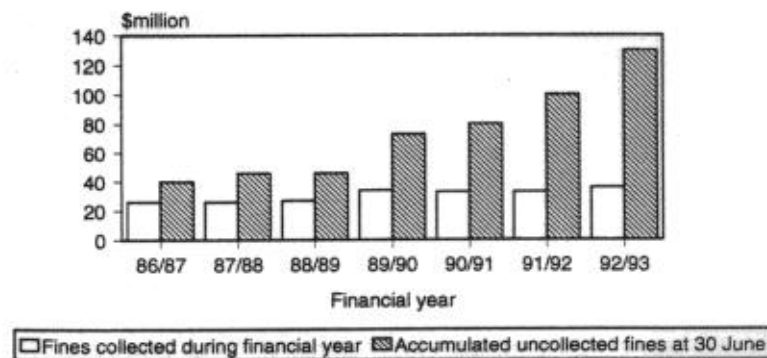
⁷⁷ By 30 June 1994 the figure had risen to \$242.3 million, Department of Justice, Victoria, *Annual Report 1994*, Part E, *Note to Administrative Unit Financial Statements*, Note (AR) Debtors of the Administrative Unit – Court Fines.

⁷⁸ Auditor-General of Victoria 1994, above 3.9.9.

⁷⁹ Auditor-General of Victoria 1994, above para 3.9.30, Table 3.9E (Uncollected fines as at 30 June 1993).

⁸⁰ Auditor-General of Victoria 1994, above 3.9.23.

Figure 6.1
Growth in Collected and Uncollected Fines 1986/1987 to 1992/1993, Victoria⁸¹



Not only had the accumulated uncollected fines risen dramatically, but the number of unexecuted warrants increased from 866 150 as of 30 June 1992 to 1 108 041 at 30 June 1993. This related to 107 879 individuals and entities.⁸² Within this group there were 38 individuals and 16 corporations each of which had a minimum of 100 outstanding warrants. In one instance, an individual had committed 329 offences in the same motor vehicle between 1989 and 1992.⁸³

6.9.16 In asking why the enforcement system was ineffective, the audit review identified a number of factors. These included:

- **Staffing decline:** When the enforcement functions were transferred from the police to the sheriff in 1989, the staff of the latter were increased in numbers from 118 to 319 in 1990/91, but were reduced in 1992/93 to 291 despite a heavier workload and backlog of cases.⁸⁴
- **Suspension of drivers' licences only partially effective:** Though the *Road Safety (Procedures) (Amendment No. 3) Regulations 1989* allowed the administrative suspension of a driver's licence for non-payment of a fine incurred in relation to a motor vehicle related offence, this power was not made available to the sheriff until April 1991 when VicRoads delegated that power to an officer within the Department of Justice. In the following ten-month period, 3800 offenders were threatened with suspension of their driver's licence, but only 57 per cent responded by payment of the fine. This indicated that licence suspension was only partially effective in

⁸¹ Auditor-General of Victoria, *Report on Ministerial Portfolios, May 1994*, Melbourne, 1994, Chart 3.9D, para 3.9.24 reproduced with permission.

⁸² Auditor-General of Victoria 1994, above 3.9.26.

⁸³ Auditor-General of Victoria 1994, above 3.9.27.

⁸⁴ Auditor-General of Victoria 1994, above 3.9.35 and Table 3.9H.

extracting payment of the fine. Since it does not operate to discharge the fine, the remaining 45 per cent who had their licences suspended were now either not driving, or were driving unlawfully.⁸⁵ In either event their indebtedness remained.

- **Suspension of motor vehicle registration of limited scope:** Though the sheriff has power to suspend the registration of a motor vehicle in the name of a corporation for non-payment of infringement penalties in respect of offences where owner-onus applies, the power does not extend to offences where owner-onus is not applicable, nor where the vehicle is registered in the name of an individual.⁸⁶
- **Seizure of personal property:** The sanction for corporate defaulters is seizure of the corporation's personal property. That power has recently been extended to allow for the seizure of the personal property of directors of the company and to seizure of the personal property of individual offenders.⁸⁷ The Auditor-General would like to go further and has recommended that the sheriff's interest in any vehicle be registered on VicRoads' Vehicle Securities Register in order to deter buyers from acquiring the vehicle in or by which the offence was committed.⁸⁸
- **Location of offenders:** In 1991, 106 802 warrants representing 58 per cent of those issued in that year were returned unexecuted because of the inability of the sheriff's officers to locate offenders at the addresses given on the warrant. In 1991/92 the figure of unexecuted warrants was 194 598 and represented 60 per cent of warrants issued. By 1992/93 it had grown to 266 393 representing 57 per cent of those for which action had been authorised.⁸⁹ The principal source of information used by the sheriff to establish the whereabouts of offenders who are involved in motor vehicle offences is the VicRoads licence database. In the Auditor-General's opinion that data-base is not sufficiently reliable.⁹⁰ However, he acknowledges that the 266 393 unexecuted warrants in relation to

⁸⁵ On the failure of the Sheriff's Office to recover drivers' licences which should have been surrendered as a result of suspensions, see Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, para 4.6.2.

⁸⁶ Auditor-General of Victoria 1994, above 3.9.40-3.9.42. In New South Wales, no transfer of ownership, nor re-registration will be recorded until the outstanding fines are paid.

⁸⁷ *Magistrates' Court Act* 1989, s.82A-82F & Schedule 7, cl.8A.

⁸⁸ Auditor-General of Victoria 1994, above 3.9.44.

⁸⁹ Auditor-General of Victoria 1994, above 3.9.45, Table 3.9G.

⁹⁰ The database is conceded to be at the limit of its capacity. The estimated cost of bringing it up to scratch is in the order of \$5-10 million, see Parliament of Victoria, Road Safety Committee, *Inquiry into the Demerit Points Scheme*, November 1994, para 4.6.1.

offences committed by some 107 879 individual drivers only represents a minuscule portion of the 2.9 million drivers' licences and the 3.2 million vehicle registrations recorded in that database.⁹¹

- **Enforcement time frame:** It was pointed out that the minimum time lag between the date on which an infringement notice is issued and the date upon which a warrant for enforcement is sent to the Sheriff by the PERIN Court is 119 days. It was suggested that this minimum three-month time frame contributed to the difficulties in locating offenders who may have left their residence in the meantime. The New South Wales system only allows 91 days to reach the enforcement stage.⁹² The Auditor-General recommended a similar foreshortening. However, he also noted that many of the ticket issuing agencies were contributing to the sheriff's problems in locating offenders and enforcing orders by delaying their filing of infringement notices with the PERIN Court for enforcement for long periods. The figure of between 5 and 11 months was given for some instances of delay, particularly in relation to local government agencies.

6.9.17 Use of credit reference databases: In New South Wales, the Public Accounts Committee wanted to find out whether private debt collectors were more efficient in locating defaulters than the police. An experiment using 1000 randomly selected fine defaulters with warrants still outstanding, showed that 82 per cent were persons already on the files of the Credit Reference Association of Australia Limited, an organisation providing a main source of credit information for agencies concerned with commercial debt recovery and creditworthiness. A group of 99 defaulters owing \$500 or more in unpaid fines was followed up. Credit checks and other forms of tracing successfully identified the new addresses of 68 per cent of this sub-sample of serious defaulters.⁹³ This rate of success led the Committee to conclude that private debt collecting agencies were better at locating defaulters than the state police. This finding does not match the Victorian experience with the police accelerated warrant execution project. It is possible that the poor quality of Victorian police records of outstanding warrants was a factor which contributed to the inability of Victorian private debt collectors to track down defaulters. However, a more powerful reason for the different outcome is the fact that neither the Victorian police nor the Victorian sheriff utilised the Credit

⁹¹ Auditor-General of Victoria 1994, above 3.9.46.

⁹² Auditor-General of Victoria 1994, above 3.9.49, p.315.

⁹³ New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, para 9.2 and Table 9.2.

Reference Association of Australia database as a means of identifying the whereabouts of defaulters. Whether such databases should be used raises broader issues of principle.

6.9.18 The New South Wales Public Accounts Committee observed that the use of private debt collecting agencies for fine defaulters had become widespread in the United States since the federal *Debt Collection Act 1982* (U.S.) was passed. This permitted United States federal agencies to employ private collection agencies, but a number of American states had already also passed laws allowing the use of private debt collection for decriminalised traffic offences and for other state debts. It was reported that in New York, use of eight private debt collecting agencies for outstanding parking and traffic debts in 1979 resulted in a 91 per cent increase in collections of these outstanding sums.⁹⁴ Nonetheless, the New South Wales committee was extremely cautious about recommending the large scale use of private debt collectors because the techniques they used to trace debtors included file searches in the Credit Reference Association of Australia's database. While this clearly improved the location rate, it also created a file record of the enquiry and of the reason for the search. This would leave, in the person's credit record, a notation of the fact that he or she was a fine defaulter, in effect placing that person's 'criminal record' on file for any other enquirer to access. It would remain there for the normal life of the credit entry (normally five years) and would be susceptible to any interpretation other credit givers wished to place upon it. It is in the nature of the vicarious liability elements in the infringement notice system that an allegation may be made against individuals who are not the actual offenders. This is particularly true in relation to the owner-onus provisions that apply in respect of motor vehicle offences. There is a very real danger that a person tagged as a fine defaulter in a commercial credit rating database will suffer economic disadvantage because of the entry in the credit bureau file, even though that entry does not fully represent the true situation.⁹⁵

Say if you moved house and some one had ripped a parking ticket off your windscreen and you did not know anything about it, and say the following week or three months later you were going to rent a television set and you were told you had a bad credit rating, you could make enquiries through us or write to CRA, and you could get a credit report back from CRA and find to your horror that you had a parking fine about which you knew nothing at the time and as a result of which you had been listed [as a bad debt] for five years.

⁹⁴ New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986, para 9.3.

⁹⁵ New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986, p.86, evidence of Mr. Nolan representing the Privacy Committee of New South Wales.

6.9.19 The additional anxiety was also expressed that, once law enforcement officers were given access to general credit rating information on commercial databases, they would misuse it. The utility of using creditworthiness files as a means of locating people would be too difficult for police to resist. They would be tempted to use it for purposes other than debt collection. In the opinion of the representative of the New South Wales Privacy Committee, in giving evidence before the New South Wales Public Accounts Committee, if the public sector was to gain access to commercial debt collection data systems for the purposes of enforcing the criminal law, some protective measures had to be enshrined in legislation setting out what level the fine default should have reached before enquiries could lawfully be made and what steps were to be taken to safeguard the database from being contaminated by erroneous information about alleged fine defaulters which could cause serious and possibly permanent damage to their credit rating. This is a good example of how cost-benefit analyses of the financial implications of new policies have to be balanced against a similar assessment that takes account of the equity considerations.

6.9.20 **Auditor-General's reports on Traffic Camera Office:** The Victorian Traffic Camera Office has also come under scrutiny by the Auditor-General. The Office was created following an announcement in September 1989 by the then Ministers of Transport and Police and Emergency Services of a road safety initiative containing seven elements aimed at changing driver attitudes and reducing the road toll. One of the initiatives involved the introduction of 60 automatic speed cameras along major Victorian roads and highways. A Traffic Camera Office was to be established under the Ministry of Police and Emergency Services to oversee the operation and administration of the infringements detected by these speed cameras. The Office commenced operations in June 1990, taking over the speed camera program which had been in the direct hands of the police since December 1989. The Office was first subject to comment by the Auditor-General in April 1991 in relation to its inability to issue infringement notices in respect of over half the number of vehicles photographed exceeding the speed threshold.⁹⁶ Despite technical and legal difficulties associated with the operation of the cameras which reduced their deterrent and revenue impact, the Auditor-General was able to report that, from the commencement of operations of the Traffic Camera Office in mid 1990 to the end of January 1991, \$14 million in revenue had been collected. The Transport Accident Commission received \$4.6 million of

⁹⁶ Auditor-General of Victoria, *Report on Ministerial Portfolios, April 1991*, Melbourne, 1991, 3.15.1-3.15.5. See above 6.7.2.

this amount and \$9.4 million was paid into the consolidated fund.⁹⁷ A comparison of revenue with expenses showed that the Traffic Camera Office was generating revenue in excess of its monthly operational costs. The conclusion drawn was that the revenue brought in by the office would be sufficient to not only recoup its operating costs, but also the capital costs of \$15.4 million incurred in establishing it.⁹⁸

6.9.21 In 1992, the primary concern of the Auditor-General was the failure of the Traffic Camera Office to take action against corporate offenders within 12 months of the infringement notice being issued against them.⁹⁹ The effect of this delay was to allow the infringement notices to lapse, thus preventing any further proceedings being taken by summons because of the general twelve month limitation on the prosecution of summary offences contained in *Magistrates' Court Act 1991*, s.26(4). The audit review found that, in the 1990/91 financial year, 7399 corporate offenders were not pursued within 12 months of the date of the alleged infringement offence, thus forestalling further action against them. The Auditor-General complained that the lack of expedition by the Traffic Camera Office in following up corporate offenders resulted in it abandoning proceedings involving a potential loss to revenue of \$4.4 million. This comprised \$711 000 in fines for the original offence and \$3.7 million as further penalties which could have been imposed upon the companies for their failure to disclose the name of the actual driver of the vehicle. The explanations proffered by the Traffic Camera Office for not actively pursuing penalties involving company vehicles were: first, a lack of resources to set up the systems and computerised administrative procedures for identifying companies which had failed to nominate offending drivers; and secondly, on a point of principle, that it was more appropriate, in the interests of road safety, for the office to pursue educative rather than revenue-raising objectives, even if this involved foregoing possible penalties.¹⁰⁰

The TCO road safety initiative is directed towards changing the attitude of delinquent drivers through the imposition of demerit points with the collection of revenue being a secondary issue. It was deemed appropriate to allow a period whereby companies were to become educated as to their responsibilities in

⁹⁷ Auditor-General of Victoria, *Report on Ministerial Portfolios, April 1991*, Melbourne, 1991, 3.15.1-3.15.6. Of the revenue raised by the office from traffic infringements, one-third was apportioned to the Transport Accident Commission and two-thirds to the consolidated fund.

⁹⁸ Auditor-General of Victoria, *Report on Ministerial Portfolios, April 1991*, Melbourne, 1991, 3.15.1-3.15.7-3.15.8 and Chart 3.15C on p.363.

⁹⁹ Auditor-General of Victoria, *Report on Ministerial Portfolios, May 1992*, Melbourne, Government Printer, 1992, 3.17.1-3.17.12.

¹⁰⁰ Auditor-General of Victoria, *Report on Ministerial Portfolios, May 1992*, Melbourne, 1992, 3.17.10.

relation to their employees and the public, as opposed to enforcing the substantial penalties that were available under the new legislation.

6.9.22 The Auditor-General's reaction to these two defences was to comment adversely both on the failure of the government to provide the Traffic Camera Office with adequate resources to do its job, despite the fact that the revenue that it brought in was ample to cover its needs and, secondly, on the apparent attitude of the Office that police duties were 'becoming one of education of corporations instead of enforcement of legislation passed by Parliament'.¹⁰¹ This brought forth a response from the Secretary of the Ministry for Police and Emergency Services who emphasised both the difficulties involved in establishing administrative procedures for efficient fine collection and the importance of the non-punitive, non-revenue aspects of the approach the government was taking to the improvement of road safety in the state.¹⁰²

Community debate and consultation occurred while the proposed legislation was being framed. However, community education regarding the particular policy encompassed in the legislation and discussion concerning enforcement policy can only occur after the legislation is made. The integrity of the Traffic Camera Office is the critical success factor for the overall road safety strategy. To have rushed this task and implemented a less than fully functional system prematurely could have created a public backlash which would have jeopardised the road safety program as a whole. Traffic camera enforcement has gained community acceptance as evidenced by the 80 per cent support for speed cameras shown in driver surveys conducted in May 1991 and again in December 1991. As a result the speed cameras have had an enormous impact on driving behaviour and have contributed to the 42 per cent reduction in the State's road toll since 1989.

6.9.23 **Local government:** Figures on the profitability or otherwise of on-the-spot tickets for municipal councils are hard to come by. Figures on parking infringement revenue obtained by *The Age* newspaper from six inner-city municipalities showed that for all, bar one where no data was available, the revenue raised in the financial year 1992/93 exceeded expenditure on enforcement during the same period (see Table 6.2).

¹⁰¹ Auditor-General of Victoria, *Report on Ministerial Portfolios, May 1992*, Melbourne, 1992, 3.17.12.

¹⁰² Auditor-General of Victoria, *Report on Ministerial Portfolios, May 1992*, Melbourne, 1992, 3.17.12.

Table 6.2
Parking Infringement Revenue and Expenditure
1992/93, Victoria¹⁰³

Council	Revenue \$m	Expenditure \$m
Fitzroy	1.7	1.2
Richmond	1.7	0.7
St. Kilda	2.5	n/a
South Melbourne	2.9	1.5
Prahran	3.5	2.0
Melbourne	15.3	10.4

The revenue from infringements in the Melbourne City area rose from \$13m in 1991/92 to over \$15m in 1992/93. This was achieved by the introduction of shifts with some of the city's 130 parking officers working until 2 a.m., as well as working singly rather than in pairs. The city regarded itself as having made a 'profit' of about \$5m from its involvement in parking infringement notices. Expenditure by the Melbourne City Council on enforcing parking infringements amounted to 68 per cent of the revenue raised. There is marked variation between the Councils in the relationship between expenditure and revenue. Richmond's expenditure was 41.2 per cent of its revenue, whereas in the similar sized inner-city suburb of Fitzroy, 70.6 per cent of parking infringement revenue was absorbed by costs. The cost component in South Melbourne was 51.7 per cent and in Prahran 57.1 per cent. These figures may not be a good indicator of differences in enforcement efficiency because of doubt whether the bases upon which they have been calculated are consistent from one council to another.

6.9.24 Motor registration inefficiencies: As the Auditor-General of Victoria has pointed out, an evaluation of the infringement notice system must also address the impact that other, more peripheral, agencies have on the efficacy of the infringement notice system. A consistent focus of complaint during the period under study related to the inaccuracy of the records of motor vehicle ownership in Victoria held by VicRoads. The police, local government authorities and the sheriff depend upon the central registry for accurate information on the identity and address of the owner of vehicles subject to traffic or parking infringement notices. Not only do the owner-onus provisions of the legislation treat the owner *prima facie* as the offender, but follow-up enforcement mechanisms also depend

¹⁰³ Source: *Sunday Age*, 9 January 1994, 5. The figures are based on the local government financial year 1 October, 1992 to 30 September, 1993.

on suspension of drivers' licences or motor vehicle registration. These systems are undermined if the ownership and licence databases are riddled with inaccuracies. This is a problem which has been openly recognised in New South Wales¹⁰⁴ but also acknowledged in Victoria.¹⁰⁵ The complaints about the Victorian system include non-registration of the transfer of ownership; delays or inaccuracies in the processing of vehicle transfer notifications; and laxity in confirming the accuracy of addresses for vehicle ownership and licences, thus permitting vehicles to be registered and licences issued to either fictitious persons or persons at fictitious addresses. The willingness of the Roads Corporation to re-register vehicles over the counter at motor vehicle registries, rather than sending out the documentation by mail to the address officially on the record has made it easy for owners to disguise their identity and/or address.¹⁰⁶ Until recently, the failure to require sellers, as well as buyers, to notify the transfer of ownership deprived VicRoads of a valuable check on the accuracy of the information in its registry.¹⁰⁷

6.10 Correctional objectives

6.10.1 Since one of the principal objectives in issuing infringement notices is to reduce the incidence of offending, any form of evaluation must attempt to assess whether the rate of offending has diminished, or at least not increased beyond levels which might have been reached had the infringement notice system not been in place. Measurement of correctional impact in relation to infringement offences is subject to considerations not applicable to more serious crimes. First, the ultimate aim may not always be the complete suppression of the prohibited conduct, but rather its

¹⁰⁴ New South Wales, Legislative Assembly Public Accounts Committee (Murray J. Chairman), *Report on the Collection of Parking and Traffic Fines*, Sydney, Government Printer, 1986, para 5.7.

¹⁰⁵ Interview with Peter Duncan, Sheriff of Victoria, 15 August 1994. The point was made that the inaccuracy of the initial driver's licence or motor registration ownership record made it less useful to use credit services to trace defaulters. The sheriffs could not be certain that an apparent match of names actually related to the same person. The sheriff characterised defaulters as one-third persons who had genuinely moved residences between the time of the infringement and the time efforts were commenced to enforce the penalty; one-third 'silly and forgetful' and one-third actively avoiding payment. Often this last group had no fear of prison as the default penalty, because they were facing prison for more serious offending.

¹⁰⁶ In New South Wales, over the counter renewal of registration is restricted to those who can produce notices which indicate they can be located at the addresses supplied. Others are issued with interim receipts and the registration renewal documents are posted to the address shown on the records.

¹⁰⁷ In New South Wales, since 1986, the department responsible for registration of change of ownership has made use of a Notice of Disposal card with pre-paid postage, designed to encourage sellers, as well as buyers, to promptly notify of the change of ownership. The Victorian arrangements changed in 1993, *see below* 6.11.2.

regulation. Thus, while there is a prohibition against vehicles overstaying the permitted time at parking meters, the infringement penalty may be regarded as simply the premium for the longer use of the parking facility, rather than a sanction specifically designed to prevent overparking. If the latter were the aim, other techniques, such as towing away the vehicle to clear the space, or immobilisation of the car with a wheel clamp to increase the deterrent effect, would be brought into use. Secondly, personal culpability and individualised sanctions are excluded. The infringement system works on the basis of strict liability and flat rate penalties. There is not even an attempt to increase its correctional efficacy by seeking to enhance the deterrent effect of the penalty by specifying that it be increased for second or subsequent offences.

6.10.2 Because many of the offences which are subject to infringement notices are ones which call upon citizens to meet new standards of behaviour in relation to areas of conduct which were either not previously criminalised, or which are being redefined in terms of their seriousness, the enforcement of the law is pursued with educational, as well as punitive, goals in mind. This was illustrated in the exchange between the Auditor-General and the Ministry for Police and Emergency Services in respect of the education of corporations in relation to their obligation to identify offending employee drivers.¹⁰⁸ Likewise, with littering offences, the prohibitions dealt with by way of infringement notice under the *Litter Act* 1987 are only part of a broader process of social conditioning of citizens to be more aware of environmental issues. By increasing levels of knowledge and public awareness of the reasons for the prohibitions and the social consequences of not complying with them, it is hoped that the crime reduction objectives can be attained by a combination of fear of punishment and the guilt associated with the social unacceptability of the prohibited behaviour. This blending of educative and punitive purposes corresponds with the idea that the criminal justice system should make use of the least punitive measures necessary to achieve its objectives. This is entrenched in the *Sentencing Act* 1991 in the guidelines and hierarchy of penalties contained in that Act.¹⁰⁹ From an economic point of view, if education can bring about social conformity at a lower cost than forms of punishment, it is much to be preferred. So too with other measures. Thus, in the case of road traffic offenders, attention needs to be given to factors contributing to accidents and road dangers that are of greater significance than human failure to observe traffic regulations. Remedial action through engineering to produce improvements in road layout, signposting, lighting and visibility, and traffic

¹⁰⁸ See above 6.9.22.

¹⁰⁹ *Sentencing Act* 1991, s.5 & 7.

signal phasing will have a more practical impact on road safety than installing red light or speed cameras at those sites. Reshaping the 'criminogenic' environment which contributes to traffic offending before criminalising drivers for their breach of traffic laws in relation to their driving in that particular area, may be exceptionally cost-effective in both financial and equity terms.

6.10.3 The temporal contiguity of conduct and punishment has much to do with the achievement of correctional objectives. The more proximate the punishment to the undesired behaviour, the greater the deterrent effect. But when technical devices such as red light and speed cameras are used to detect infringement offences, the offender is neither immediately apprehended, nor warned of the fact of his or her wrongdoing, notwithstanding the detection. The offence and the offender are allowed to continue. The deterrent effect is less than would have been the case if the offender had been pulled over by a traffic patrol officer and ticketed or warned. Correctional returns are diminished when they depend upon delayed knowledge of the detection and imposition of a sanction. It may be that the offender will reflect upon the later notification and vow to change his or her behaviour,¹¹⁰ but a better deterrent effect could be achieved by providing the person with more immediate feedback of the fact that a detection device has been triggered. Modern technology readily allows signalling devices to be added to automatic cameras so that, a short distance down the road, a sign will flash to the offending vehicle as it passes by that *Your vehicle has just been photographed exceeding the speed limit—Slow Down!* Appropriate warnings could also follow the triggering of red light and bus lane cameras.

6.10.4 **Parking behaviour:** The objective of parking regulations is to provide equitable access to limited parking areas for motor vehicles and to free them from congestion, or reduce levels of congestion, thus minimising incidents, accidents, and driver frustration, as well as expediting the flow of traffic. It is difficult to measure success in achieving these aims¹¹¹ since it not only involves evaluating the fairness of access, but also the sense of frustration (which may itself lead to accidents) of drivers whose demands for parking, or parking convenience, are not being fulfilled. There is also the question of the inconvenience and loss of trade caused to shopkeepers and businesses in the area by too restrictive parking controls, or the abuse of unregulated parking by those who use the assigned areas for long-term parking while conducting business elsewhere. No Australian studies tell whether the enforcement of parking

¹¹⁰ Viski L., *Road Traffic Offenders and Crime Policy*, Budapest, Akademiai Kiado, 1982 and Willett T.C., *Criminal on the Road*, London, Tavistock, 1964.

¹¹¹ Brown M., *Car Parking: The Economics of Policy Enforcement*, Bedford, Cranfield Press, 1991.

laws by local authorities has been effective in relieving congestion, inconvenience etc., nor do any provide objective indications of the levels of compliance. No doubt the situation varies markedly between city and suburbs and according to the level of activity in the area in which parking regulations are being enforced.

6.10.5 Driving behaviour: Because motoring offences figure so prominently in the catalogue of infringement offences and have benefited from the technological improvements in detection methods, special attention has to be given to assessing whether campaigns to improve driving behaviour have been effective, particularly strategies which have included measures such as increasing infringement penalties, greater use of speed cameras and increased publicity. The economists' belief that their models can build on the assumption that offenders, or potential offenders, act as though actuated by rational self-interest has been examined by Corbett and Simon in a two-year study of unlawful driving behaviour in the United Kingdom. These researchers made use of questionnaires, in-depth interviews, a study of drinking drivers in pubs, and roadside interviews with drivers who had been stopped for speeding.¹¹² They sought to identify the extent to which motoring offenders had acted deliberately and rationally, weighing up the opportunities, costs and benefits of committing driving offences. The economists' would say that if opportunities are removed or reduced and the costs of offending are increased, it is likely that offenders will desist from a particular form of misconduct. But if the motivation for breaching traffic law is predominantly irrational, the economics theorists' position is weakened and some of the current enforcement strategies may require re-thinking. As might be expected, the explanations given by motorists for committing particular traffic offences, or for generally breaking traffic rules, were numerous. However, many of the reasons given by those in the sample of drivers studied (almost 1000 in all) contained factors of an emotional nature or which indicated either deliberate disregard of the law, or belief that the likelihood of apprehension was low.¹¹³ In descending order of importance the categories were:¹¹⁴

- Confidence in one's own skill and control.

¹¹² Corbett C. and Simon F., 'Decisions to Break or Adhere to the Rules of the Road, Viewed from the Rational Choice Perspective' (1992) 32 *British Journal of Criminology*, 537.

¹¹³ This reinforces the earlier observation of the United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 32, 'Bearing in mind that so many road users have a high opinion of their own ability to avoid an accident, the perceived risk of detection becomes all the more significant'.

¹¹⁴ Corbett C. and Simon F., 'Decisions to Break or Adhere to the Rules of the Road, Viewed from the Rational Choice Perspective' (1992) 32 *British Journal of Criminology*, 537, 541, based on Table 1.

- A wish to decide driving actions for one-self, rather than be bound rigidly by rules.
- Perceiving the action as carrying little risk of accident.
- Being in a hurry or under pressure.
- Inadvertence: offending without realising it, not concentrating, not thinking about it, misjudgment.
- Convenience, laziness.
- Perceiving little risk of being caught.
- Features of the traffic scene: keeping up with the flow, avoiding congestion at junctions.
- Social pressures: conformity to the perceived consensus ('most drivers do it'), influence of passengers/friends/others.
- Features of the vehicle: good brakes, built for high speeds.
- Expression of moods, frustration, impatience.
- Enjoyment of skill, speed, risks, rule-breaking.
- Unconcern about the penalty if caught.

The researchers drew the general conclusion that behind the drivers' explanations and motives for offending was a 'sub-text' of needing to feel *in control*. It seemed that many judged the morality, criminality or safety of a driving action by this criterion:¹¹⁵

Thus, through feeling in control, many drivers were able to perform an unlawful act without regarding it as criminal or immoral . . . It appeared that provided they felt in control during the manoeuvre they were apt to dismiss the notion of a traffic offence being immoral, since harm was thought unlikely to result and would in any event be unintended. Thus this attitude allowed them a clear conscience.

6.10.6 In comparing the relative criminality of persons on the road and off the road, the authors commented on how, on every journey, a motorist is presented with numerous opportunities to easily break the law with what appears to be little risk of immediate detection. By contrast, there were less plentiful opportunities for non-motoring offending and such offences were often ones which required greater planning and effort at execution. In a motor vehicle, the distinction between lawful and unlawful behaviour is often only a small matter of degree. In the UK sample, 88 per cent of the 457 drivers who responded to the main questionnaire admitted that they broke the speed limits at least 'sometimes'. Almost a quarter admitted driving over the alcohol limit. The sense of being in control may be something of an illusion because of the number of accidents which occur. However, for most drivers accidents

¹¹⁵ Corbett C. and Simon F., above 544-45.

are rare, thus allowing them to retain their belief that they can get away with breaking the law.

6.10.7 Although the research data supported the conclusion that most drivers were making rational choices about the risks and benefits of breaking the law when driving, Corbett and Simon considered that it did not necessarily follow that traffic crime could be readily prevented by manipulating factors to increase the 'costs', or reduce the 'benefits', of offending. First, driving presented plenty of opportunities for traffic offending in circumstances which would be regarded by drivers as providing a high pay-off with low potential detection risk. Secondly, there were only a limited number of physical features of the traffic environment which could be effectively manipulated. While speeding might be minimised on some roads by speed humps, roundabouts and other physical constraints, the hardening of these target areas might only displace drivers into speeding on unimpeded roads in order to 'make up time'. The authors likewise discounted the impact of increased enforcement activities. In their view, the sheer volume of offending would prevent the greater deployment of police to traffic duties producing more than marginal benefits. It would, in any event, be at the cost of reducing police services elsewhere. Though the authors recognised that the technology existed to improve the probability of detection by use of photographic and electronic detection devices, or by in-vehicle devices such as speed limiters, they were uncertain about the extent to which society was prepared to tolerate curtailment of what are regarded as civil liberties.¹¹⁶

6.10.8 Support for the aggregate, rather than the individual, approach taken by economists to criminal behaviour is provided in the finding that willingness to breach road traffic rules does not depend on significant differences between individual drivers in judging the relative gravity of traffic offences. Brown and Copeman examined the consistency with which British motorists ranked traffic offences for seriousness.¹¹⁷ They found a high level of concordance in the overall ordering. Thirty-one offences were offered to 224 subjects. Each was invited to place them in rank order. The least seriously ranked offence was that of exceeding the speed limit by between 10 and 20 miles per hour. The next were parking offences. The highest ranked offences were those which the motorists felt were intrinsically dangerous, such as driving with a defective vehicle, driving with a blood alcohol level more than 50 per cent over the legal limit, overtaking when visibility was obscured, or failing to stop after

¹¹⁶ Corbett C. and Simon F., above 548.

¹¹⁷ Brown I.D. and Copeman A.K., 'Drivers' Attitudes to the Seriousness of Road Traffic Offences Considered in Relation to the Design of Sanctions' (1975) 7 *Accident Analysis and Prevention* 15.

injuring another road user. The authors suggested that a well designed sanctioning system should relate the value of sanctions to this ordering of offences. They did not examine the drivers' actual knowledge of the penalties which attached to the offences they had ranked, nor test whether the statutory allocation of penalties or actual enforcement practices matched the drivers' seriousness ranking of the offences.

6.10.9 When considering how deterrent effects can be improved, economists are likely to emphasise that the offender's perception of the risk of being caught is as important as the actual risk. If potential offenders do not believe that they will be caught their 'expected punishment' will be low and the prohibition will have minimal impact on their behaviour. If, however, potential offenders think that their chances of being caught are higher than they actually are, the deterrent effect will be enhanced. In relation to traffic offences, this suggests that gains in deterrence might be achieved at low cost by a more open policy of letting motorists know, through media and other publicity, what measures are in place to detect offences in a given area rather than relying on secrecy and ambush in the placement of detection devices. Economists would also stress the fact that when the deterrent takes a monetary form, it can be frequently passed on to others, particularly where a commercial vehicle is involved. In the first instance, the employer may pay the penalty, but ultimately higher service and commodity costs will be passed on to customers and to the community generally. If fines are treated only as a tolerable form of tax, they will have little effect in modifying future driving behaviour.

6.10.10 Investing in efforts to change underlying attitudes can produce cost effective benefits. In a recent report on curbing drink-driving,¹¹⁸ David Riley of the Home Office Research and Planning Unit in the United Kingdom, examined whether different enforcement patterns involving breath tests and other measures for screening drivers for alcohol consumption produced different rates of compliance with the law. He explored variations in police enforcement activities in different areas of England. Overall he found that drivers in high enforcement areas were less likely to drink and drive than those in low enforcement areas, but he concluded that the difference in behaviour between the two areas could not be explained by variations in the perception of being detected. Drivers in the high and low enforcement areas made similar assessments of the risk of being caught by police. What seemed to be potent in producing obedience to the law was a greater level of police and media activity in the high enforcement areas which heightened drivers' awareness of the social

¹¹⁸ Riley D., *Drink-Driving: The Effects of Enforcement*, Home Office Research Study No. 121, London, HMSO, 1991.

attitudes against drink-driving and of the dangers of mixing alcohol and driving. It led Riley to conclude that increased levels of enforcement alone are not enough unless backed up by substantial media attention. The latter is not concerned with changing drivers' estimates of their chances of being caught, but rather with altering their social attitudes towards the prohibited behaviour. Riley makes the further point that although enhanced levels of enforcement often appear the least difficult of the various policy options used in combating drink-driving problems and may indeed produce immediate reductions in accidents, injuries, and fatalities, the research literature on such interventions suggests that the benefits are often short-lived.¹¹⁹

6.10.11 This is illustrated by some Australian experiences. Between 1987 and 1991 sets of driver interviews were conducted at the behest of the Roads Corporation of Victoria in order to monitor the effects of speed management initiatives, including the speed camera programs launched in May 1990.¹²⁰ These interviews obtained information on the drivers' intended speed behaviour, their perception of the likelihood of being detected for speeding, their understanding of the penalty associated with speeding and their perceptions of the dangers of speeding. One thousand and fifty interviewees drawn from the Melbourne, Ballarat and Wodonga areas participated in the survey. The responses indicated that drivers generally regarded themselves as being at low risk of being detected for driving in excess of the speed limit. However, for drivers using urban arterial roads, an increase in their perceived risk of detection was noted in May 1990, when speed camera publicity was extensive. That elevated perception of risk did not continue and, within a year, their perception of the likelihood of being detected for speeding had decreased.¹²¹

6.10.12 In the surveys, the majority of drivers defined speeding as exceeding the speed limit by up to 10 km/h, while dangerous driving was viewed by them as travelling at 11 km/h or more over the official limit. However, the speeds at which the respondents considered that the activity amounted to speeding, or dangerous driving, increased as the speed of the surrounding traffic flow also increased. When asked what penalties were thought to be appropriate for exceeding the speed limit by various amounts, of those surveyed in December 1991, 42 per cent felt that no

¹¹⁹ See generally the literature review in Riley D., *Drink-Driving: The Effects of Enforcement*, Home Office Research Study No. 121, London, HMSO, 1991, Ch. 5.; Ross H.L., *Deterring the Drinking Driver*, Lexington, Mass., Lexington Books, 1984.

¹²⁰ Cavallo A., *Trends in Driver Attitudes to Speeding*, Melbourne, VicRoads, May 1991; AGB McNair Australia, *Attitudes to Speed: December 1991*, Report prepared for VicRoads, December 1991.

¹²¹ AGB McNair Australia, *Attitudes to Speed: December 1991*, Report prepared for VicRoads, December 1991.

penalty or reprimand was appropriate for exceeding the speed limit by 10 km/h in a 60 km/h zone. The remaining respondents thought that a fine was justified. When asked what the fine level should be, the respondents nominated a figure lower than the actual infringement penalty prescribed at the time of the survey. A fine with loss of points and licence suspension was considered the most appropriate penalty for a driver exceeding the speed limit in a 60 km zone by 30 km/h. This attitude held true for each of the surveys. The surveys discovered that the vast majority of motorists considered a fine to be a deserved penalty, but either underestimated the magnitude of the fine or did not know what the penalty was for the specific traffic violations. The May 1991 study reported by Cavallo indicated that for infringements of 10 km/h over the speed limit, about two-thirds of respondents indicated that they did not view the behaviour as serious. In earlier surveys 50 per cent of respondents had expressed this view.

6.10.13 In the December 1991 survey additional questions were asked about attitudes to speed cameras. While 57 per cent of the respondents believed that the effect of speed cameras was to reduce traffic speeds, 25 per cent were also of the opinion that the cameras were being used to raise revenue for the government. Almost 40 per cent of those responding claimed that the speed cameras had no effect on their own driving. Only 25 per cent of the drivers sampled claimed that the speed at which they drove had decreased as a result of the use of the cameras. Nonetheless, 79 per cent of the sample supported the continued use of cameras, though the respondents believed that the speed at which they should be allowed to travel before being booked in a 60 km/h zone was, on average, 11 km/h over the limit.¹²² The lack of knowledge, or underestimation, of the actual penalty levels by the motorists in the above surveys reinforces the need for education and publicity as part of the control of offending. Not only must the sanctions bear an acceptable relationship to the relative seriousness of the offending, but if intended to deter, they must be made known to the road user population:¹²³

. . . sentences which are perceived by the offender as too harsh or too lenient will not have the desired effect of re-shaping behaviour. Harshness will tend to produce resentment and a sense of injustice; leniency will tend to produce specific, or even generalised contempt for the whole system of traffic-law enforcement. This is because sanctions operate as a feed back of society's views to convicted offenders. Poorly designed sanctions will thus provide inexact feedback . . .

¹²² AGB McNair Australia, p.20, Table 18.

¹²³ Brown I.D. and Copeman A.K., 'Drivers' Attitudes to the Seriousness of Road Traffic Offences Considered in Relation to the Design of Sanctions' (1975) *7 Accident Analysis and Prevention* 17.

6.10.14 Despite overseas research findings on the temporary nature of reductions in offending gained by increased enforcement activity, there has been a remarkable drop in traffic offences and the consequences of such offending in Victoria since 1989. The Traffic Camera Office has supplied figures indicating that the incidence of drivers detected as travelling above the threshold limit¹²⁴ by speed cameras has dropped from 22.8 per cent in December 1989 to 5 per cent in December 1992 and has stabilised there (see Figure 6.2).¹²⁵ Likewise, the percentage of vehicles travelling at 30 km/h or more above the speed limit, as detected by speed cameras, has fallen from 1.5 per cent in December 1989/January 1990 to 0.5 per cent in the last months of 1992 and has stayed there (see Figure 6.3). Collisions have shown a similar and sustained decline from the latter half of 1989 (see Figure 6.4). The drop in fatalities from 1989 to 1992 (from 776 to 396) was the largest continuous reduction ever experienced in Victoria and brought the road toll total to below 400 deaths for the first time since 1948 when there were 87 per cent fewer registered vehicles (see Figure 6.5).¹²⁶ There were also reductions in the number of injuries though these were not as great as for fatalities (see Figure 6.6).¹²⁷ The more recent figures on collisions, fatalities and injuries do, however, suggest the downward trend in Victoria has levelled out.

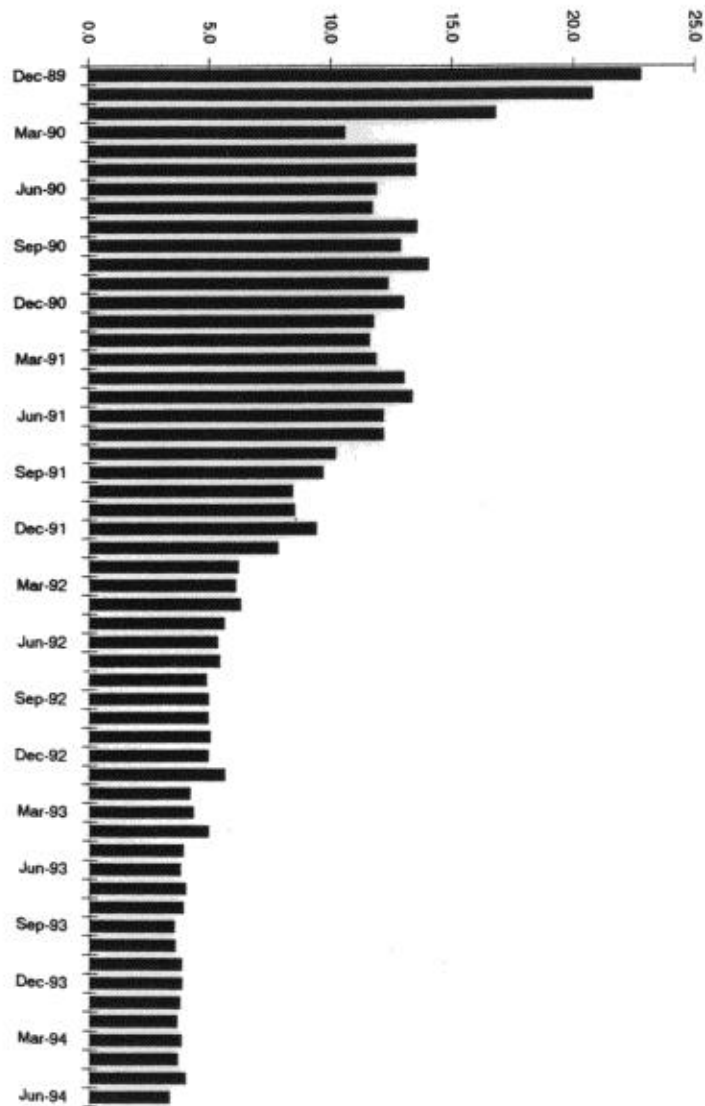
¹²⁴ I.e. the local speed limit plus the 10 km/h tolerance.

¹²⁵ In August 1994 the figure declined to 3.3%, Parliament of Victoria, Road Safety Committee, *Inquiry into the Demerit Points Scheme*, November 1994, para 3.1. See also Appendix G of that report.

¹²⁶ Vulcan P., *The Road Toll in Victoria — An Objective Analysis*, Paper Presented to Road Safety Forum 25/26 August 1993, Melbourne, 1.

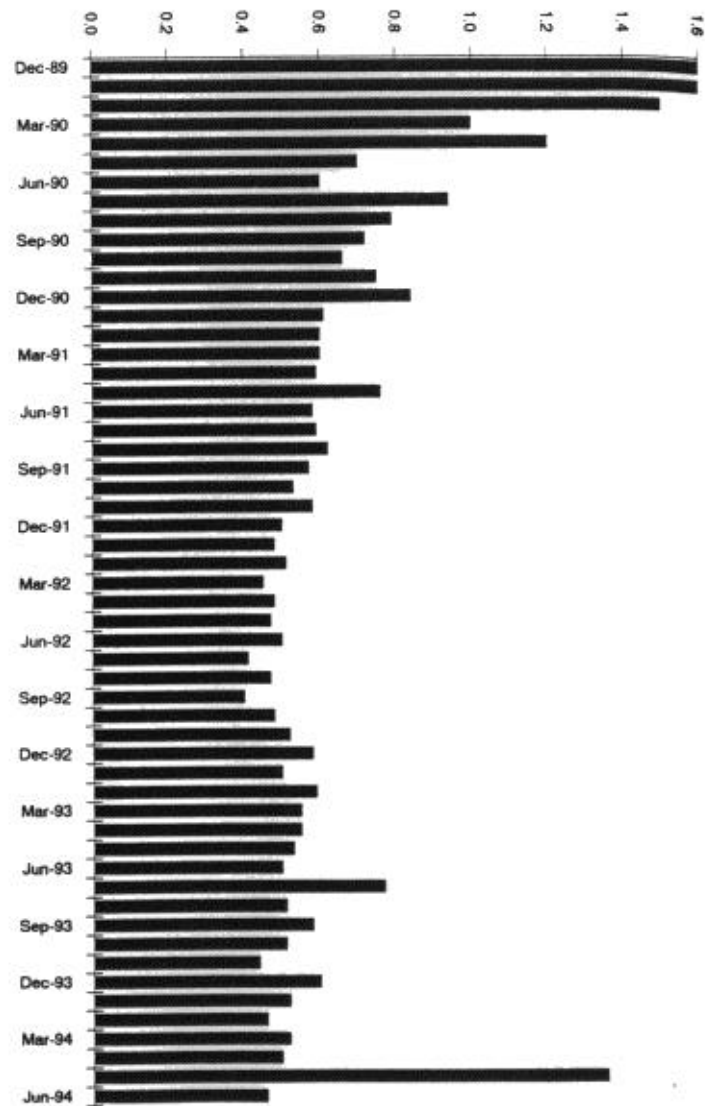
¹²⁷ See Vulcan P., *The Road Toll in Victoria — An Objective Analysis*, Paper Presented to Road Safety Forum 25/26 August 1993, Melbourne, 2-3, Figure 3.

Figure 6.2
Vehicle Speeds: Percentage of Vehicles Travelling Above the Threshold, December 1989 to June 1994, Victoria¹²⁸



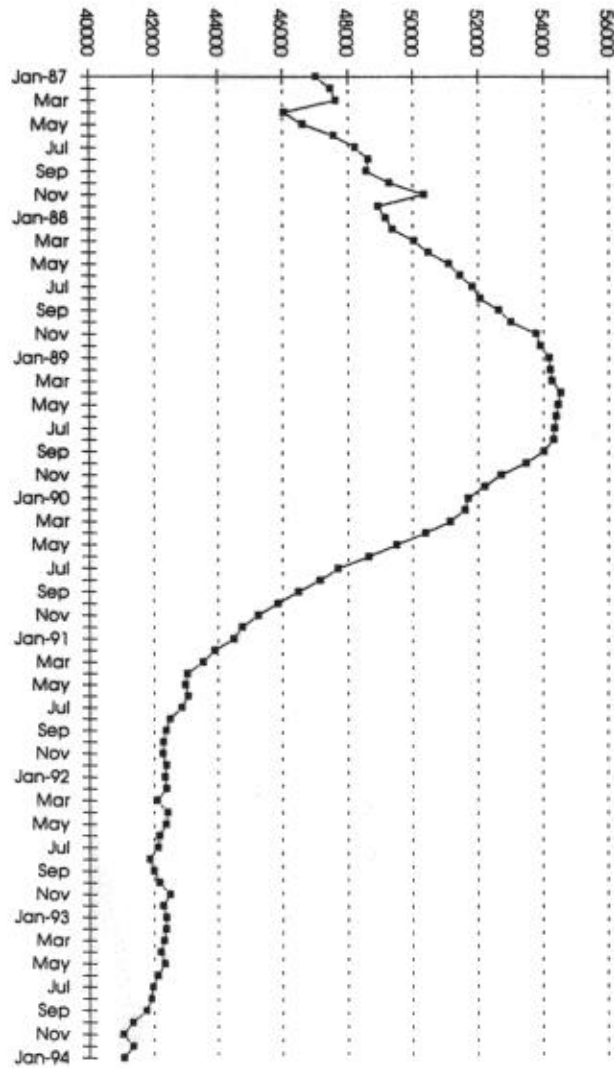
¹²⁸ Source: Traffic Camera Office, reproduced with permission.

Figure 6.3
**Vehicle Speeds: Percentage of Vehicles 30 km/h or More Above Limit,
 December 1989 to June 1994, Victoria¹²⁹**



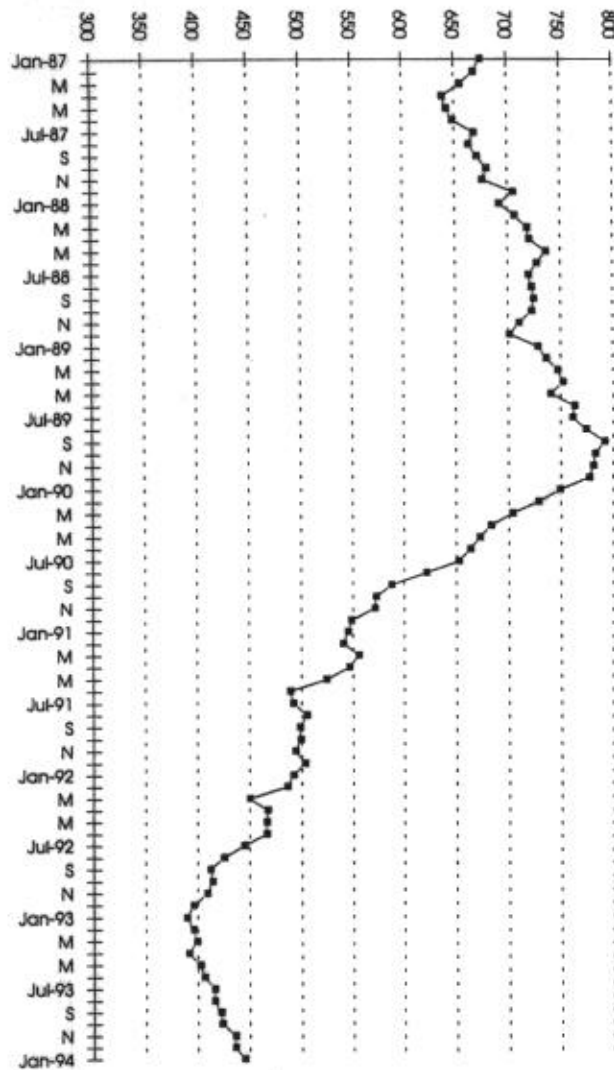
¹²⁹ Source: Traffic Camera Office, reproduced with permission.

Figure 6.4
Collisions: Moving 12-Month Total, 1987-94, Victoria¹³⁰



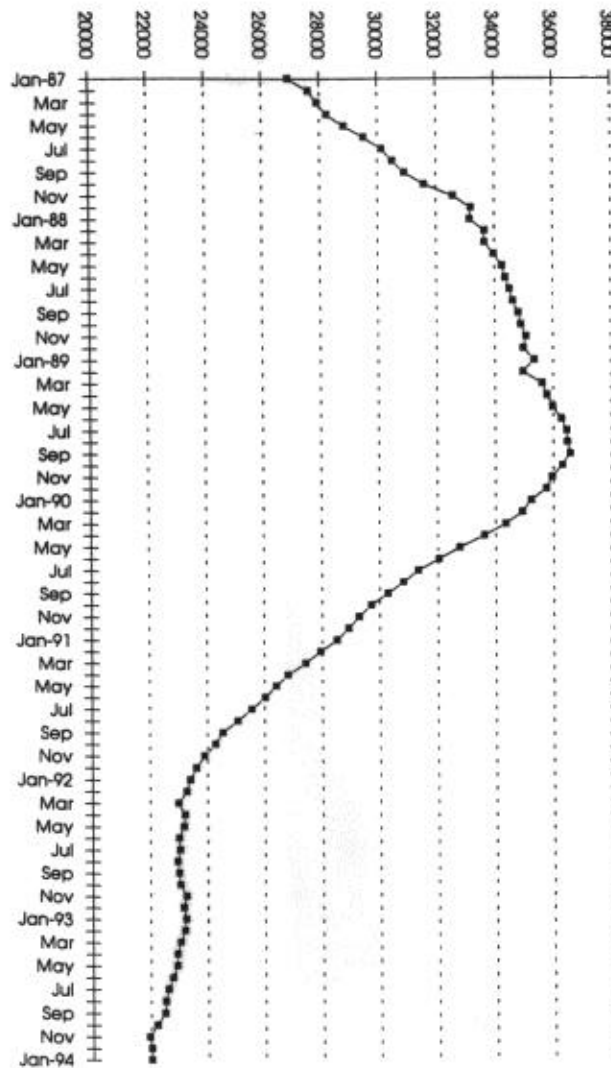
¹³⁰ Source: Traffic Camera Office, reproduced with permission.

Figure 6.5
Fatalities: Moving 12-Month Total, 1987-94, Victoria¹³¹



¹³¹ Source: Traffic Camera Office, reproduced with permission.

Figure 6.6
Injuries: Moving 12-Month Total, 1987-94, Victoria¹³²



¹³² Source: Traffic Camera Office, reproduced with permission.

6.10.15 Although the Traffic Camera Office has sought to stress the role that speed cameras have played in bringing about these reductions, the Royal Automobile Club of Victoria has said that it is too simplistic to assert that speed cameras are responsible for the drop in the road toll. It contends that lower vehicle usage in the recession, better roads and road signalling and an improved public awareness of road safety issues have produced the lower figures. The RACV received support for its views from the Victorian Parliamentary Social Development Committee in reporting the results of its enquiry into speed limits in Victoria. The committee examined overseas and Australian studies on the relevance of speed to accidents. While satisfied that speed was a contributing factor in road crashes, it was unable to say just how important a factor it was. It noted how estimates of the involvement of speeding in accidents differed widely. The police estimated 13 per cent of accidents were due to speeding, yet data presented to the committee by VicRoads indicated that over 90 per cent of all casualty accidents involved drivers travelling within 4 km/h of the posted speed limit.¹³³ The Social Development Committee called for an independent evaluation of the effectiveness of speed cameras.¹³⁴ It was not satisfied that there was sufficient evidence to support police claims that the speed camera scheme significantly contributed to road safety through the reduction of the speed at which vehicles travelled. The best interpretation the committee was prepared to put on the data, after calling for further evidence from the Road Safety Division of VicRoads, was that there was a suggestion that motorists would comply with speed limits if they believed that there was a high risk of detection.¹³⁵ This squares with the evidence obtained by Portans when she examined the potential value of speed cameras in 1988.¹³⁶ She commented that while the use of speed cameras and warning signs resulted in a reduction in vehicle speeds, particularly when combined with publicity, those effects tended to be limited to a relatively small area around the enforcement site. Although other studies had shown that drivers responded to a visible police presence by reducing their speed, they tended to do so only for up to a 5 km distance after being reminded of the possibility of detection.¹³⁷ Portans indicated that there was no evidence in the research literature that speed enforcement effects

¹³³ Victoria Parliament, Social Development Committee *Report Upon the Inquiry into Speed Limits in Victoria*, Melbourne, Government Printer, 1991, 174-75.

¹³⁴ Victoria Parliament, Social Development Committee, above, 106.

¹³⁵ Victorian Parliament, Social Development Committee, above, 104.

¹³⁶ Portans I., *The Potential Value of Speed Cameras*, Melbourne, Road Traffic Authority, 1988, 16.

¹³⁷ Galizio M., Jackson L.A. and Steele F.O., 'Enforcement Symbols and Driving Speed: The Overreaction Effect' (1979) 64 *Journal of Applied Psychology* 311-15.

generalise to areas other than the immediate vicinity of the enforcement action.¹³⁸

6.10.16 The most recent evaluation of the speed camera program was that undertaken by the Monash University Accident Research Centre during the period December 1989 to December 1991.¹³⁹ The criterion for effectiveness used by the Centre related to casualty crash frequency and injury severity using a comparison of Victorian and New South Wales data. It found that the speed camera program, together with its supporting publicity, and the increased number of traffic infringement notices issued, were causally associated with a reduction in deaths and injuries during the period under survey. However, it was noted that this reduction was also related to increased random breath testing programs and associated publicity, the improvement in road and traffic management through elimination or reduction of accident 'black spot' areas; the mandatory wearing of bicycle helmets and to a downturn in economic activity in the state reducing the amount of vehicle travel.¹⁴⁰ The authors of the report calculated that the benefit of reduction in deaths and injuries which could be attributed to these road safety measures (speed camera and breath testing) were valued at at least ten times the costs of the programs themselves.¹⁴¹ No reference was made to the fact that most of the relevant offences were dealt with by way of infringement notices which brought about additional cost savings by way of shortened legal proceedings, but nonetheless the findings provide empirical support for the belief that, at least in this road traffic area, the system is achieving both its correctional and fiscal objectives.

6.11 Other considerations

6.11.1 **Secondary deviance:** New techniques to control crime inevitably lead to counter-measures. When these counter-measures are themselves criminalised, criminality is amplified through a process of secondary deviance. This has to be taken into account in assessing the incidental costs of an infringement notice system supported by technological advances designed to identify offenders and to exact penalties as rapidly

¹³⁸ Portans I., *The Potential Value of Speed Cameras*, Melbourne, Road Traffic Authority, 1988, 2.

¹³⁹ Cameron M.H., Cavallo A. and Gilbert A., *Crash-based Evaluation of the Speed Camera Program in Victoria 1990-1991, Phase 1: General Effects; Phase 2: Effects of Program Mechanisms*, Monash University Accident Research Centre, Report No.42, December 1992.

¹⁴⁰ Thoresen T., Fry T., Heiman L. and Cameron M., *Linking Economic Activity, Road Safety Countermeasures and Other Factors With the Victorian Road Toll*, Monash University Accident Research Centre, Report No.29, 1992.

¹⁴¹ Vulcan P., *The Road Toll in Victoria—An Objective Analysis*, Paper Presented to Road Safety Forum 25/26 August 1993, Melbourne, 15.

and as simply as possible. Because the main group of infringement offenders are motorists, the major efforts to evade liability for infringement notices concern motor vehicles. These concentrate on thwarting identification of the vehicle, or the driver responsible for the offence. A number of inventive stratagems have been developed; some are aided by the ineptitude of government.

6.11.2 As has been mentioned earlier,¹⁴² some motorists keen to avoid receiving parking or traffic infringement notices in relation to vehicles they have recently purchased deliberately choose not to register the transfer of ownership into their own name. Though the *Road Safety (Vehicles) Regulations* 1988, r.35 calls upon *both* the disposer and acquirer to notify VicRoads within seven days of sale or other disposal of the vehicle, until 1993, the reverse of the certificate of registration setting out the duties of those privately disposing of and acquiring a vehicle called upon the seller to do no more than provide a roadworthiness certificate to the acquirer. It asks the acquirer/buyer to lodge a current roadworthy certificate, the vehicle transfer notice which is on the reverse side of the registration certificate, and the requisite fees, within seven days of the date of acquisition. The seller had to sign the Notice of Disposal, but there was no indication that he or she was obliged to register the transfer, or otherwise to notify VicRoads of the sale or disposal of the vehicle. If parking infringement notices were attached to a vehicle, or it was photographed by a speed, red-light or bus or transit lane camera, the infringement notice or follow up enforcement order was dispatched to the address still registered with VicRoads, i.e. that of the previous owner. The previous owner has the opportunity to avoid liability under the owner-onus provisions by providing the enforcement agency with a sworn statement either giving the name and address of the person in charge of the vehicle at the relevant time, or by otherwise satisfying the agency that he or she did not know and could not, with reasonable diligence, have ascertained the actual driver's name and address, it puts the previous owner to considerable inconvenience and does not assist in identifying the true owner.¹⁴³ Even when the annual renewal of registration is due, VicRoads has allowed the purchaser of a vehicle to continue to avoid responsibility by renewing the annual registration by an anonymous cash payment supported by the story that the registration renewal reminder has been lost. Registration renewal has been accepted in these circumstances, thus continuing the apparent ownership of the vehicle in the name of the

¹⁴² See above 6.9.24.

¹⁴³ *Road Safety Act* 1986 s.66(3) and s.86(3).

vendor.¹⁴⁴ Even when the purchaser has become registered, he or she can avoid being located for the purpose of enforcement of infringement notices by changing address and not notifying VicRoads. While registration reminders are sent to the old address, the registration can still be renewed annually in the manner outlined above. In 1993, in order to meet some of these difficulties, procedures were altered to require both the disposer of the vehicle and the acquirer to complete a common *Application to Transfer Vehicle Registration* form. Both the buyer and the seller are now required to separately send their respective copies to VicRoads.

6.11.3 Motorists have been inventive in other ways. Apart from driving with obscured or missing number plates, or illegally swapping them, thousands of Victorian motorists have been altering or defacing their car registration plates so as to prevent a camera registering a readable image of the number plate. In February 1992, it was reported that more than 11 300 photographs taken by speed cameras over the preceding seven months had been discarded because the numbers were blurred or obscured.¹⁴⁵ In 300 of the cases, the number plate did not match the vehicle description held by VicRoads, thus indicating that it had been altered, or was entirely false.¹⁴⁶ There is also evidence that drivers have been deliberately 'cooking' number plates in their home ovens in order to discolour them. This reduces the contrast between the background and the registration letters and makes the plate difficult to read in a photographic image taken from a distance and from an angle. In addition, defects in manufacturing a number of the plates have produced ones which darken quickly under ordinary weathering. There has not been a general recall of these defective numberplates, though VicRoads will replace them free of charge on request. Motorists, however, have no special incentive to act on this offer, other than avoiding the risk of being prosecuted for having an illegible numberplate. An alternative approach has been to apply a transparent lacquer to number plates, which, in theory, produces a reflective effect designed to defeat the photo-electric flash used by speed cameras.¹⁴⁷ It is an offence to drive with number plates that are obscured, illegible or indistinguishable from a distance of less than 20

¹⁴⁴ The renewed registration certificate is handed to the person paying the registration fee. In New South Wales the renewed certificate must be posted to the address of the owner shown on the central record.

¹⁴⁵ "'Cooked' rego plates foil speed cameras', *Sunday Age*, 16 February 1992, p.1.

¹⁴⁶ There are also problems in identifying the drivers of prime movers towing trailers of truck-trailer, or articulated vehicle combinations, where the camera records the registration of the trailer which is different from that of the prime mover.

¹⁴⁷ 'Motorists told not to tamper with plates', *Sunday Age*, 21 March 1993, p.4. There are also reports of South Australian motorists attaching fins to the middle of their plates to obscure the numbers when photographed from the side.

metres.¹⁴⁸ It is also an offence deliberately to use a device designed to prevent the effective use of a prescribed speed measuring device, or to detect when such a device is being used.¹⁴⁹ Flashing headlights at on-coming motorists in order to warn them of the presence of a speed camera or other detection device is also construed by police as the offence of obstructing or hindering them in the execution of their duty.¹⁵⁰ However, there is authority which establishes that before a conviction can be recorded for such an offence, it must not only be proven beyond reasonable doubt that a warning was given, but also that it was given to those actually committing an offence and that the person giving the warning was acting in concert with the offenders to obstruct or hinder the police.¹⁵¹

6.11.4 There is also evidence that drivers are avoiding liability by misusing their power to nominate another person as the actual person in charge of the vehicle. They find friends, relatives, or strangers with few, if any, driver demerit points and persuade them to accept the blame for offences recorded by speed and red light cameras.¹⁵² The drivers who recruit others to accept liability on their behalf are already on the brink of losing their own driving licence because the offence is either one which leads to an automatic suspension of the licence, or they have already accrued so many demerit points that the next offence will lead to the suspension of their licence for three or six months, depending on the number of points built up. The police have stated that they believe the main offenders are those who rely on their driver licences for their employment. Those who agree to be a party to a false nomination are guilty of conspiracy to pervert the course of justice and the driver making the false statutory declaration in making the nomination is guilty of perjury.

6.11.5 A riskier scheme is to try to rely on delay for as long as possible in responding to the infringement notice and the follow-up letters with a view to opting for a summary prosecution twelve months after the offence occurred and when the matter is statute barred.¹⁵³ This is not the same as simply ignoring the infringement notice in the hope that the

¹⁴⁸ See *Road Safety (Vehicles) Regulations* 1988, r. 215, 217, 218 and 222.

¹⁴⁹ *Road Safety Act* 1986, s.74(1).

¹⁵⁰ *Summary Offences Act* 1986, s.52(1). See *Hinchcliffe v. Sheldon* [1955] 3 All E.R. 406 (obstructing means 'making it more difficult for the police to carry out their duties'); *Betts v. Stevens* [1910] 1 K.B. 1 (warning speeding motorists of a 'police trap').

¹⁵¹ *Bastable v. Little* [1907] 1 K.B. 59 (not obstruction when warning is given to drivers not breaking the law); *Young v. Owen* [1972] A.L.R. 671

¹⁵² 'Police say bogus drivers "take fall"', *Sunday Age*, 31 May 1992, p.8.

¹⁵³ This technique has been restricted in relation to traffic and parking infringements by the addition of *Road Safety Act* 1986, s.66(3A) & s.86(3A) in 1994 to extend the time for commencing proceedings by twelve months if the person issued with such an infringement notice formally nominates the driver at the time.

inefficiencies of the Sheriff's Office in tracking down defaulters will last for more than five years, thus causing any warrants for enforcement to lapse. It involves the alleged offender requesting the matter to be heard in a magistrates' court, but only after the twelve-month limitation period has elapsed. The difficulty with this process is that it assumes that the enforcement of the infringement penalty either by distress, arrest, or a suspension of a driver's licence or motor vehicle registration will not occur until almost a year has passed. At that stage, the recipient of the infringement notice has no absolute right to opt for the matter to be prosecuted summarily. However, under the *Magistrates' Court Act 1989*, even though an enforcement order has been made, the person against whom it has been issued, or the agency which originally issued the infringement notice, may apply for its revocation.¹⁵⁴ If the issuing agency can itself be persuaded to apply for revocation (for instance on the basis of the recipient of the notice denying that he or she was the driver of the vehicle at the relevant time and has otherwise good reason for not having notified that fact within the prescribed 28 days), the Registrar of the PERIN Court must revoke the enforcement order and refer the matter to the Magistrates' Court for hearing and determination. Any falsehood in the reasons given by the defendant will itself constitute a separate offence. If the agency refuses to revoke the matter and the application comes from the defendant, the Registrar retains a discretion whether or not to revoke the order. If the Registrar of the Magistrates' Court is not persuaded to revoke the enforcement order, the defendant will have incurred additional substantial costs. However, if all these contingencies are overcome, and the matter is referred to a Magistrates' Court for hearing and determination more than a year after the date of the alleged offence, it will be statute barred under the *Magistrates' Court Act 1989*, s.26(4).

6.11.6 Another technique is to establish a company with minimal assets for the purpose of leasing vehicles which can incur traffic and parking fines with impunity. The company declines to identify the actual driver of the vehicle and, having no assets, frustrates any efforts at enforcement against it. Action to cancel the registration of the vehicle affects the company which leased the vehicle to the offender, but not the offending company or driver. The provisions of the *Sentencing Act 1991* which allow action to be taken personally against directors of impecunious corporations which incur fines do not apply to infringement penalties.¹⁵⁵ However, the government has indicated an intention to introduce such legislation in 1994.

¹⁵⁴ *Magistrates' Court Act 1989*, Sch.7, cl.10; *Road Safety Act 1986*, s.89E.

¹⁵⁵ See *Sentencing Act 1991*, s.50(6)&(7); *Magistrates' Court Act 1989*, s.98.

6.11.7 Since 1991, the *Road Safety (Procedures) Regulations* 1988, r.227(3) has permitted drivers' licences to be suspended administratively by VicRoads as an indefinite sanction for non-payment of court imposed fines, costs, or orders for restitution arising out of the use of a motor vehicle. This power also extends to court orders in respect of unpaid parking and traffic infringement notices. However, according to the Auditor-General's Report for 1994,¹⁵⁶ licence suspension has not been a totally effective method of obtaining payment of the fine with only 57 per cent making payment when threatened with licence suspension. The remaining 43 per cent had their licences suspended until they either paid all the outstanding fines or entered into an instalment payment arrangement acceptable to the sheriff. It may well be that none of the 43 per cent are any longer driving, but it is more probable that some are now continuing to do so unlawfully.

6.11.8 **Police public relations:** An assessment of the success or otherwise in cost-benefit terms of the infringement notice system must also be based upon an evaluation of its effect on the quality of the relationship between the agency of government enforcing the law and the public in the encounters giving rise to the detection of the offence. A balance must be kept between law enforcement effectiveness and good public relations. Any evaluation must consider whether there has been any deterioration in this relationship. This, in part, depends on the public's perception of the fairness of the infringement notice procedure itself, as well as the quality of any human interaction which occurs in the detection of the offence. The issuing of infringement notices in the case of photographically detected offences normally excludes any human contact and therefore offers the enforcer ease of administration and anonymity. Even where infringement notices are issued to the offender personally, the ease of administration has undermined the willingness of police and other law enforcers to exercise their discretion to issue verbal or written warnings instead of a ticket.¹⁵⁷ Penalising more and more citizens each year may not be the best means of securing the consensus of the community in relation to observing codes of conduct aimed at maximising general safety and convenience, when many, including the enforcers themselves, are convinced that the exercise has as much to do with revenue as controlling undesired behaviour. This attitude colours the public's perception of the enforcement agency and may undermine public cooperativeness in other aspects of policing. Data is not available on the number of infringement notices issued as the result of face-to-face

¹⁵⁶ Auditor-General of Victoria, *Report on Ministerial Portfolios*, May 1994, Melbourne 1994, 3.9.39.

¹⁵⁷ See letter of complaint 'Unenlightened attitude' Age 12 November 1991, p.12 protesting that \$135 infringement notice was issued for headlight offence when warning was more appropriate.

confrontations between the ticket issuer and the recipient. Nor is there information available on the quality of that interaction. So many are issued by affixing the notice to a vehicle, or sending it by post some time after the event, when recall of the circumstances of the alleged offending may be diminished, that it is understandable that the initial surprise is converted to ill-will towards the agency in whose name the infringement notice has been issued.

6.11.9 United Kingdom figures from crime surveys in 1982 and 1988 suggest that about one in eight of the population in Britain during any one year have been in a vehicle stopped by the police. A later study by Southgate and Black documents one-fifth of drivers surveyed reporting such a stop.¹⁵⁸ The authors make the point that whether officers warn, or impose a penalty, they are reaching and transmitting salient messages to a far wider audience than the driver to whom they are talking. They comment that high levels of strict enforcement, whether in direct face-to-face dealings with offenders, or more indirectly via the issue of infringement notices, seem to have produced serious adverse effects on the quality of police-public relations in that country including loss of confidence in their fairness.

6.11.10 **Fairness:** One of the most important intangible costs is the intensity of feeling generated by on-the-spot tickets when they are perceived as having being issued unfairly.¹⁵⁹ When they are issued by the police, this undermines the shared values upon which the criminal law depends for compliance. Complaints of unfairness, particularly in respect of infringement notices received as a result of the use of speed cameras, have related to:

- Use of infringement notices for illegitimate revenue purposes.
- Infringement penalties being set at a level disproportionate to the wrongdoing either as measured by reference to other forms of

¹⁵⁸ Southgate P. and Mirrlees-Black C., *Traffic Policing in Changing Times*, Home Office Research Study No. 124, Home Office Research and Planning Unit, London, HMSO, 1991, 36.

¹⁵⁹ E.g. Letters to the Editor and feature articles in major metropolitan and local newspapers in Victoria have pursued the themes of unfairness and revenue raising with vigour, e.g. 'On-the-spot justice growing in an unprincipled fashion' *Age* 8 July 1991; 'The Computer Magistrate is biased against the poor' *Age* 12 July 1991; 'Police beat staff cuts with traffic fine rise' *Age* 10 August 1991; 'Bad driving a fine revenue raiser' *Sunday Age* 11 August 1991; 'Why our drivers snap back at speed cameras' *Age* 3 September 1991; 'State's salvation lies in Speedola' *Age* 2 October 1991; 'The focus on speed turns police into tax collectors' *Age* 11 November 1991; 'Unenlightened attitude' *Age* 12 November 1991; 'Outcry on speed cameras can no longer be ignored' *Age* 11 December 1991; 'Speed camera plan pays good dividend' *Age* 13 December 1991; 'Devious use of cameras' *Waverley Gazette* 18 December 1991; 'Last word on speedcams' *Sun-Herald* 1 January 1992; 'They can lock me up and feed me' *Age* 18 February 1992; 'Too many drivers wrongly fined' *Age* 24 April 1992.

infringement, or in comparison to penalties imposed in open court for similar summary offences.

- Thresholds of intervention being set too low. For instance, where tickets are written for parking, speeding, drinking, or turning violations when the conduct was close to the lawful limits.
- Failure to use less punitive measures, such as warnings, particularly when the offence amounted to a marginal breach of the law, e.g. where turning at an intersection is prohibited at peak hour, making such a turn five minutes after the peak hour was deemed to have commenced.
- Deliberate placement of the detection devices on which many traffic infringement notices depend in locations that are either inappropriate (e.g. shortly before a sign increasing the speed limit), or which smack of entrapment (e.g. at the bottom of a hill).
- Delay in advising alleged offenders of the fact that they have been detected. Where drivers daily travel the same route and in the same fashion, if this involves an infringement it may be repeated and detected a number of times with the infringement penalties reaching high levels before any notice of wrongdoing has been given to the offender.
- The fact that, in practical terms, infringement notices make the police (or any other agency issuing them) the accuser, adjudicator and sentencer all in one.

6.11.11 Ultimately the effectiveness of legal authorities depends on their ability to secure voluntary compliance from the public. Agencies charged with the enforcement of any aspect of the law cannot hope to control citizens by coercive means alone. They have to be sensitive to the public's attitude towards the rules its members are being asked to observe. There is a difference between complying with the law for instrumental reasons (i.e. fear of the consequences of not doing so) and conforming to it for normative ones (i.e. acceptance of its moral and social merit). In his classic study, *Why People Obey the Law*,¹⁶⁰ the American psychologist, Tom Tyler, found that compliance was much more strongly related to a widespread acceptance of a moral obligation to obey the rule than the adverse consequences of being caught. This is consistent with Homel's 1988 Australian review of models of deterrence which showed that the perceived social unacceptability of an offence was a major deterrent to committing it.¹⁶¹ Likewise, in the United Kingdom

¹⁶⁰ Tyler T.R., *Why People Obey the Law*, New Haven, Yale University Press, 1990.

¹⁶¹ Homel R., *Policing and Punishing the Drinking Driver*, New York, Springer Verlag, 1988.

study by Southgate and Black of almost 2000 drivers who claimed they never drove in excess of the speed limit on urban roads, 13 per cent were concerned with the potential for an accident, 26 per cent with the legal consequences and 56 per cent with the social unacceptability of the behaviour.¹⁶² Tyler's study added an important further dimension. Views on the legitimacy of the law of the 1500 respondents in his sample were strongly coloured by the fairness of the procedures adopted in its enforcement. For example, 45 per cent of those studied, who had been stopped by police for motoring offences, did not get the outcome most favourable to them. They got a traffic ticket instead. Nevertheless, three-quarters reported that the procedure and outcome had been fair. Fair procedure was found by Tyler to 'cushion' the effect of unfavourable outcomes.¹⁶³ His findings are that, in assessing the legitimacy of a law, those subject to the legal system regard the way in which they are treated as being at least as important as the extent to which they gain any personal benefit, or avoid any disability or punishment under that law. He also examined the dimensions of fairness. What was counted as essential to fairness was the opportunity to state one's case, to have one's views properly considered and to be treated with dignity and respect by a neutral decision-maker.¹⁶⁴

6.11.12 The infringement notice system falls short of these standards of fairness in a number of ways. Recipients of tickets, particularly those caught by automatic detection devices, have minimal opportunity to state their case or to have their views considered upon either substantive liability or penalty unless they insist on by-passing the on-the-spot ticket system entirely by opting for a judicial hearing. This brings with it added expense, inconvenience and risk of higher penalties. The automatic conviction and suspension of licence which come with some forms of infringement notice are particularly deficient in terms of procedural rights. Claims for the enhancement of procedural rights are usually based on the need to redress the possibility of error. They have been resisted on the grounds that they contribute to conflict and create an unnecessary administrative burden for the courts and others in relation to what are essentially minor and uncontested offences. The fact that the matters are uncontested is the result of procedures already in place which make it difficult to mount a judicial challenge. The assertion that infringement penalties are minor is

¹⁶² Southgate P. and Mirrlees-Black C., *Traffic Policing in Changing Times*, Home Office Research Study No. 124, Home Office Research and Planning Unit, London, HMSO, 1991, 63.

¹⁶³ '... fair procedures can act as a cushion of support when authorities are delivering unfavourable outcomes', Tyler T.R., *Why People Obey the Law*, New Haven, Yale University Press, 1990, 107. See also Ch.6 'What Do People Want from Legal Authorities?'

¹⁶⁴ Tyler T.R., *Why People Obey the Law*, New Haven, Yale University Press, 1990, Ch.13 'The Psychology of Legitimacy'.

also becoming less and less true. However, the real significance of Tyler's findings, from a cost-benefit analysis point of view, is that it provides a sound utilitarian warrant for giving weight to the equity considerations in any such analysis. A growing sense of unfairness and the withholding of public cooperation because the law is being enforced in a way which offends communal expectations must appear, in any cost-benefit analysis of the infringement notice system, as a loyalty cost, not merely to the infringement notice system itself, but to the criminal justice system as a whole.

Sanctions

7.1 Warnings and interventions as sanctions

7.1.1 The infringement notice system is about punishment without prosecution. Although it involves diversion of offenders from the courts, it is still underwritten by a strategy of deterrence. It continues to assume that the imposition of a punitive sanction will produce greater compliance with the standards enforced by the use of on-the-spot tickets than other means of social control. The question whether compliance can be achieved by other more proactive and preventive techniques such as education, improved road design and more positive incentives for complying with the law¹ was raised in the previous chapter on *Costs and Benefits*. The fact that over 2.3 million infringement notices were issued in Victoria in the twelve months under study, indicates that the deterrent effect of the system is not as potent as desired. However, the number of citizens actually deterred from breach of the law during this period is unknown. The fact that the number of violations which come to official attention number in the millions is the primary reason for designing alternatives to judicial proceedings. But the size of those numbers also shapes the choice of sanction. Although the infringement notice system pays lip service to the right of full hearing on matters of liability and sentence, it is actually designed to prevent cases coming into the judicial system, and to avoid a complex sanctioning system. Thus, all the main attributes of a conventional sentencing system are absent: there is no hierarchy of sanctions; no legislative structure which sets increased

¹ E.g. no-claim insurance bonuses for accident-free driving; refundable deposits on bottles, cans and other disposable containers as an anti-littering stratagem, Freiberg A., 'Reward, Law and Power: Toward A Jurisprudence of the Carrot', (1986) 19 *Australian and New Zealand Journal of Criminology* 91. New South Wales has a 'Gold' licence scheme offering a reduced licence renewal fee for its five-year drivers' licences, for having a disqualification or cancellation free licence-renewal period.

penalties for recidivists; practically no grading of offences to take into account aggravating features and certainly no aggravating elements of a personal nature; nor is there any enquiry into mitigating factors in either the circumstances of the offence, or the personal character and/or background of the offender. Mitigating considerations ordinarily determine whether a reduction in severity, or an alteration in the type of sanction is warranted, but this possibility is denied in the enforcement of infringement penalties. There is not even an opportunity to challenge the sanction on appeal. While the principle of proportionality is respected to the extent that a number of different levels of fixed penalty are allocated to infringement offences, in accordance with some estimation of their gravity, no argument about disproportion or disparity of penalty in the individual case will be entertained, unless the alleged offender insists on taking up the option of a full judicial determination of the alleged wrongdoing.

7.1.2 Even though the infringement system runs on fixed, non-negotiable, penalties, there is still plenty of scope for discretion in deciding what action, if any, should be taken in relation to the alleged violation. As will be pointed out in Chapter 9 *The Enforcement Threshold*, there is a real risk that the ease with which on-the-spot tickets can be written reduces the likelihood that the enforcement official will make use of other discretionary options. These can include an informal verbal, or a formal written warning. Both avoid the monetary penalty and other consequential effects.² Nonetheless, a formal warning is a sanction in its own right. It is capable of further development. Thus, when a person acquires enough formal warnings, he or she might be referred to other non-judicial modes of intervention such as mediation centres, driver education programs, or alcohol or drug counselling centres.³ Greater use of the discretion to issue warnings as part of a continuum of sanctions ranging from the least to the most formal and intrusive is desirable. In New South Wales, it has been suggested that the pad of infringement notice forms itself be re-designed to incorporate a box on each form allowing the apprehending officer to use the notice for the purpose of issuing a formal caution, rather than an infringement notice.⁴ The fact that the pre-printed pad of notices itself contains provision for issuing a formal caution, is

² E.g. accrual of demerit points, or suspension of driving licences.

³ The use of warning letters was encouraged by the Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, para 6.9.

⁴ Ireland S., 'Use of a Citation Notice by Police as an Alternative to Arrest and Charge', Paper presented to the Seventh Annual Conference of the ANZ Society of Criminology, University of Melbourne, 2-4 November 1991.

intended to remind the officer about to write a ticket that he or she still retains the discretion to deal with minor offences in other ways.

7.1.3 The advantage of extending discretionary power in this fashion is that it promotes compliance with the law by use of the least restrictive measure appropriate to the particular case. However, this has to be counter-balanced by the danger that, when enforcement officers are invested with too wide a discretion, they will act inconsistently or unfairly. The problem of maintaining consistency is particularly significant in respect of many of the Acts which allow for the issue of infringement notices because the legislation also grants police or other enforcement officials other extensive powers in relation to the enforcement of the legislation. These include the power to stop vehicles, identify and detain suspected offenders, confiscate keys, suspend licences, conduct searches or inspections, and especially in relation to commercial road transport vehicles, to require steps to be taken to remedy breaches of legislative standards relating to the size and weight of the load, the level of pollutants emitted, and general vehicle roadworthiness and the like. The exercise of these powers may be far more burdensome to the alleged offender than the monetary penalty sought by way of expiation of any on-the-spot ticket. The control of inappropriate use of such discretions may require the formulation of non-legislative guidelines, not only in relation to the standards to be applied, but which also indicate how and when it is appropriate to use the different forms of intervention available in the armoury of sanctions.

7.2 Objectives of punishment

7.2.1 The four principal objectives of punishment are deterrence, retribution, incapacitation, and rehabilitation. Not all these justifications apply in the use of infringement penalties. *Deterrence* continues to be a principal objective but, as has been pointed out earlier,⁵ the ability of the system to produce general or special deterrence depends not only on the severity of the sanction, but also the perceived probability of detection and punishment. To maintain the perception that there is a high risk of detection can be costly in terms of the number of enforcement officers required to maintain visibility, unless technological innovations can help out. Furthermore, if penalties are increased in an effort to improve their deterrent efficacy in the face of the continuing high level of offending, they may become disproportionately severe. That gives rise to questions regarding the fairness of the infringement penalties. The unfairness may

⁵ See above 6.2.3.

arise not only because of severity and the exclusion of mitigating factors, but also because the receipt of an on-the-spot ticket depends upon strong elements of randomness. The vast majority of parking, motoring and littering offenders are not detected. Even when alterations in penalty levels are followed by obvious changes in public behaviour, it remains difficult to untangle whether these are due to short-term deterrent effects, or longer term changes in attitude towards complying with the law. Deterrence is always difficult to measure because the number of people who did not breach the law because of their consciousness of the penalty which might be applied, as opposed to their normal propensity to be law abiding citizens is unknown.

7.2.2 *Retribution* is a less obvious justification for dealing with the minor offences normally punished by infringement penalties. However, it does have a bearing on the relationship between the penalty level and the gravity of the offence. Retributive principles require that respect be given to the concept of proportionality. The penalty imposed on the offender should bear some relationship to the harm threatened or caused by the wrongdoing. For infringement notices this is more pertinent to the legislative assignment of fixed penalties, than in fine tuning the penalty for each individual offender. Because the infringement notice system does not individualise penalties, its designers have a greater obligation to ensure that a serious effort has been made to rank the offences as well as penalties in some order of gravity in order that the two may be matched.

7.2.3 *Incapacitation* is a significant objective in the use of infringement notices. But the most obvious and conventional form of incapacitation, imprisonment, is not directly available. For traffic infringements incapacitation is sought to be achieved through loss of drivers' licences. This sanction, which is additional to payment of the monetary penalty, has been added to certain drink-driving and excessive speed infringements. It can also be an indirect result of other traffic violations which lead to the earning of demerit points. When enough of these have been acquired, the licence is withdrawn and, in theory, the driver is forced off the road. Loss of vehicle registration for corporate offenders has a similar incapacitative rationale. So too has legislation which permits vehicles to be towed away and impounded because of parking and other traffic offences. In the hierarchy of the conventional sanctions open to the courts, suspension or cancellation of driving privileges is regarded as a more powerful deterrent than a fine. It certainly is appropriate for the more serious traffic violations. To act upon a person's licence is a powerful sanction because of the effect of its loss from an economic and convenience point of view. The tendency to append these and similar supplementary forms of disqualification to the standard monetary infringement penalty is a noticeable feature of recent

developments in relation to infringement offences. These developments carry the risk that they will produce an inappropriate escalation of penalties without procedural protections normally regarded as essential and which, in aggregate, may produce levels of punishment which are far more onerous than a proportionate response would warrant.

7.2.4 In assessing the significance of adding disqualification measures, recognition should also be given to the fact that the motor vehicle itself may have special emotional and symbolic significance to the driver beyond its utility and convenience as a form of transport. The United Kingdom North Report observed that:⁶

... some drivers also obtain great satisfaction in the form of a sense of freedom and of overcoming human physical limitations. The vehicle may be an individual's major personal investment in modern technology and, whereas much technology seems to impose control on the individual, the motor vehicle can give the individual a sense of control over it, and through it, over his life-style. We feel bound to recognise the intensity of such feelings if we are adequately to take into account the strength with which restrictions on the opportunity to own and use a motor vehicle may be resisted.

7.2.5 *Rehabilitation* is not a direct objective of the infringement notice system. The needs of the offender are neither identified, nor catered for. However, where licence cancellation and disqualification occur as the result of a conviction for drink driving offences, Victorian law obliges offenders to participate in drink-driving education programs.⁷ Since cancellation and disqualification of licence for drink-driving infringements is provided for under s.89C of the *Road Safety Act 1986 (Vic)*, and s.89A treats such infringements as a conviction for the offence specified in the infringement notice, this must be seen as one of the few examples of a rehabilitative program being linked with an infringement notice. Again, however, this is a standardised legislative response to the offending and not the result of any individualised judgment about the rehabilitative needs of the offender.

7.3 Allocation of responsibility

7.3.1 The criminal law operates on the assumption that the phenomena against which it is being directed are the result of the actions and motivations of individuals, rather than more abstract entities such as corporations. Furthermore, it normally imposes liability directly upon the

⁶ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 18.

⁷ *Road Safety Act 1986 (Vic)*, s.50A(1).

individual who is regarded as personally responsible for the conduct, rather than upon some other who was thought somehow to be vicariously responsible for the wrongdoing. The general view is that, in allocating punishment, it is fairer that people be held accountable for their own acts, rather than the actions of others. While this general principle still holds true for a large number of infringement offences, the doctrine of vicarious responsibility has taken a strong hold. It is now relied upon to support the imposition of corporate liability and features predominantly in relation to infringement notices in the form of the *owner-onus* doctrine. Owner-onus is not the same as holding personally responsible those elsewhere in the chain of command who, by their own actions, have contributed to the breach of the law. To have overloaded a commercial goods vehicle can be made a separate offence from that of driving the overloaded vehicle. The former offence is directed towards others in the transport chain who make decisions about loads and safety. Since these are not within the provenance of the actual driver pulled over on the highway, owner-onus would make the owner of the vehicle responsible for the driving offence, though not the actual driver. In relation to road transport offences, the National Road Transport Commission, in its Discussion Paper on Compliance with the Road Transport Law, has commented on the need for legislation to be drafted to hold others responsible for their role in producing the pressures on drivers' to break the law:⁸

Examples of parties in the transport chain who may share responsibility for breaches of standards include:

- consignors, freight forwarders or prime contractors who expressly require, offer incentives or set schedules that implicitly require drivers to drive faster or for longer than is permitted;
- consignors, freight forwarders or prime contractors who fail to supply drivers with accurate documentation in relation to weight or contents of loads and place them in breach of mass or dangerous goods requirements; and
- owners, repairers and mechanics who permit or cause another person to drive a vehicle while unroadworthy.

In the Commission's preliminary view, it is quite right to hold accountable all those who have the capacity to control the conduct or the circumstances giving rise to the breach. By focussing liability and targeting sanctions more efficiently, the impact of the law will be felt by those in the

⁸ National Road Transport Commission, *Compliance with the Road Transport Law—Principles, Objectives and Strategies: Discussion Paper*, National Road Transport Commission, Melbourne, June 1994, 14.

hierarchy of responsibility most likely to bring about the necessary change towards law abiding behaviour. This approach has the added advantage of avoiding the unfairness of scapegoating the person who happens to be last in the chain of responsibility.

7.3.2 Because mens rea is irrelevant to liability for infringement offences, it is much easier to rely on vicarious responsibility. The owner-onus provisions, which are a feature of traffic infringement notices, attribute liability to the registered owner of the vehicle. They cast responsibility on that person to rebut the presumption that he or she was responsible for the offence. The person may have neither been the driver nor, because of the inaccuracies of the motor registration records system, the actual owner of the vehicle. Any system which punishes people selected on the basis of a combination of strict liability and vicarious liability risks holding them accountable for conduct for which they have no moral responsibility and which could not have been prevented by any reasonable diligence on their part. This carries with it a high potential for unfairness. An infringement notice system must allow some leeway, whether by way of administrative discretion or substantive defence such as reasonable mistake of fact, act of a stranger, or due diligence to avoid unfairly penalising innocent persons. At the moment, substantive defences can only be relied upon if the offender opts for a judicial hearing. Even then it may not be clear, because of the poor drafting of the legislation creating the infringement offence itself, whether the substantive defences are available. For this reason, it is regarded as better that the elements of substantive and procedural fairness be incorporated within legislation, rather than relying on administrative discretion in the fond hope that administrative commonsense will ensure that the system does not work injustice. The preparation of a common infringement penalty statute which addresses these matters is all the more important and urgent.⁹

7.4 Setting fixed penalty levels

7.4.1 At the commencement of this study, in April 1991, the list of infringement offences compiled by the Victoria Police for the use of their officers¹⁰ showed thirty different penalty levels in relation to 362 separate offences.¹¹ They ranged in gravity from \$10 for jaywalking, failure to wear

⁹ See below Chapter 10.

¹⁰ Victoria Police, *Penalty Notice Offences and Codes*, 11 April 1991, VP Form 508A (listing infringement penalty codes for traffic, litter, tobacco, environment protection, marine and transport infringements).

¹¹ The dollar amounts of the infringement penalties were: 10, 15, 20, 25, 40, 50, 60, 70, 75, 80, 85, 100, 110, 115, 120, 135, 170, 180, 200, 220, 250, 270, 300, 320, 350, 375, 420, 500 & 750.

an approved bicycle helmet, or failure to park within a single parking bay, at the lowest level of infringement penalties, to \$750 for offences relating to a company failing to disclose the identity of a driver, failure to comply with an Environment Protection Agency notice, or driving at excessive speed in a large motor vehicle. When, in June 1991, the then Premier of Victoria, Joan Kirner, applied a 20 per cent increase to traffic infringement penalties, the Victoria Police listing of infringement offence codes grew to 387 with 33 discrete penalty levels.¹² Although these do not constitute the full list of infringement penalties, they are the ones which the police are expected to enforce. This list indicates the unnecessary complexity of the penalty structure. For the 387 offences in the police listing, Table 7.1 sets out the 33 separate penalty levels and the number of offences at each level with examples of the type of prohibition. Though the lower end of the scale is confined to the less serious forms of conduct, there is no discernible pattern to the manner in which offences have been allocated to particular levels.

¹² Victoria Police, *Penalty Notice Offences and Codes*, 15 June 1992, VP Form 508A.

Table 7.1
Fixed Penalty Levels, June 1992, Victoria¹³

Penalty Level \$	Number of Offences	Class of Offence
15	5	Pedestrian
20	17	Bicycle, Litter
25	2	Behaviour on public transport
40	79	Parking/Marine
50	35	Motor vehicle licensing and registration; Behaviour on public transport
60	30	Parking and Motor vehicle registration
75	21	Driving; Motor registration
80	18	Marine
85	6	Towing
90	2	Behaviour on public transport
100	61	Litter; Tobacco; Marine; Transport; Ticketing offences
105	22	Driving
110	3	Motor vehicle licensing
120	2	Marine
135	27	Driving; Transport
140	1	Large vehicle speeding
145	2	Motor vehicle licensing; Vehicle weight
165	27	Driving/Towing
205	1	Large vehicle
220	2	Large vehicle speeding
240	1	Drink-driving
265	1	Commercial vehicle weight offence
300	4	Speeding; Drink-driving
325	1	Large vehicle offence
360	1	Speeding
385	1	Commercial vehicle weight
400	2	Litter Act/Litter abatement notices
420	5	Drink-driving
450	2	Large vehicle excessive speed
500	1	Litter Act
505	1	Commercial vehicle weight
600	2	Company failing to disclose identity of driver; Failure to comply with EPA notice
900	2	Large vehicle excessive speed

¹³ Victoria Police, *Penalty Notice Offences and Codes*, 15 June 1992, VP Form 508A.

7.4.2 This 33-item scale practically overlaps with Levels 12, 13 and 14 of the penalty scale contained in the *Sentencing Act* 1991, s.109(2), Table 2. Though there are 33 steps in the fixed penalties contained in Table 7.1, they are not equally utilised. Eight fine amounts account for close to 75 per cent of the total number of infringement offences listed. The most commonly used fixed penalties were \$40, \$50, \$75, \$80, \$100, \$105, \$135 and \$165. Examination of the clustering of these items suggests that a further simplification is possible and that the scale could be collapsed to \$50, \$75, \$100, \$150 and \$200. When the Victorian Sentencing Taskforce conducted its review of statutory maximum penalties in 1989,¹⁴ it discovered that a 27-point scale was in use in setting maximum fines within the state. It thought that this was unnecessarily complicated. Its particular mandate was limited to reviewing penalties contained in the *Crimes Act* 1958. It did not go on to examine infringement penalty levels. The recommendations of the Taskforce ultimately led to the adoption of a fourteen level penalty scale for Victoria.¹⁵ Eleven levels allowed for a maximum penalty in the form of a fine. These are Levels 12 through to 14. Level 12, where the maximum fine is 10 penalty units (i.e. \$1000), allows for the alternative of 50 hours of unpaid community work to be completed over three months. Level 13 provides for a fine of only five penalty units and Level 14 for 1 penalty unit. If the penalty system in Victoria is to maintain rationality and coherence, the infringement penalty system must be treated as taking its place as an extension of the lower end of the *Sentencing Act* 1991, s.109 penalty scale. It cannot intrude into Level 12 because this already involves the judgment that a fine at this level is sufficiently serious to warrant authorising the sentencer to opt for a form of community-based corrections involving unpaid community work. That requires a degree of discretionary judgment incompatible with the fixed penalty system. The infringement penalty system therefore must be seen as operating within the range represented by Levels 13 and 14 of the *Sentencing Act* 1991 penalty scale, namely, offences punishable only by a maximum of a fine.

7.4.3 It is inappropriate that there be 33 penalty levels for infringement offences. There are eleven levels up to and including \$100, seven levels for penalties over \$100 and up to \$200, five levels over \$200 and up to and including \$300 and a further ten levels for infringement penalties over \$300 and up to \$900. It is submitted that this scale can be reduced to the following: \$25, \$50, \$75, \$100, \$125, \$150, \$175, \$200,

¹⁴ Sentencing Taskforce, *Review of Statutory Maximum Penalties: Report to the Attorney-General*, Melbourne, 1989, 37; see also Fox R.G., 'Order Out of Chaos: Victoria's New Maximum Penalty Structure' (1991) 17 *Monash University Law Review*, 106.

¹⁵ *Sentencing Act* 1991, s.109.

\$250, \$300, \$350, \$400, \$450, \$500 and \$750. This produces a fifteen-point scale. It is also consistent with the position argued above that the fixed penalties of the infringement notice system should not intrude into Level 12 of the penalty scale which marks the point at which a financial penalty is regarded as so severe as to warrant the exercise of some judgment regarding whether an alternative sanction is more appropriate. It is submitted that a scale along these lines should be incorporated in the special legislation recommended in Chapter 10. To continue to set infringement penalties at amounts so close to each other as \$100, \$105 and \$110, or \$205 and \$220, or \$500 and \$505 is meaningless and anachronistic.

7.4.4 Rationalising the penalty levels is only a first step. There also has to be a fresh assessment of the seriousness of each class or category of offence to which one or other of the fixed penalties on the recommended fifteen-point scale is to be allocated. Each infringement offence has to be evaluated in terms of its harmfulness and the culpability which normally is associated with it. An exercise such as this has already been undertaken, in relation to offences under the *Crimes Act* 1958 by the Victorian Sentencing Taskforce. A similar one is now needed for the hundreds of infringement offences currently punishable in Victoria. Separate consideration will also have to be given to the offences to which ancillary sanctions, such as loss of licence, are to be attached.

7.4.5 The principle of commensurate punishment requires that equally blameworthy conduct be, as far as possible, punished equally. The punishment must be proportionate to the wrongdoing. This fundamental principle applies no less to infringement penalties as to the more serious class of offences or those which are disposed of by a court rather than administratively. There has to be a reclassification of infringement offences into their relative seriousness so that each can be assigned one of the monetary and ancillary penalties which have already been ranked in order of severity.¹⁶ This is no easy task, given the ragbag of summary offences that are grouped together as infringements. Nonetheless, it is a necessary exercise if anomalies, inconsistencies and injustices are to be avoided. There is already in place some classificatory system, but it represents individual departmental judgments of relative severity. There has not been an overall review of the integrity of the infringement system as a whole. For instance, at the moment, disobeying a traffic sign at an intersection carries an infringement penalty of \$165. It is applied both to drivers who fail to observe a stop sign, or give way sign, and those who

¹⁶ This has been discussed in the context of demerit points, Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, Ch. 5.

ignore or overlook a sign specifying a curfew on making turns at the intersection between prescribed peak-hour times. There is a difference between the two situations. Punishment or failure to observe a stop or give way sign aims to avoid danger to life, limb and property. Failure to observe a sign that restricts normal traffic flow only temporarily and is concerned only with local traffic management, should have been set at a lower level on the penalty scale.¹⁷ On the proposed new scale the former could be set at \$175, but the latter at \$100. Such examples can be multiplied. The Sentencing Taskforce warned that:¹⁸

It is doubtful whether it is possible to rate and match the gravity of offences and the severity of sanctions in a way that is not controversial. There are no right answers to the task of classification, only defensible ones. Once the absolute limits of the penalty scales are settled and some major anchoring or reference points are marked out, the task of deciding where to position offences and which forms of maxima to attach to them involves not only looking at the intrinsic nature of the offence (i.e. whether against a person or property, the degree of intentionality and the extent of harm caused, or authority abused etc), but also its ties with, and relationship to, other offences (i.e. whether an aggravated form of another offence or ancillary or preparatory to another crime in the hierarchy).

7.4.6 Offences may be drafted broadly or narrowly: this is the difference between prohibiting ‘criminal damage’ and exceeding the speed limit by 15 km/h or less. It is important to recognise that if an offence is defined so broadly as to encompass very different degrees of harmfulness and levels of culpability, any system which calls for the payment of mandatory or fixed penalties risks working injustice. The system lacks the flexibility to make allowance for the possibility that the offending conduct falls at one or other of the extremes of behaviour caught by the prohibition. Thus, in conventional judicial proceedings, the sentencer, in the exercise of his or her discretion, can take into account whether the conduct, for example the criminal damage, is a trivial or grave example of the offence charged. But under the infringement notice system, no such enquiry takes place. Excessive speed offences are treated equally culpable and as deserving of both an on-the-spot fine and loss of licence, without any reference to or enquiry into the state of the traffic, the road conditions, or the reason for travelling at that speed. While it is true that the offender may opt for a hearing in open court, a well designed infringement penalty system will recognise the nature of this problem by

¹⁷ See letter to editor, Chris Beattie, ‘They can lock me up and feed me’, *Age*, 18 February 1992, p. 12. The suggestion that these infringement offences be divided into safety and non-safety related ones was endorsed by the Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, para 5.6.

¹⁸ Sentencing Taskforce, *Review of Statutory Maximum Penalties: Report to the Attorney-General*, Melbourne, 1989, 33.

sub-dividing general offences like those of speeding, or drink driving, into subsidiary ones. This can be done by reference to relatively narrow bands based on speed, or blood alcohol concentration with the fixed penalties increasing in severity in direct proportion to the excessiveness of the speed, or the degree of intoxication.¹⁹ Likewise, in considering whether offences are suitable for inclusion in a fixed penalty system, the degree of culpability should be relatively standard. Since the system operates on the assumption that the offences are ones for which strict responsibility is justified, and that any enquiry into culpability is unnecessary, the offences should not be ones for which the degree of personal responsibility of the offender might vary markedly from one situation to another. Likewise, the offences suitable for classification as infringements should not be ones defined in terms of a significant degree of damage or personal injury. The gravity of such cases not only requires an examination of the personal culpability of the alleged offender, but also access to a wider range of sanctions than the expediency of the on-the-spot ticket system allows.

7.5 Infringement penalties for corporations

7.5.1 It is already clear that the fact that infringement offences may be committed by corporations, or in relation to vehicles which belong to corporations, creates problems in the design and administration of an infringement penalty system. First, by its very nature, a corporation cannot be subject to imprisonment as the default penalty. The only form of execution is against the property of the corporation under a warrant issued under s.73 or s.74 of the *Magistrates' Court Act* 1989. This power is, however, limited to seizure of the 'personal property' of the entity named or described in the warrant. This relates to moveable property, i.e. goods and chattels. It does not apply to real property, i.e. immovable property, such as land or buildings. Because a company may lease most of its assets including office furniture and vehicles, there may be little left for the sheriff to recover after the assets have been allowed for. Unlike the situation in relation to the enforcement of civil debts, there is no provision for an order for the enforcement of a fine to be executed against the real property of the offender as though it were an order of the Supreme Court. Legislation recently enacted in Victoria²⁰ permits the sheriff to not only seize the personal property of the corporation in discharge of unpaid infringement penalties, but also the personal property of any director of a defendant company where the effort to enforce against the company's

¹⁹ See, for example, *Road Safety Act* 1986, Schedule 1 and Schedule 5.

²⁰ *Magistrates' Court Act* 1989, s.82A-F & Schedule 7, cl.8A.

property has produced insufficient assets to discharge the fine. This legislation was drawn up to deal with the '\$2 companies' that had been deliberately set up without any assets behind them for the sole purpose of having leased motor vehicles registered in its name so that drivers, who were also the sole shareholders and directors of the companies would be free to incur traffic and parking fines with impunity. Liability, under the owner-onus provisions would be attributed to the company which declined to identify the actual driver and which refused to expiate any of the resultant infringement penalties or meet any of the demands for payment by the sheriff's officers. The Victorian legislation does not yet regard it as appropriate to subject the directors to the threat of imprisonment.

7.5.2 A second problem (which was adverted to above), is that when owner-onus provisions apply to a corporation in relation to driving offences involving company vehicles, particularly with vehicles in a transport pool, the company may genuinely not know which member of the staff was the driver of the vehicle on the occasion in question. Though this lack of knowledge can easily be remedied by an efficient log book system in relation to vehicle use, the fact that the company may readily avoid liability for fines by ensuring that it does not have the requisite knowledge, has not escaped those who manage the allocation of vehicles. Thirdly, the levels at which infringement penalties are set do not distinguish between corporate and natural persons. If the infringement takes place in the course of business, or otherwise serving corporate interests, it may be regarded by the corporation as being little more than a cost of doing business, or a form of tax, rather than a sanction intended to deter. It is simply another cost to be passed on to consumers. This failure to distinguish between corporate and non-corporate offenders and, beyond that, to allow for differences in means between offenders, is a structural weakness of the Victorian penalty system. It is not confined to infringement notices. Thus the Victorian maximum penalty scale set out in s.109 of the *Sentencing Act* 1991, which defines the maximum fines applicable to each of the fourteen sanction levels which may be allocated to offences makes no allowance for prescribing higher maximum fines for situations in which the offender is a corporation. That concept is to be found in other legislation. For instance, the general federal rule applicable under the *Crimes Act* 1914 (Cth), s.4B(3) is that a corporation should be subject to a fine five times the amount of the maximum that would otherwise be imposed by a court on a natural person convicted of the

same crime.²¹ In 1989, the Victorian Sentencing Committee considered and rejected the idea of a similar multiplier for fines imposed upon corporations under state law until a more general review of corporate sanctions had been undertaken.²² That review has not yet occurred. It would not be difficult, in designing a sanction system, to specify that infringement penalties for corporate offenders are to be pitched at a higher level. However, the assumption that corporations have a greater capacity to pay than individuals is not necessarily true when it is remembered that any such rule will apply to small and private companies, as well as large and public ones.

7.5.3 The fine is the only criminal sanction which, though imposed upon the person held responsible for the offence, may be discharged by another. Neither the law, nor those who administer it, enquires who actually pays fines, whether imposed judicially or by way of an on-the-spot ticket. The United Kingdom Road Traffic Law Review Report considered whether the vicarious payment of on-the-spot fines, particularly by employers for their employees, should be forbidden. Such payments are more likely to occur in corporate settings when an employee incurs the fine when engaged on company business. Though the United Kingdom Review recognised that, in terms of achieving the objectives of criminal punishment, it was undesirable that offenders be relieved of the effect of a penalty because a third person paid a fine, it was unable to recommend any practical means by which vicarious payment of fines could be stopped.²³ Even in relation to court imposed fines, a sentencer has little power to ascertain the actual source of payment of a fine, particularly when time to pay has been allowed, and there is little that can be done, administratively, in relation to non-judicially imposed fines, to control the future action of third parties.²⁴ In any event, payment by a third person may still produce a punitive and deterrent effect if, as a consequence, the offender is placed under some new obligation to that third party.

²¹ See Fox R.G. and Freiberg A., *Sentencing: State and Federal Law in Victoria*, Melbourne, Oxford University Press, 1985, 138-139 for other examples of legislation imposing five, ten or twenty-fold increases in penalty where the offender is a company.

²² Sentencing Taskforce, *Review of Statutory Maximum Penalties: Report to the Attorney-General*, Melbourne, 1989, 110.

²³ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 133.

²⁴ Bein D., 'Payment of a Fine by a Person Other than the Defendant' (1974) 9 *Israel Law Review* 332.

7.6 Infringement penalties for juveniles

7.6.1 Another major problem area pertains to the appropriateness of attempting to apply the infringement notice system to juvenile offenders.²⁵ The fixed penalty system administers punishment with a rigidity that is at odds with the individualised treatment which features in the juvenile justice system. Some jurisdictions bar the use of infringement notices in relation to persons below a certain age. In Western Australia it is 16 years.²⁶ In Victoria, where there is no such limit, problems have arisen in relation to the issue of transport infringement notices (TINs) to juveniles for fare evasion and misconduct on trams, trains and other public transport vehicles. Neither the infringement offences, nor the attached penalties, distinguish between adult and juvenile offenders. In any event, the fines cannot be registered or enforced in the PERIN Court because, as a venue of the Magistrates' Court, it has no authority over persons under the age of 18. The young offender may opt to have the allegation dealt with summarily in the Children's Court, which is the appropriate jurisdiction, but even if he or she does not do so, the enforcement officials cannot obtain the assistance of the Children's Court to enforce the infringement notice, because the PERIN arrangements have no application to the latter jurisdiction. If the enforcement officials do choose to withdraw the infringement notice and issue a summons in the Children's Court, the financial circumstances of the child must be considered in determining whether a fine is appropriate and the amount to be fixed.²⁷ Any policy involving automatically imposing vicarious liability upon parents for the infringement offences of their children would be bound to work injustice. In general, infringement penalties issued to juveniles, if not voluntarily expiated by payment, are written off as unenforceable.

7.7 Relationship between fixed penalties and normal penalties

7.7.1 Whether there should be a ceiling on the level of punishment that can be exacted by way of payment of an on-the-spot ticket is discussed in Chapter 10.²⁸ While the infringement notice scheme is built upon the assumption that it administers only fiscal penalties, this is being eroded with the addition of a variety of disqualificatory measures²⁹ and a

²⁵ See above 4.14.1.

²⁶ At the date of the alleged offence, *Justices Act* 1902 (WA), s.171BB.

²⁷ *Children and Young Persons Act* 1989, s.151.

²⁸ See below, 10.7.1.

²⁹ E.g. loss of drivers' licences and/or motor vehicle registration.

strengthening of the power to order confiscation of property and/or imprisonment in default of payment. It has long been suggested that those who agree to have their offences dealt with by way of an on-the-spot ticket should be secure in the knowledge that what they are being invited to pay is a reduced percentage of the ordinary maximum monetary penalty applicable to the offence in question. In Scotland, the Stewart Committee proposed 20 per cent of the normal statutory maximum.³⁰ In Victoria, there is no such consistency. The infringement penalty may be as low as 4 per cent of the statutory maximum and as high as 40 per cent.³¹ This weakness is also discussed further in Chapter 10 in relation to the need to enact special legislation governing infringements as a new class of offence.

³⁰ United Kingdom, Scottish Home and Health Department, *The Motorist and Fixed Penalties*, First Report by the Committee on Alternatives to Prosecution (Chairman Lord Stewart), Edinburgh, HMSO, 1980, Cmnd. 8027, para 6.23.

³¹ See below Table

Surveillance and Detection

8.1 Introduction

8.1.1 The technical advances in the detection and processing of offenders, which have underpinned the expansion of the infringement notice system, also have significant civil liberties implications. These relate to the intrusiveness and propriety of the surveillance techniques used to detect and record breaches of the law; the question of who should be granted access to those techniques; whether the data thus gathered should be amalgamated with other material so as to be available in larger, more comprehensive, databases used for other purposes; and whether these advances in automating criminal justice are producing untoward changes in policing methods and in the courts. The advances in technology have the capacity, not yet fully realised, to be used proactively in many areas of law enforcement. They can keep large sectors of the population under surveillance as they engage in activities which may have an impact on road safety, the well-being of the environment, public order, and safety, and financial and commercial transactions. Cameras are no longer confined to catching motorists. They are being focussed on potential offenders in the stands and galleries of sporting arenas,¹ they are used in public and private areas to monitor perimeter security, maintain stock control, and preserve public safety, and they can be found in malls, railway stations, banks, and other areas in which remote and/or continuous sensing for preventive purposes is thought to be needed. Police already regard the film record of red light cameras as open to scrutiny in the investigation of more serious offences, such as causing death by culpable driving or hit-run accidents. It is not difficult to conceive how the movement of particular vehicles or persons as registered by cameras designed to pick up motoring offences might also be of interest to other investigatory agencies, such as the

¹ 'Cricket louts face trial by video', *Age* 11 January 1993, p. 1.

National Crime Authority, with whom local police routinely exchange information.

8.1.2 As the merit of particular technical innovations becomes apparent and the cost of accessing the technology falls, reliance on the devices tends to increase.² Though many of the devices started off as aids to the replacement of subjective measures of liability with objective ones, the crime prevention objective has encouraged their use as mass screening devices for groups thought to be at risk of offending. This shift in usage is well illustrated by the impact of the breathalyser in detecting drink impaired drivers. As an indicator of intoxication, the readings of these machines were vastly more convenient than those which depended on having to obtain blood or urine samples for laboratory analysis. They also provided results almost instantaneously. They were less vulnerable to attack than the earlier purely subjective tests of intoxication. As confidence in the technology increased, the subjective measures of impairment and the concept of drunkenness itself were abandoned in favour of an assumption of impairment once a legislatively specified minimum concentration of alcohol in the blood had been reached. Nowadays, the actus reus of drink-driving offences is expressed in terms of driving with a minimum concentration of alcohol in the blood as measured by a specified type of breathalyser machine. While the new technology made it much easier to establish liability in particular cases, this was not enough to satisfy the broader preventive goals of policing. Soon afterwards, simpler and more portable breath analysis machines became available. Though these were less accurate than the more sophisticated breathalyser, they were employed as the screening device for the random 'preliminary breath test' which, in Victoria, is used in conjunction with 'booze buses' to quickly assess the state of alcohol impairment of groups of drivers randomly pulled out of the main stream of passing traffic. A diagnostic instrument has been converted into a screening device and deployed in relation to a much larger target population. Moreover, this screening process has spawned subsidiary offences pertaining to refusal to submit to these random tests. Because the larger number of tests administered in screening for offenders produced a greater number of cases requiring adjudication, the majority of offences came to be defined as infringements so they could be dealt with by way of on-the-spot tickets, rather than a summons to court.

8.1.3 This scenario is typical of the changing uses to which the new technology is put. Technical innovations offer simplicity and efficiency in gathering evidence of wrongdoing. But there are

² The increased use of red light cameras and new technology speed cameras has been advocated by the Victorian Parliamentary Road Safety Committee, *Report Upon the Inquiry into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, paras 3.2 & 3.11.

countervailing considerations. First, while some of the technology can gather evidence of offending by unobtrusive means, others involve the alleged offender or the segment of the population being screened, in submitting to some degree of inconvenience and self-incrimination. Second, even when the surveillance and detection techniques are more covert, less visible and, as with photographic detection devices, least intrusive, the invasion of a citizen's privacy and autonomy represented by these techniques may be regarded as all the more insidious because that intrusion has come in a covert, largely invisible, electronic form. The citizen has little notice of being under surveillance, and usually receives no immediate indication that he or she has been detected. Third, the new technology could, in theory, be used to detect and convict every person who breached a particular rule in an area of close surveillance.³ Such vigorous enforcement would be regarded as oppressive and involving excessive labelling of large numbers of citizens as offenders. Total compliance with prohibitions on lesser offences is never expected and can be pursued at too great a price in terms of public support for the law and goodwill towards the enforcement officials. Respect for rights of privacy and self-determination is based, in part, on the practical reality that not all the law is enforced all the time.⁴ This assumption of the reasonable enforcement of the law is undermined when rigorous enforcement of the law is made easier. Not only does the new technology lower costs and increase efficiency, but the threshold of enforcement intervention can be reduced. In the past, only the more extreme speedsters were pursued by police. Now speed cameras sweep up droves of drivers travelling only marginally above the speed limit. Fourth, the legislation which supports the technology makes the evidence gathered almost legally unassailable. Breach of the law becomes defined in terms of the data gathered by the instrument itself, rather than the actual conduct being observed. The evidence gathered becomes impervious to attack because it is supported by legal presumptions that the information produced by the instrument proves what it claims to represent. It forecloses the need for further investigation or analysis and stymies most defences. In the case of red-light cameras, photographic evidence of guilt is usually so clear that almost no legal challenge is possible and the burden of a fact-determining trial is treated as superfluous. The shift from judicial to administrative findings of guilt thus gains momentum. Fifth, the pressure placed on alleged offenders to admit guilt provides police and other enforcement authorities with an incentive to charge offences that would not have been

³ E.g. cameras operating 24 hours a day at every traffic light controlled intersection in Victoria and speed cameras operating continuously on all major highways and arterial roads..

⁴ Price M.E., 'Criminal Law and Technology: Some Comments' (1968) 16 *U.C.L.A. Law Review* 120, 125.

justified if a full judicial hearing were required, and proof had to be established by conventional means. Cases in which a warning might have been administered, or which would have proved difficult or expensive to have established forensically, can now be pursued easily and conveniently under the infringement notice system. Sixth, as has already been demonstrated, in relation to the difficulties with the Sheriff's Office, the technology may detect more offenders than the compliance system can cope with, thus leading to delays, inefficiencies, ill-will, and loss of revenue that may exceed the fiscal or other benefits allegedly attained by introducing the technology in the first place.

8.2 Technological capacities

8.2.1 Detection: The sanctions which accompany an infringement notice will produce no deterrent effect unless potential offenders believe that there is a significant risk of being detected. Citizens fully understand that a large number of infringements go undetected. Drivers who speed, people who dump litter, owners of unrestrained dogs, by-law violators, and others who commit summary offences all recognise that they have a better than even chance of breaking the law with impunity. They know that the law is a 'punitive lottery'⁵ and gamble upon it regularly. To overcome this perception that there is a good chance of avoiding liability requires a marked improvement in the actual rate of detection, or in what is perceived as the probability of detection. The main technological developments affecting the infringement notice system have their impact at this detection stage, primarily in relation to motoring offences. Though the technical advances on this front have been considerable, all the possibilities have not yet been realised. For instance, the original 1988 evaluations of the utility of speed cameras for Victoria suggested that, in the future, the cameras might be deployed in permanent in-ground unmanned detectors, in a fashion similar to the unmanned red light cameras, in order to screen all passing traffic.⁶ The cameras would no longer need to be manned by individual police operators, and, if purchased and installed in bulk, could provide a vastly expanded area of continuous surveillance. This idea was regarded as worthy of support by the Victorian Parliament's Social Development Committee in its inquiry into speed limits in Victoria.⁷ Speed is not the only characteristic of a vehicle that can be evaluated by

⁵ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 26.

⁶ Portans I., *The Potential Value of Speed Cameras*, Melbourne, Road Traffic Authority, 1988, 16.

⁷ Victoria Parliament, Social Development Committee, *Report Upon the Inquiry into Speed Limits in Victoria*, Melbourne, Government Printer, 1991, 106.

unmanned sensors. Other characteristics of the vehicle, such as its emissions and mass, can also be monitored. The former are relevant to environment protection and anti-pollution legislation and the latter to offences involving overloading and safety. Overloading offences are particularly significant to commercial transport vehicles which ply the highways. Devices already exist for measuring a moving vehicle's height, length and mass. The New South Wales government, through its Roads and Traffic Authority, has introduced an Australian designed satellite surveillance scheme originally called 'Scamcam', but later renamed 'Safe-T-Cam', which uses special infra-red roadside cameras to read the registration plates of passing trucks.⁸ The data is checked immediately by computers linked to the sensor via satellite to identify whether there are any outstanding warrants against the vehicle's owner, or whether the vehicle is of interest to the police for any other reason.⁹ At the same time, the camera can be used with other devices, to check the speed and weight of the passing vehicle. The information can be processed quickly and the sensors are located on the highway between turn-offs so as to allow the vehicle to be apprehended further down the road once the analysis of the information indicates the vehicle is worthy of attention.

8.2.2 The external detection devices can be supplemented by internal ones which allow a vehicle to 'incriminate' itself. Of special interest are the vehicle monitoring devices which are the equivalent of the 'black box' installed in modern commercial aircraft. These maintain a continuous record of the main features of the operation of the vehicle or aircraft. In the case of motor vehicles, the monitoring devices record starting and stopping times, acceleration and braking, and speed. If connected to load-sensing devices built into the vehicle itself, especially in commercial vehicles, the weight of the load being carried at any particular time can also be registered.¹⁰ Although originally designed to assist owners of commercial heavy vehicles to monitor the behaviour of their drivers, it is now clear that the quality of information recorded in the monitoring devices and the security of the devices themselves, lend themselves to enforcement purposes. The ability of authorised persons to access the record, means that enforcement agencies interested in the behaviour of a vehicle on the road can identify the salient features, after the event, without having to engage in on-road detection either through external monitoring devices, or highway patrols. The installation of sealed

⁸ It is set to respond only to vehicles larger than a specified size.

⁹ 'Super-cam to spy on drivers' *Sunday Telegraph*, 5 January 1992, p. 3; 'Playing big brother' *Sydney Morning Herald*, 16 April 1992, p. 5.

¹⁰ See generally National Road Transport Commission, *Compliance with the Road Transport Law—Principles, Objectives and Strategies: Discussion Paper*, National Road Transport Commission, Melbourne, June 1994, 15-18.

vehicle monitoring devices of this type could be made compulsory and the data routinely and electronically downloaded for computerised analysis to detect infringements. Thus, if the instrument recorded the vehicle travelling above the speed limit at any point in the journey, an infringement notice could be issued. Both the analysis of the behaviour of the vehicle and the issue of the infringement notice could be entirely computerised. The significance of this goes beyond mere reduction of enforcement costs. As the National Road Transport Commission discussion paper on compliance has noted:¹¹

. . . most importantly, they enabled the 'probability of detection' factor to be eliminated from the deterrence equation. In theory, every offence is detectable. Penalties do not need to be severe simply in order to offset the uncertainty of detection. They could therefore be set at the minimum level needed to offset the economic incentive for non-compliance, or at a level that recoups the full cost of the unlawful conduct. In the latter case the penalty assumes the character of a tax.

Indeed, the Commission's discussion paper has suggested that, instead of imposing a fine on each occasion, if breaches have been detected by in-built monitoring devices, the number of offences in a year could be aggregated and the amount owing be automatically added to the annual vehicle registration fee.

8.2.3 Another idea is to build into each motor vehicle a unique electronic identifier, which could be used for the automatic electronic interrogation of vehicles. This could be paired with the similar idea of requiring all drivers to carry a 'Smartcard' identification device. Both respond electronically to interrogation by static detection devices which could be also linked to speed cameras and the like. It would thus be possible to identify both the vehicle and the driver at the time of offending. Electronic driver identification allows a more precise allocation of responsibility for non-complying conduct and would reduce the need to rely upon owner-onus provisions with all the difficulties which these produce, particularly in relation to vehicles owned by corporations. It is also conceivable that the built-in vehicle identification devices would be capable of being switched on by enforcement officials in the event of the vehicle being reported stolen as an aid to its location. They might also be designed to incapacitate a vehicle. Already proposals are in place for 'drunk locks' on car ignitions for convicted drink-driver offenders.¹² An electro-chemical sensor would bar ignition until the driver blows a breath registering below 0.5 blood alcohol content. This interlock has been under

¹¹ National Road Transport Commission, *Compliance with the Road Transport Law—Principles, Objectives and Strategies: Discussion Paper*, National Road Transport Commission, Melbourne, June 1994, 16.

¹² 'Car drink locks could be law by Christmas', *Sunday Herald-Sun*, 7 August 1994, p.9.

consideration in Victoria since the mid-1980s. The installation of interlocks, vehicle identification devices and the carrying of drivers' licences with built-in 'Smartcard' electronics could readily be made compulsory by law.

8.2.4 Three elements underlie all of the technological innovations in the automatic detection of offences. First, a unit to detect and measure the particular feature of interest, e.g. speed, weight, photo-chemical emissions etc; secondly, a device for recording the identity of the offender picked up by the detector unit; and thirdly, a triggering device set so as to activate the recording only when the detector exceeds a pre-determined threshold. Each of these three elements is capable of improvement in the light of technological advances. Furthermore, advances in the way in which the elements can be combined with each other and with the arrangements of issuing infringement notices to the person regarded in law as responsible for the offence, allow for that process to take place in a faster, more integrated and more highly automated fashion. For instance, the newest forms of speed cameras, about to be introduced in Australia, use digital computer images instead of film to record the offending vehicle. In fact, they take two images simultaneously, one a regular wide-angle picture of the vehicle and, the second, a zoom shot of the number plate. Because the image is captured in a digital form on computer, it is capable of further enhancement in order to read the number plate.¹³ These cameras are not only cheaper to operate than film-based ones because the handling and processing of film is obviated, but also allow the digital image to be transferred electronically to a central office for processing and issuing of tickets. This can be done via a mobile phone, satellite dish, or direct land-line. It results in faster issue of infringement notices.¹⁴ Though encouraging the Victoria Police to continue with the testing and evaluation of new technology cameras, the Victorian Parliamentary Road Safety Committee, in its recent *Inquiry Into the Demerit Points Scheme*, expressed concern about the manner in which it is possible to manipulate the details of an image produced by modern computer imaging technology.¹⁵ Also in the pipeline are the anti-pollution equivalents of speed cameras. These are devices for detecting unacceptable vehicle emissions and pollutants by passing an infra-red beam through exhaust fumes and using infra-red absorption technology to analyse the nature of those emissions and their levels.¹⁶ Also under consideration is the use of

¹³ 'New speed cameras to double takings', *Adelaide Advertiser*, 7 April 1994, p.1.

¹⁴ 'Speeding fine news to arrive post-haste', *Age*, 7 April 1994, p.7.

¹⁵ Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, para 3.11.

¹⁶ Lawson D.R., Gooblicki P.J., Stedman D.H., Bishop G.A. and Guenther P.L., 'Emissions from In-Use Motor Vehicles in Los Angeles: A Pilot Study of Remote Sensing' (1990) 40 *Air and Waste*

laser beams for more accurate detection of speed than is presently provided by the radar-based speed cameras. The laser beams would also be more efficient in reading number plates if the latter, by law, were required to incorporate a bar-code identifier. Already railway rolling stock has bar-code tags attached which make the identification and location of individual wagons and carriages easier. Use of bar-code identifiers may not only obviate the need for intermediate photographic processing, but might even cut out the need for the on-line digital imaging systems which are just now beginning to be introduced. Other existing road monitoring devices, such as vehicle sensing loops concealed under the tarmac of the road, may be improved and given new uses. Such sensing loops already are to be found in capital cities in Australia where they are used to monitor traffic flow for the purpose of adjusting the timing of traffic lights. Loops of this sort could also be used for the automatic electronic identification of vehicles and possibly drivers in the manner outlined above. However, one of the problems in cutting detectors into roadways, or installing them on roadsides, is that the road network is huge and growing continuously. Detectors cannot be located at all intersections, except at enormous cost. The further apart such devices are placed, the less is the deterrent effect. Some rules for strategic targeting of offenders are required.

8.2.5 Targeting: It is well within the capacity of the new technology to store, in a central registry, identifying data on offenders, vehicle owners, drivers' licence holders and to allow rapid access to that information by multiple authorised users. This offers the potential to monitor patterns of illegal behaviour with a view to targeting either particular geographical areas in which offences occur, or classes, types, or age groups of offender for selective enforcement. If computerised information on infringement offences and other wrongdoing is matched against parallel information contained on computerised central registries in other jurisdictions within Australia, a national profile of offending can be drawn up. Likewise, if the data contained in relation to infringement offences is matched against other databases containing information on other forms of wrongdoing, such as those maintained by the Australian Securities Commission, or other national or local enforcement agencies, the analysis of the matched files may produce profiles relevant to more serious forms of misconduct. Yet again, if the infringement notice data is linked with electoral, social security, or taxation records, it would speed up the location of fine defaulters, thus addressing a major problem within the infringement notice system. That matching is also, incidentally, likely to throw up evidence of other fiscal wrongdoing. The consolidation of

databases would not only be useful for tracing defaulting drivers, it would also improve the tracing of vehicles owned by defaulters. The latter could then be seized and sold to meet outstanding fines. By storing information about breaches of the law for analysis by more sophisticated programs, systematic patterns of wrongdoing can be exposed, cross-references made, chronologies and inter-relationships exposed. This may be particularly valuable in the area of commercial transport, in that it may reveal a deliberate policy of breaching the law by commercial goods vehicles operators, which goes beyond that which can be remedied by the repeated imposition of infringement notices. A sustained pattern of recidivism would indicate that prosecutorial discretion should be exercised in favour of court-based appearances rather than infringement notices. A larger range of more threatening sanctions could then be available to the enforcement agencies. Furthermore, concepts of incitement and complicity, not available at the infringement level, could allow the higher level officials who were responsible for the deliberate policy of breaking the law in the interests of commercial expediency to be joined for punishment. Selective targeting of more serious or repeated offenders may become more important if the new technology for detecting the illegal behaviour generates unmanageable workloads in processing the extra offences detected. Although the technology can be readily adapted to have infringement notices, or summonses, rapidly issued and posted to the alleged offender, any significant degree of resistance to payment, or inaccuracy in the databases on which the identification of the offenders depends, will produce an unmanageably large backlog of enforcement problems.

8.2.6 **Sanctions:** In addition to improvements in detecting offenders, tracing of vehicles through computer-matching techniques and the possibility that financial penalties may be automatically added to vehicle registration fees, or directly debited from bank accounts, the new technology also offers the possibility of direct immobilisation of vehicles. The possibility exists of vehicles of the future incorporating tamper-proof electronic controls which allow their immobilisation through external controls operated by vehicle registration authorities or police. As has been discussed above,¹⁷ such devices have been mooted as a means of controlling drink-drivers. One version, already discussed above, is the electro-chemical sensor which requires the driver to pass a preliminary breath test before being able to engage the ignition of the motor vehicle. Another version depends upon the driver being too uncoordinated to be able to enter a set of numbers into a keypad in the dashboard within a short space of time. If the drink-driver fails to do so within the prescribed

¹⁷ See above 8.2.3.

period, the electrical system of the vehicle will be isolated for some hours. Both of these devices are open to being defeated by a person, other than the driver, passing the test for the intoxicated person. It is possible to envisage immobilising devices being fitted to vehicles and being triggered after a certain number of infringement notices have been recorded in relation to the use of the particular vehicle, or on non-payment of registration, or on the vehicle itself reaching a certain state of unroadworthiness, or being overloaded. If sanctions more severe than fines are to be applied for those who commit the more serious forms of infringement, techniques of electronic monitored home detention already exist and are in use in this country.¹⁸

8.3 Entrapment

8.3.1 There is anxiety that the covert and surreptitious nature of the new detection devices allows them to be employed in settings that are inappropriate to achieving the desired deterrent effect and are being used in a manner which involves elements of instigation, incitement, or entrapment. The point that speed cameras have often been placed in settings which do not appear to bear any relationship to the actual traffic danger represented by that location, has been forcibly made by the Royal Automobile Club of Victoria in a submission on behalf of its 1.3 million members to the Social Development Committee of the Victorian Parliament in 1990.¹⁹ Complaints have been made that speed cameras have been located a short distance before signs signalling an increase in the speed limit. Those drivers approaching the sign who commence acceleration to reach the new limit, prior to passing the sign are caught by the camera. Placing speed cameras and similar devices at the bottom of a hill is regarded as another example of unfairness, if not entrapment.²⁰ Motorists have protested that to place speed detecting devices on a highway that is clear, straight, and free of side roads is aimed more at raising of revenue than reducing the immediate danger to road users. Although the RACV has consistently supported the use of speed cameras as a road safety initiative since their introduction in Victoria, it has acknowledged that many of its members have complained about the petty

¹⁸ Fox R.G., 'Electronic Technology as an Alternative to Prison' in *Developments in Correctional Policy: More Prisons?*, Seminar Proceeding No.22, Canberra, Australian Institute of Criminology, 1988, 75.

¹⁹ Royal Automobile Club of Victoria (RACV) Limited, *Speed Camera Operations: RACV's Perspective*—A submission to the Parliamentary Social Development Committee, Melbourne, RACV, 1990.

²⁰ The Victoria Police has formulated site selection criteria designed to address these complaints, Victoria Police Speed Camera Program, *Site Selection Criteria and Camera Operator's Manual*, Version 2, December 1993.

application of the cameras to what they regard as unjustified efforts at detecting minor speed infringements.

8.3.2 As a consequence of these complaints, the RACV investigated twenty-five speed camera locations in the state. At each place it conducted its own speed survey and investigated accident rates in the area. It concluded that eleven of the twenty-five locations had been inappropriately selected, having neither high crash rates nor excessive speeds in the vicinity. This represented over 40 per cent of the locations being surveyed. Eleven were judged to have been justifiably selected and a further four required further investigation. In the view of the RACV, the high proportion of inappropriate locations was evidence of a misuse of valuable enforcement resources. It called for a better targeting of the cameras with the objective of placing them in locations that had poor accident records. In this way they would be more directly aimed at driving behaviour associated with those crashes.²¹ The motoring organisation also noted that the speed cameras were being operated in a manner inconsistent with the general police policy that a visible police presence was the most effective means of deterring crime. Because the cameras were operated from cars not identified as police vehicles, they were essentially hidden and motorists were not deterred from speeding because they were unaware of any offence until an infringement notice was received some weeks after the violation. The aim of immediate deterrence was sacrificed to the hope that a more generalised deterrent effect in the future would be achieved by these covert operations.

8.3.3 The vehicle speed at which speed cameras were triggered for the purpose of issuing infringement notices, was originally set by police at the local speed limit plus 10 per cent with an additional 3 km/h tolerance for technical errors in the operation of the machines.²² The RACV argued that a more sophisticated and appropriate way of fixing the threshold would be by reference to what is known as the 85th percentile speed. This is a common measure used in speed studies. It derives a figure on what may be regarded as the safe speed for a particular location, given its environmental and traffic conditions, from the actual driving speed of the majority of drivers using that road. The figure is one at which the majority of drivers, i.e. 85 per cent, will be travelling on that road at or below it. Only 15 per cent will be travelling above it. The 85th percentile speed may be above or below the local posted speed limit. Because the test is based on the conduct of those actually using the road, to enforce speed limits below the 85th percentile, even if drivers as a group were exceeding the

²¹ Royal Automobile Club of Victoria (RACV) Limited, *Speed Camera Operations: RACV's Perspective*—A submission to the Parliamentary Social Development Committee, Melbourne, RACV, 1990, 2.

²² See *Road Safety (Procedures) Regulations* 1988, r.411(d) and Chapter 9.4 below.

local speed limit, would unfairly cause a large number of motorists to be classified as offenders. The RACV fully accepts that it is appropriate that those drivers whose speed exceeds that which is being observed by 85 per cent of all those travelling in the vicinity and which, in doing so, exceeds the lawful speed limit, should be subject to punishment.²³ However, in the RACV's view, most of the community hostility about the elements of unfairness and entrapment in speed cameras have arisen because infringement notices are being issued for what drivers believed to be relatively minor offences on sections of road on which motorists were adhering to the actual driving practices for that highway.²⁴ Motorists object to being victimised for travelling at a speed which involved them only in attempting to drive responsibly by keeping up with the traffic flow on roadways that are safe for it.

8.4 Threats to privacy

8.4.1 Is the process of detecting offences through use of surreptitious photographic and other sensing devices unfair as too great an intrusion into the personal privacy of citizens? Does it lead in conjunction with the infringement notice system, to a too depersonalised form of criminal justice? Is the growth in the use of automatic detection devices and the computerised processing of offenders yet further evidence that mass surveillance of citizens has become an accepted plank of public administration in this country? Many critics of these developments fear a diminution of the personal privacy of citizens as increasing numbers of the public become subject to some form of routine governmental surveillance in their personal lives. Whether or not there is some inherent merit in the purposes for which individual surveillance schemes were set up, the fear is that the growing use of these techniques and the likelihood of their output being linked into more complex networks for data-matching purposes, involves a dangerous political trend. It replaces trust with suspicion; presumptions of innocence with assumptions of guilt; involves large scale reversal of the ordinary onus of proof rules in criminal matters; and replaces personal responsibility with vicarious responsibility. The risk of creating powerful surveillance networks by linking together data files collected for unrelated purposes has been the source of great anxiety for

²³ The RACV argues that those in the bottom 15th percentile should also be subject to enforcement activity, since they are travelling so slowly as to constitute an obstruction to the flow of traffic and an accident hazard.

²⁴ Royal Automobile Club of Victoria (RACV) Limited, *Speed Camera Operations: RACV's Perspective*—A submission to the Parliamentary Social Development Committee, Melbourne, RACV, 1990, 3.

many.²⁵ While cameras and other sensors only gather information, computers can store it indefinitely and analyse it with a speed and efficiency beyond individual human capacities. This adds a new dimension to the criminal justice system and qualitatively alters the significance of the surveillance. The data is no longer being collected by government agencies with limited institutional memories and with systems which record information on an individual relatively inefficiently and only at a limited period of time. The knowledge and memories of organisations are now vastly extended over time and space by the new technology. Privacy advocates argue that this is a trend to be resisted at each step of the way.²⁶ Like all civil liberties issues, there are countervailing arguments. Thus, the United Kingdom North Report on the review of road traffic law, argued:²⁷

It is sometimes implied that effective and targeted police action to detect traffic offenders by using technology is in some way unfair. We have no sympathy for the attitude which treats enforcement of the road traffic law as if it were a kind of a game, with rules that should allow the offender a sporting chance of escape. Enforcement of the road traffic law is to prevent as many as possible of the 5000 deaths and 300000 casualties each year on the roads. That objective amply justifies the police making use of the best available means within the law to deter and detect offenders. That includes using the latest technology, and targeting the use of that technology as precisely as possible on those most likely to be in breach of the law.

8.4.2 There is no doubt that public anxiety about privacy considerations has been exacerbated by technical developments. Most of the early writings on the legal impact of surveillance techniques concerned the evidentiary problems which were thrown up by the use of methods which might be unlawful.²⁸ But the current legal and political concerns relate to the fact that the detection and recording devices can cover larger areas, work for longer hours and with greater accuracy than ever attainable in the past by more intrusive and labour-intensive methods. It is strongly urged, in the interest of preserving civil liberties, that if policing authorities are to be given these new powers, they should be subject to even greater scrutiny and controls in the exercise of them in order to prevent manipulation or misuse of the surveillance techniques, or the databases thus created, through administrative incompetence or deliberate abuse.

²⁵ Tucker G. and Gronow M., 'Is Big Brother Watching You: The Proposed Law Enforcement Access Network' (1992) 66 *Law Institute Journal* 993.

²⁶ Davies S., *Big Brother: Australia's Growing Web of Surveillance*, East Roseville, Simon and Schuster, 1992, 'Data matching is the technological equivalent of a general warrant on the entire population . . . [and] is directly equivalent to arbitrary investigation without cause of suspicion', p.70.

²⁷ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 32.

²⁸ E.g. Walker C.P., 'Police Surveillance by Technical Devices', [1980] *Public Law* 184.

8.5 Controls on access

8.5.1 Many different authorities have power to issue infringement notices under Victorian legislation. However, there are both legislative restrictions on the type of infringement notice which may be issued and on access to the technology which detects offenders. For instance, local government authorities in Victoria have power to issue parking infringements, but not traffic ones. Already they have complained about their inability to control speeding within their municipal boundaries, particularly in local streets, because the police concentrate their radar beams and cameras on arterial and major roads. So far, requests for speed cameras to be made available to municipalities, to be operated by their enforcement staff, have been denied.²⁹ In 1991, with the support of the Metropolitan Municipal Association and the Municipal Association of Victoria, a number of Councils sought authority to give their by-laws officers power to issue traffic infringement notices for offences such as making illegal turns, driving through red lights and disobeying traffic signals, as well as being able to make use of speed cameras to deter excessive speed in residential areas. The municipal authorities argued that since the government was unable to provide adequate resources for the police to monitor traffic behaviour in local areas, there should be a devolution of enforcement power to local government to administer the *Road Safety Act* 1986 within local government areas.³⁰

8.5.2 The proposal was rejected by the police, citing the ‘chaos’ that would eventuate if there were local area traffic enforcement, rather than a state-wide approach. Reference was also made to the likely lack of professionalism in policing the areas, as well as the possibility that revenue raising considerations would come to predominate in the exercise of the powers being sought. The councils then adopted another tack: if they could not be trusted with the statutory powers and the equipment, could they at least purchase the equipment on condition that it was used by police locally? Early in 1992, the then municipality of Kew³¹ wrote to the Minister for Police and also to the Minister for Transport seeking to buy speed cameras to be used by local police in streets which it would nominate. The municipality felt that an investment of \$30 000 per camera would be a more efficient use of council funds than similar expenditure on installing speed humps or barriers to inhibit excessive speed in local streets. This too was rejected.³² A similar idea from Prahran City Council

²⁹ ‘Power threat’ *Hawthorn Progress Press*, 4 September 1991, p.1; ‘Councils to debate traffic plan’ *Sunday Age*, 16 February 1992, p.4.

³⁰ ‘Power threat’ *Hawthorn Progress Press*, 4 September 1991, p.1

³¹ Now the Kew District of the City of Boroondara.

³² ‘Councils to debate traffic plan’ *Sunday Age*, 16 February 1992, p.4.

to buy a camera for local police to use in the area, provided that the revenue raised by their use of it was shared with the council, was also rejected. This municipal government interest in acquiring speed control devices was stimulated by the government's acceptance of the 1991 recommendation of the Victorian Parliamentary Social Development Committee that speed limits for residential streets should be lowered to 50 km/h or 40 km/h near schools and shops.³³ However, the Social Development Committee expressly considered speed cameras for local government and supported the police position that this was a specialty for them alone.³⁴ This exclusion from access to speed cameras of local government authorities has been confirmed in the most recent Victorian Parliamentary Road Safety Committee Report, even though it was willing to approve of the police using civilian personnel for some of the on-road camera detection operations.³⁵ The municipalities continue to be troubled by speeding in local residential streets and motoring offences which occur near schools and other areas infrequently patrolled by police. A survey of municipal views on metropolitan road traffic issues indicates that, after funding needs for road traffic works and services, safety and control of speed on local streets is their highest priority.³⁶

8.5.3 A similar resistance to police sharing access to powers and technological innovations has been evident in the United Kingdom. The intransigence of police there is a little harder to understand since traffic wardens have been appointed for over twenty years under the *Road Traffic Regulation Act 1967* (UK) to 'discharge, in aid of the police, functions normally undertaken by the police in connection with the control and regulation of, or the enforcement of the law relating to traffic or vehicles'. Despite their long established role in the enforcement of traffic legislation, suggestions that wardens could have a useful function in policing an infringement notice system that went beyond parking has been resisted by police, who maintain that only they have the necessary training, experience, knowledge of the law, and ability to exercise prosecutorial discretion to handle the wider range of traffic offences. Why United Kingdom traffic wardens (nor, for that matter, Australian municipal by-

³³ Victoria Parliament, Social Development Committee, *Report Upon the Inquiry into Speed Limits in Victoria*, Melbourne, Government Printer, 1991, 61.

³⁴ Victoria Parliament, Social Development Committee, *Report Upon the Inquiry into Speed Limits in Victoria*, Melbourne, Government Printer, 1991, 99.

³⁵ Victoria Parliament, Road Safety Committee, *Inquiry into the Demerit Points Scheme*, November 1994, para 3.7.

³⁶ Cleland J., *Metropolitan Road Traffic Issues—A Municipal View*, Melbourne, Road Traffic Authority, 1988, 7-8. See also evidence given by General Manager of the Metropolitan Municipal Association to the Social Development Committee, Victoria Parliament, Social Development Committee, *Report Upon the Inquiry into Speed Limits in Victoria*, Melbourne, Government Printer, 1991, 99-100.

laws officers) could not obtain those skills by training similar to that provided to the police has never been satisfactorily explained.³⁷ Nor have the police been immune from allegations of entrapment and revenue raising in their own use of powers which they deny to other enforcement authorities on these same grounds.

8.5.4 Even in the hands of police, the surveillance devices are not perfect.³⁸ They are subject to error and so are their operators. One of the important ways of minimising the risk that the technology will be misused, is to ensure that technological innovations are always accompanied by legislation controlling the testing and approval of equipment, and the manner in which it may be deployed. The probity of the evidence produced by the detection devices is dependent on the performance of the device itself. The equipment must be proved to be accurate within known and allowed for tolerances and be reliable in operation. The manufacturer's requirements in relation to the siting and calibration of devices and the training of operators and the circumstances in which the surveillance technique can properly be used, should be included in legislation or regulations. These are often adopted from standards set by the Standards Association of Australia.³⁹ If police operators can be trained to reach those standards, so can others. The argument about local authorities having inadequate experience in exercising prosecutorial discretion to handle the wider range of traffic offences is hardly sustainable given the experience of municipal councils in exercising discretion in many areas of prosecutorial responsibility, and the ease with which guidelines on these matters can be prepared. At minimum, an arrangement could be entered into whereby the infringement record could be forwarded to the Victoria Police Fixed Penalties Office or, if a photographic record, to the Traffic Camera Office for handling in accordance with the standards applicable there. The police might welcome a fee-for-service arrangement with municipalities, similar to that which many councils already have with the Melbourne City Council in the processing of infringement notices. The real objection to widening access

³⁷ Particularly since the Victorian Road Safety Committee has encouraged the police to improve the cost effectiveness of speed enforcement by using civilian personnel to set up and monitor speed camera operations, see Victoria Parliament, Road Safety Committee, *Inquiry into the Demerit Points Scheme*, November 1994, para 3.7.

³⁸ For instance, on 21 February, 1992, there were 132 red-light camera sites available in theory in Victoria (all but one in metro area). However, only 75 were actually capable of being made operational. The rest had faults in the road loops used to detect passing vehicles, or in other equipment. Only 35 cameras were actually operational on that day.

³⁹ Standards Australia, *Radar Speed Detection – Part 1: Functional Requirements and Definitions*, Australian Standard AS 2898.1, Sydney, Standards Association of Australia, 1992; Standards Australia, *Radar Speed Detection – Part 2: Operational Procedures*, Australian Standard AS 2898.2, Sydney, Standards Association of Australia, 1992.

to the new technology is that it would represent a significant expansion of social control.

8.6 Expansion of social control

8.6.1 Criminologists have been greatly interested in the manner in which social control has been expanding and how the state has shifted its involvement from direct physical punishment and restraint in custodial settings to more subtle forms of surveillance and control within the community through greater use of non-custodial sanctions.⁴⁰ The history of infringement notices reveals how they have expanded from parking to traffic offences, and from motoring to environmental, local government, corporate and other classes of summary offending. Motoring offences still remain the major group. Even if the proportionate number of offences committed by motorists remains the same, the expanding number of motor vehicle owners in an affluent society guarantees an increase in the number of citizens under surveillance. This alone involves a marked degree of net-widening.⁴¹ The shift towards informalism in the disposal of summary offences has made it both easier and less expensive to extend control and surveillance by the state. In Australia, O'Malley has already described the erosion of due process rights by the grafting of civil forms of procedure on to criminal prosecutions. This has allowed the use of lower standards of proof, the exclusion of the requirement of mens rea and the extension of responsibility for conduct beyond its immediate perpetrator. He specifically refers to the growing use of on-the-spot fines as a prime example of technocratic justice by-passing the procedures of adversary due process.⁴² The infringement notice system combines both a judgment of guilt and the sentence in one regulatory act. It pre-empts court procedure altogether, unless challenged. However, O'Malley does not see behind these developments some kind of master plan or pattern for deliberately expanding social control and subjugating the will of the public as may be thought to exist in some totalitarian societies, but rather the results of what is seen as essentially administrative pragmatism. Foucault himself refused to seek such a 'master plan' explanation in analysing the expansion of state disciplinary power from closed institutions into the community itself. In his view, disciplinary power operates 'self-functionally'.⁴³

⁴⁰ Foucault M., *Discipline and Punish: The Birth Of The Prison*, London, Allen Lane, 1977; Cohen S., *Visions of Social Control*, Cambridge, Polity Press, 1985.

⁴¹ For a recent critical discussion of the concept of 'net-widening' see McMahon M., "'Net-widening"—Vagaries in the Use of a Concept' (1990) 30 *British Journal of Criminology* 121.

⁴² O'Malley P., 'Technocratic Justice in Australia', (1984) 2 *Law in Context*, 31, 36.

⁴³ Foucault M., *Discipline and Punish: The Birth of the Prison*, London, Allen Lane, 1977.

8.6.2 Another troublesome aspect of the changes brought about by the new technology is that the forms of surveillance they offer represent a change in policing style from overt to covert policing.⁴⁴ This is more than a question of whether there are limits on the extent to which a government has a right to place its populace under surveillance. It is what Garry Marx, in his book *Undercover: Police Surveillance in America*,⁴⁵ calls ‘the maximum security society’.⁴⁶ He sees the expansion of covert state investigatory powers as weakening the individual in relation to society at large. While acknowledging that the techniques do have value in issues of national security, serious drug abuse and significant areas of public safety and well-being, he is anxious that the means adopted should not be highly intrusive for the general populace, or of questionable reliability. The government may not be able to solve all the problems. Some may have to be lived with rather than using excessive measures in the attempt to deal with them. In his book Marx has identified ten characteristics of the new surveillance which he asserts set it apart from most traditional forms of social control. Many of these hold true for the technology already in place in support of the infringement notice system operating in Australia, or planned for the immediate future. These are:⁴⁷

- The new surveillance transcends distance, darkness, and physical barriers.
- It transcends time; its records can be stored, retrieved, combined, analysed and communicated.
- It has low visibility or is invisible.
- It is often involuntary.
- Prevention is a major concern.
- It is capital, rather than labour-intensive.
- It involves decentralised self-policing.
- It triggers a shift from targeting a specific suspect to categorical suspicion of everyone (or at least everyone within a particular category⁴⁸).
- It is more intensive.

⁴⁴ Geake E., ‘The Electronic Arm of the Law’, *New Scientist*, 8 May 1993, 19-20; Geake E., ‘Tiny Brother is Watching You’, *New Scientist*, 8 May 1993, 21-23.

⁴⁵ Marx G.T., *Undercover: Police Surveillance in America*, Berkeley, University of California Press, 1988.

⁴⁶ Marx G.T., above 219-221.

⁴⁷ Marx G.T., above 217-219.

⁴⁸ E.g. motorists.

- It is more extensive.

He fears that these extensions in covert monitoring of citizens are occurring so gradually that it is easy to miss the magnitude of the change and the broader issues it raises. Notions of privacy, liberty, and individual rights are being shifted with little public awareness or legislative attention. Marx views the expansion of electronic forms of crime control as part of the ethos of a 'maximum security society'⁴⁹ which spreads the discipline of the prison to society at large,⁵⁰ and which has the following characteristics:⁵¹

- A *dossier society*, in which computerised records play a major role.
- An *actuarial or predictive society*, in which our decisions are increasingly made on the basis of predictions about our future behaviour as a result of our membership in aggregate categories.
- An *engineered society*, in which our choices are increasingly limited and determined by the physical and social environment.
- A *transparent or porous society*, in which the boundaries that traditionally protected privacy are weakened.
- A *self-monitored society*, in which auto-surveillance plays a prominent role.

8.6.3 These are valid concerns. The impact of the new technology in changing the criminal justice system cannot be underestimated. The ability to inexpensively and rapidly collect, disseminate, merge and analyse data not only facilitates the expansion of social control, but adds to the citizen's sense of powerlessness and unfairness. The fact that it is a covert and electronic process means that people do not know when and how they are being monitored and have no fair chance of controlling, or avoiding the situation. Added to the fear that there is too much surveillance by government of citizens, is the correlative concern that covert operations and automatic criminal justice allow too little surveillance

⁴⁹ Marx G.T., *Undercover: Police Surveillance in America*, Berkeley, University of California Press, 1988, 219–221.

⁵⁰ Corbett R. and Marx G., 'Critique: No Soul in the New Machine—Technofallacies in the Electronic Monitoring Movement', (1991) 8 *Justice Quarterly* 399–414.

⁵¹ Marx G.T., *Undercover: Police Surveillance in America*, Berkeley, University of California Press, 1988, 221. See also Lyon D., 'The New Surveillance: Electronic Technologies and the Maximum Security Society' (1992) 18 *Crime, Law and Social Change* 159.

of government actions by the citizens themselves, or their representatives. The large scale removal of cases from court limits the access presently enjoyed by the public, the press, and other news media to test whether justice is being fairly administered. The checks and balances which provide the accountability of the system are being weakened. The emergence of the infringement notice system, with its technological overlay, is likely to have a far greater impact than has been realised. The ability to detect crime from a distance, without any apparent human intervention and the capacity to exact penalties demanded by computer without the need for any face to face human contact raises a legitimate anxiety that the infringement notice system is a key building block in a dehumanised criminal justice system.

Enforcement Threshold

9.1 Tolerance of wrongdoing

9.1.1 It is a truism that the criminal law is never fully enforced. The offending may not be detected; if detected, may not be reported; if reported, no official action may be taken; if action is taken, something less than full prosecution may eventuate. And even if a finding of guilt results, the penalty may be mitigated, or action to enforce it may be delayed or abandoned. The fact that the person is a repeat offender may be ignored. Each of these possibilities represents a threshold in the enforcement process. They determine the difference between action and inaction at various key points in the process. They have important flow-on effects elsewhere in the system. If less wrongdoing is tolerated than before, more cases will flow into the courts unless diversionary systems can take up the load. If these arrangements cannot cope with the backlog, other mechanisms, such as prosecutorial discretion exercised after detection, will come into play to limit the number of cases requiring official attention. Forbearance levels will rise as police and prosecutors are forced to set priorities in determining which matters to pursue within available limits on time and resources.

9.1.2 Official fine tuning of the enforcement threshold is particularly significant in the world of infringement notices because the setting of automatic detection devices and the operation of the PERIN system can be readily adjusted to meet enforcement criteria defined in advance. The ease with which this can be done is one of the features of technocratic justice. It minimises discretion in the decision to act. This is significant in relation to speed and red light camera traffic offences. However, if intervention thresholds are out of kilter with communal expectations of what should be tolerated, not only will protests be heard, but high levels of non-compliance with the law can be expected. Communal expectations might relate either to the absolute standards upon which the particular prohibition is based, e.g. whether the prohibition on

driving with a concentration of alcohol in the blood should be set at 0.0, 0.5, or 0.8 grams per 100 millilitres of blood, or to what, beyond this defined level, should be tolerated before an official response is triggered. The concept of 'tolerance' refers both to permissible variations in dimensions or measurements and to a willingness to accept or put up with something. In the infringement notice context, both are relevant. Allowance must be made for imprecision in the devices which measure and record the infringements, otherwise legal challenges to the validity of the record can be expected on the ground of its inaccuracy. Accuracy within known and allowed for tolerances is crucial when conviction for an offence may ultimately depend upon proof of a person exceeding some legally defined time, speed, blood-alcohol, weight, or other measurable limit. Likewise, if the margin which is allowed out of respect for some concept of fairness in the instigation of proceedings is too narrow, there will be objection. The public's sense that the enforcement action is undeserved and unfair not only risks eroding the relationship between the enforced and the enforcers, but may also bring the law itself into disrepute. Although debates about the setting of thresholds have concentrated on the use of speed cameras, the question of tolerances in enforcement practices is of wider concern. Although it is frequently subsumed under the general head of 'prosecutorial discretion', where the threshold tends to be marked in vague and unquantified generalisations,¹ the discretion to forbear from further enforcing the law is open at many different stages.

9.1.3 In addition to the latitude allowed out of a sense of fairness towards those who have only marginally breached the law and wariness about the precision of the instruments used to detect them, those enforcing the law also possess a discretion to pursue an offender in informal ways. They may choose to issue a warning instead of an infringement notice. Even if more official action is being contemplated, they can agree to handle the matter as though it were an offence less serious than the one actually detected. These discretions may be exercised at the point of detection, or later when the evidence has been reviewed. If proof of the offence is strong, exercising the discretion not to enforce the law is less likely. On the other hand, hesitancy about taking action on a weak case may be overcome if enforcement authorities are confident that it is unlikely a court hearing will be held. The ease with which infringement notices can be issued can make them a more preferred option than informal cautions, official warnings, or complete inaction.² Potentially fatal weaknesses in the case will remain hidden if the alleged offender finds it

¹ See Attorney-General's Department, *Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process*, AGPS, Canberra, 1986.

² See above, 2.2.12 regarding the decline in use of warnings in the United Kingdom.

more convenient to expiate the alleged offence by payment of the infringement penalty rather than challenging it in court.

9.1.4 The degree to which offending is tolerated because it does not meet certain threshold limits at various stages of the enforcement process can be illustrated by figures on speed camera offences. From July 1990 to June 1991, of 8545 235 vehicles monitored when passing a speed camera, 1 082 122 (12.5 per cent) were detected as travelling over the speed limit. On average, these vehicles were exceeding the applicable limit by 12.7 per cent. Only in two-thirds of the cases (representing 663 095 vehicles) were photographs actually taken of the breach. This was because the police were applying a general rule that a vehicle had to be travelling at least 10 per cent above the applicable limit plus 3 km/h.³ The former is the 'fairness' tolerance and the latter is the 'machine' tolerance. Of those vehicles photographed, 37 per cent (representing 246 544 vehicles) were rejected for further action because of technical deficiencies in the quality of the photograph or in the ability to identify the vehicle accurately, or for legal reasons. The end result was 416 551 traffic infringement notices issued. This constitutes a little more than a third (38.5 per cent) of the original 1 082 122 cases. The same degree of attrition continued into the next year despite a much heavier surveillance program. In the 1991/92 financial year, 19 765 063 vehicles were screened (a two and a half fold increase), but only 1 479 829 (7.5 per cent) were identified as over the limit. The number of photographs taken was 888 732 with, again, over a third, 311 466, (35 per cent) being rejected.⁴ Traffic infringement notices were issued to owners of 577 266 vehicles representing only 39 per cent of the group of violators originally identified.

9.1.5 Threshold standards can also be changed by altering the evidentiary criteria for the issuing of infringement notices. Originally a traffic infringement notice could only be issued by a member of the police force or other authorised officer who actually saw a person commit an infringement. Now the *Road Safety Act* 1986, s.88 has replaced the phrase 'saw committing' with 'who has reason to believe that a person has committed a traffic infringement'. The belief need not, in law, be a reasonable one. While the change is obviously intended to cover notices issued as the result of perusal of a photographic record, the easing of the evidentiary standard for taking action applies to all forms of traffic infringement. In the United Kingdom there was originally a requirement of corroboration of the circumstances alleged to warrant the issue of a fixed penalty notice, particularly when the notice could be served by being affixed to a vehicle in the absence of the owner or driver. Police and

³ See below, 9.4.2-9.4.3.

⁴ Source: Traffic Camera Office. See also figures supplied in Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, para 3.9.1.

traffic wardens in Scotland were required to operate in pairs for the purposes of supplying this corroboration.⁵ Though there is no equivalent legal requirement under Victorian law, this was the practice of the Melbourne City Council, which was the first Victorian municipal authority to issue tickets. Until very recently it still sent out its parking and traffic officers in pairs. In Scotland, the removal of the requirement of corroboration allowed the traffic wardens to cover twice as much ground and, presumably, increase the rate of detection of offences.

9.2 Warnings rather than infringements

9.2.1 Braithwaite and Petit have drawn attention to the fact that police use a mixture of ‘compliance’ and ‘deterrence’ models of social control. When the punishment role prevails they will choose a ‘deterrence’, or ‘retributive’ solution by making use of the power to arrest, summons, or issue a ticket. But discretionary policing based on a ‘compliance’ model avoids fully implementing the criminal justice system. Its concern is to find other, more humanitarian, solutions to the problem:⁶

[it] implies a shift from surveillance for the purpose of collecting evidence for prosecution to surveillance for the purpose of solving problems in consultation with local communities—a key plank of the new . . . community policing philosophy. Instead of just issuing a lot of traffic tickets at a junction that has repeated accidents, the police would convene a meeting for local residents and road construction authorities to discuss the redesign of the junction.

Current opinion is that warnings, given in accordance with this compliance model, are an effective way of dealing with a broad range of minor offences. Indeed, the United Kingdom Road Traffic Law Review Report thought that they may have as much effect as actual prosecution in improving driving conduct.⁷ Use of a warning at the point of the offence represents an individualisation of the sanction for the breach. Research commissioned as part of the United Kingdom report indicated that a combination of a trained officer’s professionalism in the exercise of discretion in favour of the motorist left distinctly favourable impressions of the police which persisted.⁸ The Report recognised that some

⁵ United Kingdom, Scottish Home and Health Department, *The Motorist and Fixed Penalties*, First Report by the Committee on Alternatives to Prosecution (Chairman Lord Stewart), Edinburgh, HMSO 1980, Cmnd. 8027, para. 2.17.

⁶ Braithwaite J. and Petit P., *Not Just Deserts: A Republican Theory of Criminal Justice*, Oxford, Clarendon Press, 1990, 111-12. See also Makkai T. & Braithwaite J., ‘Reintegrative Shaming and Compliance with Regulatory Standards’ (1994) 32 *Criminology* 361.

⁷ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 119.

⁸ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 34 & 119.

offenders might regard receiving a warning as ‘getting away with it’ and that too wide a use of warnings could bring the law into disrepute. However, it found no evidence of this occurring and recommended that warnings be used as widely as possible in cases where an offence gives rise to little or no danger:⁹

Our preferred route has been to take as many as possible of the offences involving minor road traffic misconduct, including cases which would not be contested in court, out of the criminal law system altogether. This involves greater use of warnings and cautions

Warnings, especially those issued at the roadside, have the advantages of immediacy, informality and simplicity, and have a role in softening the apparent inflexibility of the fixed penalty infringement system.¹⁰

9.2.2 The instructions given to Victorian police acknowledge that the discretion to issue a warning is one of the first enforcement thresholds in relation to summary offences. The officer identifying the alleged offence may give an informal verbal warning to the offender at the time of the offence and take no other action, or issue an infringement notice where that is authorised by law for the particular offence, or report the matter with a view to a prosecution being initiated by the filing of a charge. The use of infringement notices is entirely discretionary. For instance, in relation to traffic infringements under s.88 of the *Road Safety Act 1986*, if a member of the police force has reason to believe a person has committed a traffic infringement prescribed in Schedule 6 of *the Road Safety (Procedures) Regulations 1988* that member *may* issue a traffic infringement notice.¹¹ Likewise, under s.87, if a member of the police force, or an authorised officer, has reason to believe that a parking infringement has been committed in respect of any vehicle, he or she *may* serve a parking infringement notice. If an infringement notice is issued and the offender advances mitigating circumstances as an excuse, or if a brief to prosecute the matter in open court is being contemplated, a senior officer attached to the unit responsible for issuing the infringement notice may recommend that the notice be withdrawn and/or no action be taken. However, this may be conditional upon the offender being formally cautioned in writing that, while no further action will be taken in the matter, the investigating officer was satisfied that an offence had been committed.¹²

⁹ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 25.

¹⁰ For a discussion of the types of warning that might be used *see generally Road Traffic Law Review Report*, 1988, Chapter 11 - ‘Warnings’.

¹¹ *Road Safety Act 1986*, s.88(1).

¹² Victoria Police, *Force Circular Memo*, No 89-9, 11 November 1989. Any infringement penalty already paid is to be refunded.

9.2.3 Police warning programs already exist in relation to shoplifting offences and offences by juveniles. The *Victoria Police Statistical Review 1991-92* shows that 134 860 traffic offence warnings were given in 1991/92, which was an increase of 32.2 per cent over the 102 005 warnings recorded for 1990/91.¹³ These included the written cautions sent to those offenders detected by speed cameras who submitted a written plea in explanation or mitigation of their driving behaviour. However, to issue warnings in response to pleas in mitigation is essentially a reactive response. The Royal Automobile Club of Victoria has called for a more proactive use of warnings, both verbal and written for minor 'non-safety-related' offences, thus allowing on-the-spot fines to be reserved for less serious 'safety-related' offences.¹⁴ Like the authorities in the United Kingdom, it regards warnings as having an educative function and as minimising loss of confidence in the criminal justice system.¹⁵ Despite their potential effect in reducing the revenue that would otherwise come from infringement notices, a more vigorous use of formal warnings might avoid the danger of infringement notices being issued as an alternative to a warning, rather than as an alternative to prosecution. That would produce a net-widening effect, bringing more persons into the criminal justice system, rather than easing the pressure on it.

9.2.4 Already in New South Wales there is a proposal that police be issued with a single, pocket-sized, booklet containing a general 'citation notice' form. The form would include sections which, when filled in, amounted to the issue of a formal caution, or a fixed penalty notice, or a notice requiring attendance at a court. The recommendation is that the booklet be carried by all police officers. It would allow them to exercise their discretion in relation to the method to be adopted in handling the particular matter. By having a box for the caution appear on the same form as the 'on-the-spot ticket', the availability of that option is kept prominently before the investigating officer at all times.¹⁶ Legislative examples can already be found which direct that infringement notices be

¹³ Victoria Police Statistical Review 1991/92, 162.

¹⁴ Cameron M.H. and Sanderson J.T. *Review of Police Operations for Traffic Law Enforcement*, Melbourne, Traffic and Safety Department, Royal Automobile Club of Victoria, 1982, 60.

¹⁵ In a study of over 1,000 drivers in the United Kingdom who had been spoken to by the police about a possible offence, 61% claimed to have subsequently taken more care in their driving behaviour irrespective of the fact that they had simply received a verbal warning, or had been taken to court, Griffiths R., Davies R.F., Henderson R. and Sheppard D., *Incidence and Effects of Police Action on Motoring Offences as Described by Drivers*, TRRL Supplementary Report 543, 1980 cited in Southgate P. and Mirrlees-Black C., *Traffic Policing in Changing Times*, Home Office Research Study No. 124, Home Office Research and Planning Unit, London, HMSO, 1991, 34. See also Riley D., *Police Action on Motoring Offences*, Research and Planning Unit Paper 20, London, Home Office, 1983 found that substantial savings for the police and the courts could result from greater use of warnings.

¹⁶ Ireland S., 'Use of a Citation Notice by Police as an Alternative to Arrest and Charge', Paper presented to 7th Annual Conference of the ANZ Society of Criminology, University of Melbourne, 1991. See below p.286.

issued before any prosecution is commenced.¹⁷ Statutory directions requiring that a formal warning precede an infringement notice are just as feasible.

9.3 Fairness as a factor

9.3.1 Official tolerance of a degree of wrongdoing can do much to palliate public disquiet about the inequities which are inherent in the way in which the most common infringement offences come to light. The United Kingdom Road Traffic Review Report has referred to the public perception of road traffic law enforcement as a ‘punitive lottery’:¹⁸

. . . there was evidence that many viewed the law as attempting to impose an idealised standard which even those with the best of intentions were bound to transgress from time to time. They saw the law or parts of it as operating as a punitive lottery often more concerned with exacting penalties than with improving behaviour on the roads—a ‘lottery’ because the chances of being caught were extremely low, and ‘punitive’ because of the belief that quite severe punishment might be imposed for minor breaches of the law apparently involving no danger to others. Too often the feeling of those who are caught is not that they have done something wrong, but merely that they have been unlucky.

Another complaint is that the leeway allowed for reasonable doubt and fairness is being altered to maximise revenue collections. That something of the sort might have occurred in Victoria is suggested in a public complaint in April 1992 by a member of state Parliament:¹⁹

Since last year’s June economic statement in which the Government announced it would increase revenue from traffic fines, the number of speed camera fines issued increased dramatically, as did the number of people able to prove that they had been wrongly booked. In June last year, 37 407 fines were issued after viewing 70 196 speed camera photos, a prosecution rate of 53 per cent. But after the Government’s decision to increase revenue from fines, the prosecution rate for July suddenly leapt to 77 per cent with 60 125 fines issued from 77 190 photos. This sudden increase in the prosecution rate straight after the Government’s decision to increase revenue from fines suggests that lower standards were applied to verifying photos to ensure that prosecutions were fully enforceable. At least 639 people have had their speed camera fines cancelled since the

¹⁷ E.g., under the *Road Traffic Act 1961 (SA)*, s.79b prosecutions against certain provisions may not be commenced unless the owner has been served a traffic infringement notice and been given the opportunity to expiate it in accordance with the *Summary Offences Act 1953 (SA)*, s.64.

¹⁸ United Kingdom, Department of Transport, Home Office, *Road Traffic Review Report*, London, HMSO, 1988, 26.

¹⁹ Dickinson H., (Parliamentary Member for South Barwon) letter to the editor, ‘Too many drivers wrongly fined’ *Age* 24 April 1992, 12.

June economic statement after they complained to the Traffic Camera Office that a fine had been issued to the wrong registration number.

9.3.2 How much attention should be paid to public opinion on what is fair in the setting of penalties and in framing enforcement policies? United Kingdom studies by Southgate and Mirrlees-Black²⁰ show that traffic police there have mixed views on how much allowance should be made for public opinion. A more receptive response to the importance of public opinion was found at senior levels rather than at junior ones. The wiser police recognised that motor vehicle enforcement is an aspect of policing which impinges upon a very large number of people. In one of their surveys of almost 2000 drivers in four police enforcement areas in England, Southgate and Mirrlees-Black found that one in five drivers had been in a vehicle approached or stopped by the police within the previous twelve months and nearly one in three had been in contact with the police in this or some other way over the same period. A common complaint amongst traffic officers was that the public underrate the seriousness of traffic offences and the importance of traffic policing. However, in another study in this series, where a comparison of 1989 drivers and 889 traffic police was made in ranking the relative seriousness of traffic and other offences, a high level of concurrence between drivers and police was attained.²¹ It suggests that the police and the public do share common values about the relative gravity of different categories or classes of wrongdoing. The issues which separate them appear to have more to do with the manner and rigour with which those standards are enforced, particularly in marginal cases.

9.3.3 Major American research studies of what the public want by way of fairness in enforcement procedures were first reported in the 1970s by Thibaut and Walker in their book *Procedural Justice: A Psychological Analysis*²² and later, in 1988, by Lind and Tyler in *The Social Psychology of Procedural Justice*.²³ What these studies in social psychology suggest is that citizens view the fairness of proceedings in terms of their own participation or voice in them, rather than in relation to the material outcome of the engagement with the law. Participatory procedure is something which the respondents saw as having value beyond any actual economic costs or losses they might incur. Indeed, the conclusion of this procedural justice research is that the sense of fairness is often a stronger

²⁰ Southgate P. and Mirrlees-Black C., *Traffic Policing in Changing Times*, Home Office Research Study No. 124, Home Office Research and Planning Unit, London, HMSO, 1991, Ch. 4.

²¹ Southgate and Black, above, p.28, Table 4.3.

²² Thibaut J. and Walker L., *Procedural Justice: A Psychological Analysis*, Hillsdale, New Jersey, Erlbaum, 1975; Thibaut J. and Walker L., 'A Theory of Procedure' (1978) 66 *California Law Review* 541.

²³ Lind E. and Tyler T., *The Social Psychology of Procedural Justice*, New York, Plenum Press, 1988.

consideration than self-interest.²⁴ Lind and Tyler have shown that this sense of fairness is strongly related to the extent to which citizens have the opportunity to present their version of the facts, or to make an argument in mitigation of the matter, even though the likelihood of it altering the decision is recognised to be slight.²⁵

9.3.4 In their survey of 1500 Americans, the researchers asked about the extent to which respondents had broken various laws during the previous year and about their experiences with the police and the courts. They were invited to assess the fairness of the procedures employed and the justice and favourability of the outcome. Included were questions related to illegal parking, driving over the speed limit and driving while intoxicated. The researchers found that a widespread feeling of moral obligation to obey the law was at the root of belief in its legitimacy. Compliance was more strongly related to shared views about the legitimacy of the law, than to judgments about the likelihood of being caught breaching it. Similarly, the extent to which respondents had favourable views about their encounter with the law, was much more strongly associated with their assessment of the fairness of the procedures, than with the outcome in material terms. Fair procedures were regarded as likely to lead to fairer outcomes, but the sense of having been treated fairly did not depend on being satisfied with the actual outcome. In the American study, 45 per cent of those who had been stopped by the police for traffic offences did not get the outcome most favourable to them; instead they received a traffic ticket. Nevertheless, three-quarters of the surveyed group felt that the procedure and result had been fair.

9.3.5 Fair procedure, even in minor offences, is important, not merely from an ideological point of view, but also from a practical point of view. Fairness in the procedure associated with the detection of the offence provides a cushioning effect, mitigating any negative impact that an adverse outcome might have on public attitudes towards obeying the law. It is directly relevant to preserving the cooperation and goodwill of the public in law enforcement matters. What counts as fair procedure? Crucial elements as revealed in the American studies, were the neutrality of the decision-maker, polite treatment of the alleged offender and respect for his or her rights. Respondents also placed weight upon the availability of an opportunity to state their case. The attitude of the enforcement officials, as revealed in their own efforts to be fair and reasonable in their enforcement of the particular area of law, also carried great weight.

²⁴ Lind and Tyler, 1988, above 125.

²⁵ This means that procedures can be created in which participation is offered, but is essentially illusory because of the trouble, expense and delay involved in initiating it, or because the discretions available to the decision-maker are heavily circumscribed. See Heydebrand W., *Technocratic Administration of Justice*, in Spitzer S. (ed.), (1979) 2 *Research in Law and Sociology* 29; see also O'Malley P., 'Technocratic Justice in Australia' (1984) 2 *Law in Context* 31.

Fairness may be a good in itself, but by building it into enforcement policies through the setting of enforcement thresholds it has significant utilitarian value. It reduces the withdrawal of legitimacy from the law and the development of disrespect for the group rules. It reinforces belief that the law is worthy of support, thus promoting compliance through a sense of moral obligation rather than fear of detection and apprehension.

9.4 Technical tolerances and discretionary allowances

9.4.1 In order to counterbalance any feeling that the enforcement of infringement offences, particularly in the motoring area, is unfair in its rigidity, the police regard it as politic to forbear from administering the law according to its strict letter. The leeway they allow is most precisely quantified in relation to speeding offences. Even so, one of the two elements in the calculation of the threshold allowance is discretionary, while the other is set by law. The latter is designed to allow for any inherent inaccuracy in the approved measuring instrument. Thus, for the reading of an instrument to be accepted as proof of the speed of a vehicle it purports to record, it must meet certain testing standards. Regulations define the allowance which must be made for the known technical errors which the instrument is capable of making. The other allowance, for fairness, is purely discretionary and has already been altered within the life of the Victorian speed camera experience, with the effect of bringing in more, rather than fewer offenders.

9.4.2 **Technical error:** The *Road Safety (Procedures) Regulations* 1988, Part 4, define the requirements for the testing, sealing and use of prescribed automatic detection devices. Part 5 deals specifically with radar and other speed measuring instruments. The regulations require that those using the instruments assume that there may be an error of plus or minus 2 km/h in measurements of speed made by older models of the machines. In relation to the newer ones now in use, the required tolerance for technical error has been increased to plus or minus 3 km/h, or 3 per cent of the measured speed, whichever is greater.²⁶ This means that in a 60 km/h zone, a vehicle cannot be regarded as speeding until, at minimum, it exceeds 63 km/h; in a 100 km/h zone the speed must exceed 103 km/h. The instruments themselves must be tested by an authorised officer²⁷ within 12 months prior to the occasion of their use and they must be used in the manner prescribed by the regulations.²⁸

²⁶ *Road Safety (Procedures) Regulations* 1988, r.411(d).

²⁷ *Road Safety (Procedures) Regulations* 1988, r.410.

²⁸ *Road Safety (Procedures) Regulations* 1988, r.412.

The police have their own site selection and camera operator's manual.²⁹ The procedures for using radar speed detection devices, including ones linked to photographic systems, as a means of detecting speeding motorists is also the subject of two revised Australian Standards published in March 1992. These deal respectively with functional requirements³⁰ and operational procedures.³¹ In preparing these Standards, account was taken of performance specifications for police traffic radar devices published by the United States National Highway Traffic Safety Administration. These Standards cover such matters as equipment certification, site selection, circuit testing, radar identification, and the training of personnel to evaluate photographs or films. The police also have their own technical services and links with tertiary institutions to maintain and test their equipment.

9.4.3 Discretionary allowance: Originally the enforcement tolerance in using speed cameras in Victoria included a value representing 10 per cent of the posted speed limit in the area, plus 3 km/h for technical error.³² This meant that there would be no action taken by way of infringement notice, or otherwise, for travelling above the speed limit in a 60 km/h zone until the speed reached 70 km/h or more.³³ In a 100 km/h zone, the equivalent threshold was 114 km/h. Police take the view that any enforcement margin above a speed limit creates a new, de facto, speed limit as motorists, learning of the leeway allowed, adjust their speed accordingly. In 1991, the Social Development Committee of the Victorian Parliament, in reporting on speed limits in Victoria, supported the practice of the Victoria Police in applying a 10 per cent tolerance on posted speed limits when using speed cameras,³⁴ but recommended that the discretionary tolerance figure in the upper speed ranges be treated as incorporating the allowance for technical error of ± 3 km/h. On 14 February 1993 this suggested change was implemented to coincide with changes in Victorian speed limits which had also been recommended by the Committee. The effect of the new policy is to lower the threshold of enforcement in the upper ranges. In a 100 km/h zone, the threshold has been reduced from 114 km/h to 110 km/h.³⁵ There have been reports of

²⁹ Victoria Police Speed Camera Program, *Site Selection and Camera Operators Manual*, Version 2, December 1993.

³⁰ Standards Australia, *Radar Speed Detection - Part 1: Functional Requirements and Definitions*, Australian Standard AS 2898.1, Sydney, Standards Association of Australia, 1992.

³¹ Standards Australia, *Radar Speed Detection - Part 2: Operational Procedures*, Australian Standard AS 2898.2, Sydney, Standards Association of Australia, 1992.

³² Victoria Police, Assistant Commissioner Frank Green, *Speed Cameras Operational Policy Change*, 14 February 1993.

³³ The actual tolerance is 9 km/h, because travel at 60 km/h is lawful. Only at 61 km/h is it unlawful in this speed zone.

³⁴ Victoria Parliament, Social Development Committee, *Report Upon the Inquiry into Speed Limits in Victoria*, Melbourne, Government Printer, 1991, 106.

³⁵ At 110 km/h the tolerance is 120 km/h instead of 124 km/h.

infringement notices having been issued to drivers for travelling at 63 km/h in a 60 km/h speed zone, though this has been denied by the police.³⁶ While they acknowledge that numerous complaints have been made by people booked for alleged speeds between 67 and 70 km/h in 60 km/h zones, their explanation is that, though the camera is triggered at a speed of 70 km/h, the speeds actually alleged in penalty notices are adjusted downwards to take into account the statutory allowance for technical error in the reading.³⁷ The speed alleged is always 3 km/h lower than that reported by the instrument. The actual speed may be above, below, or identical to, that recorded by the speed camera.³⁸

9.4.4 Because the police approach to enforcement threshold links their intervention directly to the underlying local speed limit and to their belief that speed is a primary factor in motor vehicle accidents, both the fixing of the threshold and their apparent concentration of efforts on less serious examples of speeding have continued to attract attention. Surveys conducted by the Royal Automobile Club of Victoria at some 80 locations in 1990, in order to provide information about the relevance of local speed limits, revealed a widespread and continuing disregard by motorists of those limits. In the organisation's view, many of the speed limits were inappropriate to the particular area. It also challenged police beliefs about the extent to which speed was a primary factor in motor vehicle accidents. On figures produced by the RACV to the Parliamentary Social Development Committee enquiry into speed limits in Victoria, speed was only a factor in some 5-10 per cent of urban accidents and no more than 25 per cent of rural ones.³⁹ The RACV reiterated its belief, that it was not increased speed per se which added to the risk of an accident, but the degree of deviation from the average speed of traffic.⁴⁰

³⁶ Hirsh H., letter to the editor, 'Outcry on speed cameras can no longer be ignored' *Age*, 11 December 1991. A Traffic Camera Office spokesman claimed that their computer program has the relevant tolerance built in to prevent the issuing of tickets below the threshold limit.

³⁷ Superintendent J.G. Bodinnar, Traffic Camera Operations, *Speed Cameras: A paper presented to the Community Road Safety Council (Inner Eastern) at a public meeting on 8 November 1991*, Victoria Police, Traffic Camera Office, 1991, 7.

³⁸ Another source of technical error is the accuracy of vehicle speedometers. Because the Australian design rules for motor vehicle speedometers tolerate a reading error of 10%, motorists may be booked for speeding offences, though their own speedometer may indicate that they are complying with the local speed limit. The police have acknowledged that if a driver objects to a traffic infringement notice and offers certification that the speedometer was inaccurate, that fact would be taken into account in deciding whether to proceed with the matter or issue a warning notice, see Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, paras 3.6.

³⁹ Royal Automobile Club of Victoria (RACV) Limited, *Speed Limits: RACV's Perspective—A submission to the Parliamentary Social Development Committee*, Melbourne, RACV, 1990, 42, 44 & 45: "'Speed Kills' is a myth which has been promulgated for many years. It is not speed per se that kills, it is 'excessive speed for the conditions' which increases crash involvement'.

⁴⁰ See above 8.3.3.

Table 9.1
Speed Infringement Notices Issued by Traffic Camera Office
1 July 1990 to 30 June 1991, Victoria⁴¹

Speed above the Limit	No. of Offences	%
1 - 15 km/h	317488	83
16 - 29 km/h	60819	16
30 - 39 km/h	2332	1
40 - 44 km/h	143	-
45 - 49 km/h	63	-
50 km/h and over	173	-
Total	381018	100

The RACV's position has consistently been that police issuing of traffic infringement notices concentrates too much on the least serious group of speeding offences. It has pointed out that more than half the speeding offences recorded have been detected in urban areas, where speed is not a major factor in road crashes.⁴² Further support for this concern that the concentration of effort is not upon serious speeding offenders is revealed by the figures in Table 9.1. It shows that 83 per cent of speed infringement notices issued by the Traffic Camera Office in the year under study were in relation to vehicles recorded as travelling no more than 15 km/h above applicable threshold.⁴³

9.4.5 The motoring organisation has also challenged police claims that the reduced number of fatalities in Victoria can be primarily attributed to enforcement of the speed limits and the use of speed cameras. It has drawn attention to the fact that the reduction in fatalities in Victoria has been no more than in New South Wales, nor in other states where no speed cameras have been in operation. The reduction in the road toll in Victoria began in October 1989, prior to the introduction of cameras. While the RACV accepts that the presence of speed cameras could be one of the contributing factors, it denies it is the only one and claims that there is a distinct possibility that the reduction in the road toll would have occurred, without special road safety initiatives, because it was already

⁴¹ Source: Traffic Camera Office, cited by Mulderry C., 'Challenging Speed Camera-Related Infringement Notices' (1992) 66 *Law Institute Journal* 700, 701.

⁴² Royal Automobile Club of Victoria (RACV) Limited, *Speed Limits: RACV's Perspective*—A submission to the Parliamentary Social Development Committee, Melbourne, RACV, 1990, Tables 8.1 & 8.2.

⁴³ However, it should be noted that that threshold means that the offender was already exceeding the local speed limit by at least 10 km/h.

dropping in line with a long-term trend.⁴⁴ The RACV's position, in its submission to the Victorian Parliament's Social Development Committee in 1990, was that the community accepted that driving 20 km/h or more above the speed limit was unacceptable and that licence suspension was warranted for driving 30 km/h above the limit. If speed infringement operations concentrated on these genuinely excessive speeds, the police would be subject to less hostility because of allegations of entrapment and unfairness. The figures in Table 9.1, which suggest that police are concentrating on the less serious speeding offenders, do not square up with the figures supplied by VicRoads Registration and Licence Information Services, on the number of licences lost on automatic conviction for excessive speed infringements under the *Road Safety Act* 1986. These figures are to be found in Chapter 4 at Table 4.2. For excessive speed infringements, the speed must involve exceeding the applicable speed limit by 30 km/h or more. VicRoads figures on licence loss infringements for 1990/91 show a total of 19 553 cases compared to the Traffic Camera Office figures in Table 9.1 which shows 2711 cases of speed 30 km/h or more over the speed limit. The reason for the difference in figures is that those in Table 9.1 relate to speeding detected by speed cameras deployed by the Traffic Camera Office, while VicRoads figures include all loss of licence infringements, however detected, e.g. by patrol vehicles. The latter pass through the Fixed Penalties Office. Nonetheless, the pattern of Traffic Camera Office detections does not support the claim that excessive speeding is a problem in the areas in which the cameras are deployed.

9.5 Tolerating recidivism

9.5.1 Another dimension of the enforcement threshold relates to the extent to which the infringement notice system is willing to tolerate recidivism. The normal open court hearing allows for the prior criminal history of an offender to be made known to the court at sentencing. The infringement notice system, with its concern for automation, expediency and administrative efficiency does not allow for the individualisation of treatment, the calling of criminal records, or differential penalties for repeat offenders. Only rarely are there legislative provisions which permit the fact

⁴⁴ Royal Automobile Club of Victoria (RACV) Limited, *Speed Limits: RACV's Perspective*—A submission to the Parliamentary Social Development Committee, Melbourne, RACV, 1990, 50; Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994, para 1.7. See above 6.10.16 and Thoresen T., Fry T., Heiman L. and Cameron M., *Linking Economic Activity, Road Safety Countermeasures and Other Factors With the Victorian Road Toll*, Monash University Accident Research Centre, Report No.29, 1992.

that an infringement notice has been issued to be used as evidence in future cases of a similar nature heard in open court.⁴⁵

The parliamentary debates also recognised the continuing police discretion to decline to issue an infringement notice because of the gravity of the offending and, implicitly, the discretion to issue a verbal or written warning instead of either an infringement notice or summons.

9.5.2 When the *Road Traffic (Infringements) Act 1965* was being debated in the Victorian Parliament, the opposition expressed concern about the risk of lenient treatment of recidivists.⁴⁶ The government response to this was that while parking infringement notices allowed 14 days for payment, traffic infringement notices gave 28 days in order to allow police an opportunity to check whether the person to whom such a notice was issued was a persistent offender. If that proved to be the case, the notice could be withdrawn and a summons issued. It gave an undertaking to establish a system for recording the particulars of all offenders who had expiated traffic infringements by the payment of a fixed penalty so as to detect recidivists.⁴⁷ The system failed. Those who made the promise failed to appreciate how rapidly the number of traffic infringements would grow and how inadequate the supporting technical and personnel resources were. On 13 February 1969, the Under-Secretary of the Chief Secretary's office wrote to the Chief Commissioner of Police complaining that there had only been 50 withdrawals of infringement notices over the preceding four years under the promised arrangements for the handling of persistent offenders. The Under-Secretary expressed his concern that the undertaking given to Parliament was not being complied with. In a reply, prepared by the Officer-in-charge of the Penalties Payment Office and forwarded on 28 February, 1969, the police department explained that, although a persistent offender was generally defined as any individual who had been issued with three or more traffic infringements in any twelve-month period, there were problems in identifying them. These difficulties related to the inability of police to adequately scan their records. It was pointed out that these had grown in size from 18380 infringements in the first four months of the operation of the 1965 Act to 52000 over the next twelve months. This completely exceeded the capacity of the technology then available for rapidly comparing and matching records. The period over which records were to be reviewed was then reduced from twelve to nine months. By 1967, when the system held 61 300 records, the test period had to be reduced to six months and, in 1968, with 79400 infringement notices on record, the active and non-active records could only be held together for three

⁴⁵ E.g. *Road Safety Act 1986*, s.90.

⁴⁶ *Victoria Parliamentary Debates*, Legislative Council, 1964-65, Vol. 278, 3914-15, The Hon. J.W. Galbally.

⁴⁷ *Victoria Parliamentary Debates*, Legislative Assembly, 1964-65, Vol. 278, 4096.

months. When, later in 1968, further infringement offences were added to the statute book the entire system collapsed. From July 1968, it was no longer possible to keep any separate records of persistent offenders active. The experience was an effective demonstration of what occurs when detection capacity exceeds processing power.

9.5.3 In general, the infringement notice system still treats all persons as first offenders for the purpose of allowing them to expiate their wrongdoing by the payment of a fixed penalty. This is consistent with the original model, under which no criminal conviction or civil disability attaches to those who admit the offence and expiate it. One reason for deeming an expiated infringement to be a conviction, is to be able to treat the offender as a recidivist for the purpose of increasing the penalty on reoffending. However, the *Road Safety Act 1986*, which, since 1989, has treated licence loss infringements as convictions,⁴⁸ does not provide for the elevation of penalty levels if further infringement notices are issued for subsequent acts of the same type. Rather the deeming provision is to ensure that a police record of those who commit the more serious road safety infringements will be maintained thus allowing the withdrawal of infringement notices with a view to proceeding against the offenders in open court where prior convictions can be referred to in determining sentence. The *Road Safety Act 1986*, s.90 provides that if a person is served with a summons for any infringement, and is alleged to have been previously convicted of any infringement, there may be served with the summons a document setting out particulars of the priors. These can include convictions automatically acquired under s.89A. The information in the document is admissible evidence of the fact that the person was convicted of the offences alleged and is sufficient to treat the person as a second or subsequent offender for the purposes of being awarded a more severe sentence. There is also an express prohibition on using drink-driving infringement notices for persons who are not first offenders.⁴⁹ This does not apply to the other licence loss infringements, but it does require the police to keep a record of those who are now barred from receiving infringement notices for any future drink driving offences.

9.5.4 No figures are available on the level of recidivism in relation to infringement offences under all eighteen Acts which permit the issue of infringement notices. Higher levels of recidivism might be expected in relation to parking offences, if the on-the-spot penalty is modest and the fine can be regarded as little more than a higher cost for access to parking. But in relation to moving traffic offences the penalty is more obviously intended to be a deterrent. Figures on recidivism during the first three years of the Traffic Camera Office's experience in the issue of traffic

⁴⁸ See above 4.6.1.

⁴⁹ *Road Safety Act 1986*, s.3 (definition of 'drink-driving infringement').

infringement notices show a low level of detected reoffending. The figures in Table 9.2 and Table 9.3 separately record the number of repeat offences by reference to the registration number of the offending vehicle (which may not have been owned or driven by the same person on successive occasions) and by reference to the driver's licence number of the person to whom the infringement notice was sent.⁵⁰ Again the licence holder need not have been the driver at the time, since the notice goes to the registered owner of the vehicle. A noticeable feature of Table 9.3 is the number of 'blanks', i.e. the 195 075 persons representing 31.9 per cent of the 610 761 persons sent infringement notices during this period, for whom no record of a driver's licence issued in Victoria could be found.⁵¹ Whether measured by driver or vehicle, approximately 80 per cent of infringements appear to relate to a first detected offence. In only 5 per cent of cases were more than two traffic infringements recorded against the same vehicle or licence holder in the three years to the beginning of 1992. This suggests that the general policy of treating as first offenders all those who receive infringement notices is well founded.

⁵⁰ The tables do not record whether the licence holder has been dealt with by the police Fixed Penalty Office or has been summoned to court in relation to any traffic or other offences during this period.

⁵¹ These may include notices sent to corporations registered as vehicle owners where the corporation has not nominated the actual driver to receive the infringement notice.

Table 9.2
Traffic Infringement Notices: Recidivism
Number of Offences per Vehicle,
December 1989 - 31 January 1992, Victoria⁵²

Offences	Vehicles	%	Cum %	TINS
1	419840	77.41	77.41	419840
2	93015	17.15	94.56	186030
3	21829	4.02	98.58	65487
4	5444	1.00	99.59	21776
5	1549	0.29	99.87	7745
6	455	0.08	99.96	2730
7	160	0.03	99.98	1120
8	45	0.01	99.99	360
9	26	0.00	100.00	234
10	6	0.00	100.00	60
Over 10	6	0.00	100.00	60
TOTAL	542375	100.00		705442

9.5.5 The law does, however, have another way of getting at recidivists. It is through the demerits point system.⁵³ Drivers' licences can be lost through the accrual of demerit points earned for infringements. This is a surrogate for court imposed higher penalties for recidivists. The scheme is aimed at the driver who, though not committing any individual offence which of itself merits disqualification, nevertheless demonstrates by a pattern of repeated offending that he or she is no longer willing to comply with the road traffic legislation. Progression towards loss of licence through the accrual of demerit points for infringements is an administrative way in which recidivism can be recorded against a licence and acted upon automatically, without court proceedings, when the disqualification threshold is reached.⁵⁴

9.5.6 If the present tolerance of recidivism across the board for all infringement offences is to be reduced, more efficient recording of previous offending, better matching of personal identifying details, and a graduated system of escalated penalties will have to be designed. Given that infringement penalties are enforced by well over 120 different agencies and are, in the main, of a minor nature, an alteration to the present degree

⁵² Table of traffic infringement notices issued by the Traffic Camera Office in relation to the same *vehicle registration* number from the date upon which the Traffic Camera Office commenced issuing such notices, December 1989 to 31 January 1992. Source: Traffic Camera Office.

⁵³ See above 4.7.1.

⁵⁴ The setting of demerit points thresholds has been the subject of a recent Victorian Parliamentary inquiry, Victoria Parliament, Road Safety Committee, *Report Upon the Inquiry Into the Demerit Points Scheme*, Melbourne, Government Printer, 1994.

to which recidivism is tolerated would add enormously to the complexity and costs of the infringement system.

Table 9.3
Traffic Infringement Notices: Recidivism
Number of Offences per Driver,
December 1989 - 4 February 1992, Victoria⁵⁵

Offences	Drivers	%	Cum%	TINS
1	338103	81.34	81.34	338103
2	61829	14.87	96.21	123658
3	12276	2.95	99.16	36828
4	2632	0.63	99.80	10528
5	619	0.15	99.95	3095
6	154	0.04	99.98	924
7	42	0.01	99.99	294
8	15	0.00	100.00	120
9	11	0.00	100.00	99
10	1	0.00	100.00	10
Over 10	4	0.00	100.00	40
TOTAL	415686	100.00		513699
Blanks	195075			195075
GRAND TOTAL				708774

⁵⁵ Table of traffic infringement notices issued by the Traffic Camera Office in relation to the same *driver's licence* record from the date upon which the Traffic Camera Office commenced issuing such notices, December 1989 to 4 February 1992. Source: Traffic Camera Office.

A New Class of Offence?

10.1 Classifying offences

10.1.1 Criminal offences have traditionally been divided into classes according to the seriousness of the offending.¹ The main distinction is between *indictable* and *summary* offences, but there is also an additional class of *indictable offences triable summarily*.² The classification of offences is of significance in relation to the mode of trial, the type and severity of possible sentences and the avenues of appeal available to both the defendant and the prosecutor. It also has a bearing on many other procedures which apply to the offence, e.g. whether arrest without warrant is possible, the availability of powers of entry, search and seizure, eligibility for bail and the presence or absence of limitation periods in bringing a prosecution. Indictable offences³ are triable before a judge and jury and are less numerous than summary offences⁴ which are disposed of by a magistrate. Indictable offences are generally more grave and attract higher maximum statutory penalties than summary ones. Imprisonment is usually specified as the principal sanction. All residual common law offences are indictable and so are almost all offences proscribed in the *Crimes Act 1958*.⁵ Where an Act creates an offence and describes it as a summary offence, e.g. *Summary Offences Act 1966*, or is silent as to the procedure for its prosecution or enforcement, it is treated as a summary

¹ For a discussion of the importance of the distinction between offence classifications, see Dixon J. in *Munday v. Gill* (1930) 44 CLR 38, 86-87.

² E.g. under *Magistrates' Court Act 1989*, s.53(1A) and Sch.4.

³ These may be crimes at common law or under statute. For certain purposes a distinction is drawn in Victoria between an indictable offence and a serious indictable offence, *Crimes Act 1958*, s.322C(4) & 325.

⁴ These are always statutory.

⁵ Indictable offences may also be created by other statutes, e.g. *Drugs, Poisons and Controlled Substances Act 1981*, s.71-73; *Firearms Act 1958*, s.32(7); *Occupational Health and Safety Act 1985*, s.47(3); *Petroleum (Submerged Lands) Act 1982*, s.133(1)&(2); *Wrongs Act 1958*, s.9-11.

offence to be prosecuted before a Magistrates' Court.⁶ A fine is usually specified as the primary sanction for summary offences, though imprisonment may also be ordered.⁷ In the Victorian *Sentencing Act* 1991 there is a linkage between offence classifications and penalty levels. All Victorian offences punishable at penalty level 8 or above (i.e. 36 months imprisonment and/or a fine of 360 penalty units⁸) are presumed to be indictable.⁹ Offences at penalty levels 5 to 8 inclusive are treated as indictable offences triable summarily.¹⁰ This means that, if they are prosecuted summarily, they will be subject to a lower maximum penalty. Normally this is 24 months imprisonment, or 240 penalty units.¹¹

10.1.2 The fact that many Victorian summary offences are further described by the statute, or the delegated legislation creating them, as *infringements* raises the question whether Parliament intended to bring into being a totally new class of offence. At the moment this title identifies the offence as one permitted to be expiated by payment of the fixed penalty set out in an infringement notice. However, not all offences for which such notices can be issued are called infringements. The title is not attached consistently. For many years the idea has been in circulation that it would be useful to separate some of the more common, but least serious, forms of wrongdoing from the mass of summary offences and to allow them to be disposed of by some form of administrative penalty rather than a judicially imposed one. This idea is worth reactivating as a way of separating more clearly the cases in which infringement notices should be used from those in which conventional criminal proceedings are appropriate. It could also serve to better define the legal consequences of adopting the different procedures.

10.2 Devaluing the criminal law?

10.2.1 It seems to be commonly assumed that whenever government considers that some form of conduct needs to be suppressed or regulated in the public interest, the proper course of action is to extend the criminal law to cover it. If a sanction is needed to promote compliance, judicially ordered criminal punishment is presumed to be fair and effective. These assumptions are acted upon despite the fact that the costs of running

⁶ *Interpretation of Legislation Act* 1984, s.52. See also *Sentencing Act* 1991, s.112(2). This does not apply where offences are specifically described in an Act as indictable, or to offences under the *Crimes Act* 1958 and the *Wrongs Act* 1958.

⁷ Other alternative sanctions are available under the *Sentencing Act* 1991.

⁸ *Sentencing Act* 1991, s.109. A penalty unit is \$100.

⁹ *Sentencing Act* 1991, s.112.

¹⁰ *Magistrates' Court Act* 1989, s.53(1A).

¹¹ *Sentencing Act* 1991, s.113.

offenders through the criminal justice system are high and the efficiency of the system in suppressing crime is low. But even if expensive and inefficient, the criminal justice system has symbolic worth as a powerful form of denunciation which reinforces shared communal values.¹² Denunciation can be achieved by public accusation, trial and sentence whether or not the person censured mends his or her ways. The centre-piece of the denunciation is the conviction. It produces legal stigma and social shame which endures beyond the specific penal sanction exacted. That is why, in recent times, government has chosen to attach 'real crime' labels to misconduct in the taxation, environmental protection and corporate areas in the hope of raising communal consciousness of wrongdoing, even though adequate fiscal penalties could have already been imposed in these areas under civil processes. However, there have been anxious feelings that if too many lesser offences are added to the criminal law, they will not only overload the courts, but are likely to debase the idea of criminality itself. This is particularly so if the offences are ones of strict liability, or if in other ways they depart from general principles of criminal liability, or excite little community condemnation. If offenders who do not match the public image of criminality are too casually convicted of a crime, the 'crime' label will lose its moral force. For this reason suggestions have been made that the graver crimes should be formally separated from other forms of illegality, leaving behind a separately defined class of offences which threaten the least danger and carry the weakest moral disapprobation:¹³

If criminal law's function is to reaffirm fundamental values, then it must concern itself with 'real crimes' only and not with the plethora of 'regulatory offences' found throughout our laws. Our Criminal Code should contain only such acts as are not only punishable, but also *wrong*—acts contravening fundamental values. All other offences must remain outside the Code.

The content of any new category of minimum wrongdoing is certain to include those summary offences which criminalise breaches of the standards which government sets in regulating matters such as health, welfare, the environment, occupational safety, traffic, public transport, the economy and the like. Once these are split off from the larger collection of summary offences and given their own legal identity, it will be but a short step to claim that they are sufficiently distinct to warrant some type of

¹² See *Sentencing Act* 1991, s.5(1)(d).

¹³ Law Reform Commission of Canada, *Our Criminal Law* (Report 3), Ottawa, Information Canada, 1976, 19-20.

simpler form of disposal that is less costly to the state and less vexatious to defendants than conventional summary hearings.¹⁴

10.2.2 But perhaps simplifying the machinery of prosecution, even if only for the lower levels of the offence hierarchy, will diminish the weight given to the standards of conduct required by law. Has public consciousness of the need for road safety and courtesy been eroded because the majority of traffic offences, even if detected, no longer result in a summons to court? If minor thefts, street offences and lesser drug crimes come to be as readily expiated as traffic offences by payment of a fixed penalty, will this not depreciate the standards of behaviour demanded by those prohibitions? These questions raise issues about the way in which procedure and punishment affect the substance of the criminal law. Breaches of law devoid of significant moral opprobrium and punishable in a relatively minor way are thought to be well suited to routine administrative handling. But it might also be that by assigning simpler procedures to the prosecution of offences, by relying on strict liability to speed things along, and by inflicting only nominal punishment, the legislature is denuding the conduct of its moral significance and weakening the condemnatory force of the criminal law. Has the introduction of the Cannabis Expiation Notice Scheme in South Australia had the effect of softening attitudes towards drug use in that state?¹⁵ These are causal problems that cannot be easily untangled. After all, legislation is intended to have an educative effect. When it declares that certain transgressions do not warrant a court hearing, nor an enquiry into the personal culpability of the offender, nor any individualised sanction, it cannot but promote a perception in the public that the conduct in question, though wrongful, is of no great moment.¹⁶

Law and order [then becomes] merely behavioural regulation, the administrative imposition of order and discipline, rather than the theatre of moral ceremonial which was the ideological *gestalt* of crime control.

To date, the forms of wrongdoing selected for correction by way of on-the-spot fines are not so obviously within the boundaries of 'real crime' as to be regarded as intruding into the latter's domain, but the

¹⁴ Aaronson D.E., Hoff B.H., Jaszi P., Kittrie N.N. and Saari D., *The New Justice: Alternatives to Conventional Criminal Adjudication*, Washington D.C., National Institute of Law Enforcement and Criminal Justice, 1977; Cheh M.M., 'Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction' (1991) 42 *Hastings Law Journal* 1325.

¹⁵ *Controlled Substances Act* 1984, s.45a(2) as amended by *Controlled Substances Act Amendment Act* 1986.

¹⁶ O'Malley P., 'Technocratic Justice in Australia' (1984) 2 *Law in Context* 31, 46.

potential to do so is there.¹⁷ One of the benefits of creating a discrete class of infringement offences is that it sets some limits on the notion of expiating criminality by submitting to fixed penalties by confining it to a safely defined class, thus restraining it from straying into areas of heavier punishment, where the traditional protections for the accused are more obviously needed.

10.2.3 The demand for a new class of offence often focuses upon parking and motoring offences. Most infringement notices in Victoria pertain to these areas of law. They are aimed at the safe and efficient flow of traffic and the accessibility of limited parking areas rather than the morality of drivers' conduct. Most of the offences are simply not perceived as criminal:¹⁸

Whilst some offences involving motor vehicles are seen to fall within the category of general criminal offences, the majority of road traffic offences cannot readily be characterised in this way. The conduct which gives rise to such offences may involve no more than carelessness, misjudgment, a lapse of concentration, a failure to be aware of or understand a relatively technical requirement—failings which are not in themselves usually regarded as morally reprehensible.

It was this perception, as well as a desire to conserve court resources, that led many jurisdictions in the United States to decriminalise minor traffic offences by treating them as civil or administrative infractions and removing them from the criminal courts.¹⁹ Likewise, in England, interest in innovative methods of traffic management has produced Part II of the *Road Traffic Act 1991* (UK) which allows civil rather than criminal handling of some of the traffic problems which on-the-spot tickets try to address.

10.2.4 In this country the need to consider minimising the criminalisation of those alleged to have committed the least serious types of offence has become important for a number of reasons. First, these lesser offences are no longer the prerogative of the police—over half the infringement notices in Victoria in the period reported in this study were not handed out by them, but by local government authorities;²⁰ secondly,

¹⁷ See, for example, proposals in the Australian Capital Territory for the introduction of \$100 on-the-spot fines for offences of street fighting, misbehaviour at public meetings, possession of offensive weapons, offensive behaviour, indecent exposure, noise abatement offences and public mischief: Australian Capital Territory Legislative Assembly, *Report No. 1 of the Standing Committee on Legal Affairs: Crimes (Amendment) Bill 1993*, Canberra, May 1993.

¹⁸ United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988, 19.

¹⁹ See above 2.1.5; Pike J.M., 'Civil Infractions for Minor Traffic Offences: Michigan's New Motor Vehicle Code' (1980) 26 *Wayne Law Review* 1543; Hoemann T.C., 'Washington's Decriminalization of Minor Traffic Offenses—A Summary of the New Law and its Effects on the Courts of Limited Jurisdiction' (1982) 17 *Gonzaga Law Review* 609.

²⁰ See above 5.3.1.

as has been explained, the parking and traffic violations for which infringement notices are predominantly issued are simply not regarded by many as criminal; thirdly, to treat traffic violators as criminals, even as petty offenders, becomes counter-productive when it arouses antagonism and non-cooperative attitudes in large numbers of average drivers who see themselves as also at risk of being unfairly criminalised by laws being enforced for revenue rather than safety reasons; fourthly, although the sanctions are essentially fiscal, there is a disturbing tendency to include add-on sanctions such as convictions, disqualifications and forfeitures which, in aggregate, produce apparently disproportionate levels of punishment. Since procedural reform is already being forced upon the courts by their inability to cope with the rising flood of minor cases, reduced criminalisation can be offered as an incentive for offenders to accept even further due process and procedural economies in the interest of keeping the flood out of the courts. In any event, advocates of reduced criminalisation in traffic management matters doubt whether conventional forms of criminal prosecution and punishment are much better in disciplining road behaviour than other techniques of persuasion. The latter include public education programs, greater use of formal cautions, compulsory driver retraining schemes, frequent roadworthy checks to detect unsafe vehicles, and other measures aimed at prevention and the enlistment of driver cooperation.²¹

10.3 Early steps

10.3.1 Because the current classification of offences is a matter of historical accident rather than plan, it fails to do justice to the complexity of penal regulation in a modern society. Neither penalties nor procedures have been consistently assigned to offences of a similar character and anomalies abound.²² In Victoria, widening the offence base of infringements has not been accompanied by a re-assessment of the utility of the indictable and summary classifications. The infringement scheme has simply been superimposed upon a limited subset of summary offences. Administrative convenience in dealing with frequently charged offences is only part of the expansion of the selection. There is a want of

²¹ Both the Stewart Committee in Scotland which looked at fixed penalties as alternatives to prosecution in 1980, and the United Kingdom, North Committee *Road Traffic Law Review Report* in 1988, emphasised that much more could be done by way of persuasion: Scottish Home and Health Department and Crown Office, *The Motorist and Fixed Penalties: First Report by the Committee on Alternatives to Prosecution*, Edinburgh, HMSO, Cmnd. 8027, 1980; United Kingdom, Department of Transport, Home Office, *Road Traffic Law Review Report*, London, HMSO, 1988.

²² Sentencing Taskforce, *Review of Statutory Maximum Penalties in Victoria: Report to the Attorney-General*, Melbourne, VGPO, 1989.

underlying principle. Reconstructing the offence categories would allow for clarification of the legal and procedural characteristics of each. Decisions would have to be made regarding the desirable number of categories, their designation, the maximum penalty applicable to each and whether imprisonment is to be excluded, what pre-trial procedures should apply (e.g. whether there should be different limitation periods and restrictions on use of powers of arrest and detention), and whether guilt is to be determined by a judge and jury, summarily by a magistrate, or by some administrative process. Whether to record a conviction and whether mens rea and other fault elements are to be excluded from consideration in determining guilt must also be settled for each class of offence. Ideally, the legislation defining the offence categories would then proceed to assign an appropriate one to each offence on the statute book.

10.3.2 For some time there have been calls for new classifications. In 1915, Freund, writing in America, suggested the grouping of offences into six classes according to the interest violated.²³ He wanted a new class of ‘statute violations’ to be opened because:²⁴

Experience has demonstrated the futility of attempting to deal with offenders against such statutes as common criminals, and the general policy of legislation is to rely upon relatively mild penalties, and in many cases to create special organs for their enforcement.

He accurately predicted that the number of such ‘violations’ would increase and that public sentiment would not accept them being prosecuted criminally. His proposal was for a system of summary administrative penalties as an alternative to the ‘severe and dishonoring penalties’ of orthodox criminal law.²⁵ When, in 1933, Sayre coined the phrase ‘public welfare offence’²⁶ he added impetus to this interest in the growing number of strict liability regulatory offences. In 1962, in its influential draft *Model Penal Code*, the American Law Institute responded to Freund’s idea of a class of offences to be called ‘violations’. It defined the class in these terms:²⁷

An offence . . . constitutes a violation if it is so designated in this Code or in the law defining the offence or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorised upon conviction or if it is defined by a statute other

²³ Freund E., ‘Classification and Definition of Crimes’ (1915) 5 *Journal of Criminal Law & Criminology* 807, 822. The classes suggested were: 1. political offences; 2. statute violations; 3. administrative crimes; 4. police offences; 5. crimes against morality; 6. common or ordinary crimes.

²⁴ Freund, above 823

²⁵ Freund, above 823-4.

²⁶ Sayre F., ‘Public Welfare Offenses’ (1933) 33 *Columbia Law Review* 55.

²⁷ American Law Institute, *Model Penal Code and Commentaries*, Part 1, Philadelphia, 1962, s.1.04.

than this Code that now provides that the offence shall not constitute a crime. A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offence.

This definition was supplemented by confining the punishment for a violation to a fine. The fine could either be \$500, or an amount equal to double the pecuniary gain derived from the offence by the offender.²⁸ The Institute's objective was to provide the specifications for a grade of offence for which a finding of guilt resulted neither in a criminal conviction, nor imprisonment. It was envisaged that it would cover 'public welfare' and regulatory offences, traffic violations and others which penalised conduct in circumstances in which condemnation of the offender as a criminal was undeserved. It treated violations as prima facie offences of strict liability.²⁹ Conversely, offences in which strict responsibility was imposed in respect of any material element were deemed to be violations.³⁰ Many American jurisdictions were influenced by the idea of a separate class of violation and enacted legislation based on the *Model Penal Code*.

10.3.3 In the United Kingdom, in 1980, when the Stewart Committee was looking at fixed penalties as alternatives to prosecution for motoring offences in Scotland, it thought that the system should be confined to minor or 'regulatory' offences, but was unable to define either satisfactorily and did not press for a new category of offences to be opened for this group.³¹ In Australia, the idea of calling for the introduction of legislation to convert existing minor criminal offences to 'administrative illegalities' was explored by the Australian Law Reform Commission in responding to its 1989 reference on multiculturalism.³² The Commission toyed with the idea that these would then be dealt with by some form of infringement notice procedure leading to a monetary penalty recoverable only by civil methods of enforcement. Imprisonment would not be an option.³³ The Commission saw the establishment of the new class of 'contravention' as avoiding the 'trauma, stigma and adverse consequences (which may be out of all proportion to the offence) of a

²⁸ s.6.03(4)-(6).

²⁹ s.2.05(1)&(2).

³⁰ s.2.05(2)(a).

³¹ The first category was one arrived at by excluding offences involving dishonesty, injury to a victim, or obstruction of police. The second was defined in terms of 'offences which affect a large number of people', or prohibitions 'intended to promote and maintain public safety and an orderly use of roadways throughout the country': Scottish Home and Health Department and Crown Office, *The Motorist and Fixed Penalties: First Report by the Committee on Alternatives to Prosecution*, (Stewart Committee), Edinburgh, HMSO, Cmnd. 8027, 1980, paras. 1.08 and 3.01.

³² Australian Law Reform Commission, *Multiculturalism: Criminal Law*, Discussion Paper No. 48, Sydney, ALRC, 1990, para. 6.12.

³³ ALRC Discussion Paper No. 48, above para. 6.11.

prosecution for a criminal offence'.³⁴ It also thought it would reduce the workload of local courts and the costs of the criminal justice system. On the other hand, the Commission foresaw difficulties in establishing the basis upon which the distinction between crimes and contraventions should be made and noted that the proposal might reduce the authority of the criminal law and weaken the safeguards it provided to accused persons.³⁵ Ultimately the Commission recommended that the infringement scheme be applied to particular offences on an ad hoc basis, without formally recognising a distinction between crimes and contraventions.³⁶ In its final report on multiculturalism,³⁷ the Commission recommended a diversionary scheme similar to infringement notices in Victoria and New South Wales. It declined to define the nature of the offences for which this alternative should be available, other than declaring that it should be utilised for 'conduct that amounts to a minor breach of the relevant law'.³⁸

10.3.4 In the papers which emerged from the Australian Law Reform Commission's reference on customs and excise, consideration was given to the various types of enforcement procedure available for offences under the Customs and Excise Acts.³⁹ The Commission did not seek to create any new classes or categories of illegality which would be subject to unique enforcement procedures. However, it paid attention to the fact that since 1989 customs legislation contained extensive provisions for levying of administrative penalties.⁴⁰ These provide an example of an administrative agency being given almost complete powers of enforcement, adjudication, penalty imposition and remission in relation to certain matters falling within the Act. Currently, they are directed towards recovery of revenue forgone because of false or misleading statements in customs returns, but the underlying model can be readily adapted for other purposes. It offers great flexibility in determining the amount called upon to be paid, both initially when the sum demanded is fixed and later when remissions of penalty are under consideration, but it also deliberately excludes the courts in favour of discretions being exercised by the executive arm of government. A penalty notice is issued by the department

³⁴ ALRC Discussion Paper No. 48, above para. 6.14.

³⁵ ALRC Discussion Paper No. 48, above para. 6.13.

³⁶ ALRC Discussion Paper No. 48, above para. 6.15.

³⁷ Australian Law Reform Commission, *Multiculturalism and the Law*, Report No. 57, Sydney, ALRC, 1992.

³⁸ ALRC Report No. 57, para. 9.17.

³⁹ Australian Law Reform Commission, *Customs and Excise, Customs Prosecutions, Jurisdiction and Administrative Penalties*, Discussion Paper No. 42, Sydney, ALRC, 1990; Australian Law Reform Commission, *Customs and Excise, Administrative Penalties: Customs Act 1901 (Cth) Part XIII*, Discussion Paper No. 51, Sydney, ALRC, 1991.

⁴⁰ *Customs Act 1901 (Cth)*, Part XIII, Division 4. Similar powers are to be found in the *Income Tax Assessment Act 1936 (Cth)*, Part VII.

demanding payment of a sum calculated by reference to the amount of unpaid duty (normally double the unpaid amount), but the alleged offender is given no option of having a court determine liability or penalty. Ninety days are allowed for payment, and recovery of the sum demanded is by way of a civil action for a debt due and owing. These proceedings are characterised as wholly civil in nature. Since no conviction results, they are not considered to amount to a usurpation of the judicial power of the Commonwealth.⁴¹ This shows how a shift from criminal to administrative procedures in handling offences could be effected, but there has been vehement opposition to this type of administrative penalty, even in its present setting.⁴² It is said that, in by-passing the courts, it amounts to an unwarranted trespass upon the civil liberties of those who are likely to be penalised, and that its actual administration has been unduly harsh. It remains controversial and its continuation in the *Customs Act* is still under review by the Australian Law Reform Commission.⁴³

10.3.5 The Commission's 1992 three volume review of the customs and excise legislation included a draft Customs and Excise Bill which incorporated a different administrative penalty scheme for breaches of customs legislation not involving recovery of revenue.⁴⁴ It was modelled on conventional infringement notices. Unlike the administrative penalty arrangements described above, this proposal would continue to characterise the wrongdoing as criminal and preserve the alleged offender's right to opt for a judicial determination of guilt and sentence. It envisages infringement notices being used as a first response to all customs and excise offences other than those punishable either by imprisonment or a fine of more than \$10 000. Under the draft legislation, the infringement penalty would normally be set at \$250 but under special regulations it could be fixed as high as \$1000. Payment would ordinarily be required within 21 days. If it were made as required, no further proceedings would be taken against the offender in respect of the alleged offence and the person would not be regarded as having been convicted. If payment is not made, the person may be prosecuted. Proceedings by way of an infringement notice must be initiated within a 12-month limitation period. The draft legislation also contains a novel provision allowing the recipient of a notice to formally notify the issuing officer of any matters which ought to be taken into account in relation to the offence. Unlike the position under the administrative penalties scheme, the

⁴¹ Relying on *Attorney-General v. Abrahams* (1928) 1 ALJ 388.

⁴² Australian Law Reform Commission, *Customs and Excise, Administrative Penalties: Customs Act 1901 (Cth) Part XIII*, Discussion Paper No. 51, Sydney, ALRC, 1991, paras 3.28-3.42.

⁴³ Australian Law Reform Commission, *Customs and Excise, Administrative Penalties: Customs Act 1901 (Cth) Part XIII*, Discussion Paper No. 51, Sydney, ALRC, 1991.

⁴⁴ Part 33 (Clauses 456-463).

officer has no power to remit the penalty, but may withdraw the infringement notice in its entirety, or agree to accept payment of the penalty by instalments.

10.3.6 Canada has gone further than any other Commonwealth jurisdiction in matching a new offence classification for less serious offences with a simplified enforcement procedure. The Federal Canadian Government has recently enacted the *Contraventions Act* 1992 (Can.),⁴⁵ whose purpose is:⁴⁶

(a) to provide a procedure for the prosecution of contraventions that reflect the distinction between criminal offences and regulatory offences and that is in addition to the procedure set out in the Criminal Code . . . ; and

(b) to alter or abolish the consequences in law of being convicted of a contravention in the light of that distinction.

The legislation gives effect to views advanced by the Law Reform Commission of Canada in 1986 in a working paper on classification of offences.⁴⁷ The recommendation then was that offences for which a person would, if convicted, be only liable to a fine, civil disability, or imprisonment in default of payment of a fine, be called 'infractions'. It stressed that the change had to be more than a shuffling of offences within the Criminal Code, but a serious attempt to distinguish 'real crimes' from 'regulatory offences' and to deal separately with them under two distinct regimes. The former would remain within the ambit of the criminal law with all its formalities and due process protections; the latter would shift to a simpler 'non-criminal regime'.⁴⁸ The Commission saw the non-criminal regime as lacking the three basic features of the criminal one, namely stigma, the formality of trial, and the threat of imprisonment.

10.3.7 The aim of the new legislation is to provide for a ticketing scheme for nominated minor regulatory offences. The courts still have a significant role to play in the enforcement of these provisions, but the procedure is greatly simplified and the offences will be partially decriminalised. Twelve participating federal departments and agencies have already identified almost 4000 offences as suitable for the scheme. These include conduct such as recklessly driving a motor boat close to shore, hunting without a valid licence, camping in a park without a permit

⁴⁵ Not in force as at 1/11/1993.

⁴⁶ *Contraventions Act* 1992 (Can.), s.4.

⁴⁷ Law Reform Commission of Canada, *Classification of Offences, Working Paper No. 54*, Ottawa, LRC, 1986.

⁴⁸ Law Reform Commission of Canada, *Our Criminal Law*, Report 3, Ottawa, Information Canada, 1976, 20.

and illegal parking on federal lands.⁴⁹ The term ‘infractions’ has been rejected in favour of ‘contraventions’ for these offences. Both the prosecutor and the defendant still have a right of access to the criminal courts, and even though a conviction for a contravention may be recorded by one of these courts, it is deemed not to amount to a *criminal* conviction in law. To rely on the ticket system, the enforcement authorities will have to issue a notice in the form of a ticket to the alleged offender within 30 days of the contravention.⁵⁰ A copy of that ticket has to be filed in the Contravention Court. The person ticketed then will have the following options:

(a) Plead guilty by payment of the set amount demanded in the ticket within thirty days of service.⁵¹ Endorsement of payment on the ticket amounts to a conviction for a contravention and the imposition of a fine in that amount.⁵²

(b) Plead guilty, but make representations asking the Contraventions Court in which the ticket has been filed to fix a lower fine, or to extend the time to pay, or not to forfeit any items seized by the enforcement authority in connection with the contravention.⁵³ The representations may be in writing and be considered by the court without the defendant having to appear, but the court has a discretion to call for oral evidence at a sentencing hearing.⁵⁴ If representations are received the court may invite the Attorney-General to respond to them.

(c) Dispute the allegation and request a court to hear and determine it in accordance with the summary conviction provisions of the *Criminal Code*.⁵⁵ Enforcement officers will only have to appear in court when an offence is challenged.

(d) Ignore the ticket; but an individual who does so will be treated as guilty of the contravention by default at the expiration of the normal 30 days allowed for payment.⁵⁶

The *Contraventions Act* 1992 (Can.) allows for regulations to define the fine applicable if the offence is dealt with as a contravention and allows for that penalty to vary according to whether the matter is disposed of at the ticket stage or continues on to court. However, the penalty cannot fall below the minimum prescribed by the enactment which created the

⁴⁹ Second Reading Speech, Canada, *House of Commons Debates*, Vol. 132, No. 124, 6 April 1992, 9399-405 and Committee Stage, Canada, *House of Commons Debates*, Vol. 132, No. 161, 18 June 1992, 12424-29.

⁵⁰ *Contraventions Act* 1992 (Can.), s.9.

⁵¹ *Contraventions Act* 1992 (Can.), s.21(1)(a).

⁵² *Contraventions Act* 1992 (Can.), s.22(2).

⁵³ *Contraventions Act* 1992 (Can.), s.21(1)(b) & s.23.

⁵⁴ *Contraventions Act* 1992 (Can.), s.23, s.24 & s.25. The sentencing hearing need not be held in open court, s.37(2).

⁵⁵ *Contraventions Act* 1992 (Can.), s.21(1)(c), s.26 & s.27. See also s. 29 for trial procedure.

⁵⁶ *Contraventions Act* 1992 (Can.), s.44.

offence, nor be higher than either its statutory maximum, or \$1000,⁵⁷ whichever is less.⁵⁸ Though the scheme allows for offenders to be formally convicted of a contravention, not only is that conviction expressly declared not to count as a conviction of a criminal offence, but also it is not to be regarded as a conviction of an offence for the purpose of incurring certain other civil disabilities under federal law.⁵⁹ This does not mean that the person cannot be treated as a recidivist for repeated contraventions if the regulations choose to provide for higher penalties for subsequent wrongdoing and those responsible for their enforcement are willing to keep the necessary records of contraventions committed.

10.3.8 The Canadian legislation makes it clear that a person convicted in proceedings commenced by issuing and filing of a ticket is not liable to a penalty of imprisonment.⁶⁰ Fines imposed under the *Contraventions Act* 1992 (Can.) are due within thirty days of service of the ticket, but may be discharged by payment (including periodic payment), community service, or by civil enforcement.⁶¹ Imprisonment in default of payment may only be ordered for those who have the means to pay the fine, but wilfully refuse to do so.⁶² Non-payment may also lead to the suspension or revocation of licences or permits relevant to the offence, e.g. driving licences.⁶³ Ancillary orders for the forfeiture of property related to the offence may also be made, where it is authorised by legislation outside the *Contraventions Act*, whether or not the person admits guilt by payment or ignores the ticket.⁶⁴ However a person who wishes to avoid the forfeiture may plead guilty and make representations with respect to the forfeiture, or plead not guilty. The legislation also covers contraventions relating to motor vehicle parking and imposes vicarious liability on vehicle owners as well as allowing service of parking tickets by affixing them to the offending vehicle.⁶⁵ Any powers of arrest which may be exercisable in relation to the offence continue to be available even if the offence is designated as a contravention, but there is no enlargement of arrest powers.⁶⁶

10.3.9 The *Contraventions Act* 1992 (Can.) provides no guidance on how to distinguish between 'criminal offences' and 'regulatory

⁵⁷ \$100 for juveniles.

⁵⁸ *Contraventions Act* 1992 (Can.), s.8(3)-(5).

⁵⁹ *Contraventions Act* 1992 (Can.), s.63, s.65 & s.67.

⁶⁰ *Contraventions Act* 1992 (Can.), s.42(2).

⁶¹ *Contraventions Act* 1992 (Can.), s.56 & s.58.

⁶² *Contraventions Act* 1992 (Can.), s.60.

⁶³ *Contraventions Act* 1992 (Can.), s.59.

⁶⁴ *Contraventions Act* 1992 (Can.), s.43. Third parties claiming to have an interest in the property seized may apply to the court to have the property returned to them.

⁶⁵ *Contraventions Act* 1992 (Can.), s.12, s.13 & s.14.

⁶⁶ *Contraventions Act* 1992 (Can.), s.7.

offences' even though such a distinction is the central premise upon which the legislation is framed. Indeed, in the Parliamentary debates on the Bill, concern was expressed about the risks of inappropriate offences being brought under the Act.⁶⁷ In an earlier Canadian Law Reform Commission discussion of this intractable problem by Fortin, Fitzgerald and Elton,⁶⁸ four 'badges of the regulatory offence' were identified. These relate to law, harm, conduct and penalty. With respect to 'law', a commonly relied upon identifier of the regulatory offence is said to be that it does not require proof of mens rea. However, circular reasoning often occurs when courts first determine that the offence is regulatory because of its subject matter or some other factor and, from this, infer that it must be read as imposing strict liability. 'Conduct' is seen as a better indicator. The act or omission which is the subject of a regulatory offence is usually not considered to be reprehensible in itself, or a breach of fundamental social values. The wrongfulness lies in the breach of the law itself, rather than the rejection of shared communal values. Little by way of stigma is thought to attach to such offences. The harm being struck at by the legislation is generally only apparent when the offences are viewed in aggregate. The individual acts may appear to cause little or no social damage, but together may produce significant cumulative effects. Collective rather than individual interests are being threatened. It has been suggested that a special feature of regulatory law is that the conduct it seeks to control involves individuals in their capacity as persons engaged in some specialist activity, e.g. food handling, driving, machinery operating etc. That is why the law relating to regulatory offences tends to be found in specialist statutes, rather than in general criminal legislation.⁶⁹ So far as 'penalty' is concerned, the accepted wisdom is that the lighter the statutory penalty, the more likely it is that the offence is a regulatory one. However, a survey of Canadian laws discovered that most of what were thought to be regulatory offences authorised imprisonment as well as a fine. In actual practice, however, they tended to be punished by non-custodial measures. So unsatisfactory are these pointers that it is now thought that no useful generalisation can be made that is worth enshrining in the definitional language of a statute and that, to avoid judicial and administrative uncertainty, the government, through Parliament, would be better advised to indicate precisely, by statute or regulation, what offences it regards as proper to bring within the new procedure. This is the approach adopted in the Canadian *Contraventions Act* 1992.

⁶⁷ Canada, *House of Commons Debates*, Vol. 132, No. 124, 6 April 1992, 9401-2.

⁶⁸ Fortin J., Fitzgerald P.J. and Elton T., 'Real Crimes and Regulatory Offences' in Law Reform Commission of Canada, *Studies in Strict Liability*, Ottawa, LRC, 1974, 187, 205.

⁶⁹ Fortin, Fitzgerald and Elton, above 206-8.

10.3.10 In the last decade, two Australian jurisdictions, the Northern Territory and Queensland, have acted to create the 'regulatory offence' as a new class of crime and have legislated to specify exactly which offences fall within its compass.⁷⁰ However, in neither jurisdiction are these offences assigned special procedures, nor has there been any legislative effort to reduce the criminal consequences of being found guilty of a regulatory offence. Ordinary summary criminal proceedings still apply. However, the enabling legislation withholds most of the general justifications and excuses recognised in the *Criminal Code* in order to emphasise the extent to which these regulatory offences are to be treated as ones of strict liability. In the Northern Territory the *Criminal Code Act* 1983 relies on a tripartite division of offences into 'crimes', 'simple offences' and 'regulatory offences'.⁷¹ This is augmented by the *Criminal Law (Regulatory Offences) Act* 1983 which designates over 200 offences in various Acts and delegated legislation as regulatory. In introducing the legislation, the Northern Territory Attorney-General emphasised that in future:⁷²

where an offence has been created in new legislation, there will have to be a positive decision by the legislature to categorise that offence as being a regulatory offence or otherwise. This is somewhat of a novel approach, but it places the responsibility for categorisation where it most properly belongs in this Assembly.

The Northern Territory *Criminal Code* has been amended to make it clear that a conviction or acquittal of a regulatory offence cannot be used to support a plea of *autrefois acquit* or *autrefois convict* in relation to a charge of any higher level offence, i.e. a crime or simple offence.⁷³ Furthermore, except for the defences of consent or lawful authority, ignorance of law in relation to the existence of a statutory instrument which has not been published, and infancy, all other justifications and excuses in Part II of the *Criminal Code* dealing with general principles of criminal responsibility are excluded. Queensland's *Regulatory Offences Act* 1985, s.10, takes a similar line in amending that state's *Criminal Code* to divide crimes into two categories, criminal offences (further divided into crimes, misdemeanours and simple offences) and regulatory offences.⁷⁴ Simple offences and regulatory offences are prosecuted summarily in a magistrates' court. The *Regulatory Offences Act* 1985

⁷⁰ *Criminal Law (Regulatory Offences) Act* 1983 (NT) and *Criminal Code* 1983 (NT), s.3; *Regulatory Offences Act* 1985 (Qld) and *Criminal Code Act* 1899 (Qld), s.10.

⁷¹ *Criminal Code Act* 1983 (NT), s.3.

⁷² Northern Territory Parliamentary Record, Legislative Assembly, 24 March 1983, 266. *See also* 25 August 1983, 810-11; 13 October 1983, 1207; 19 October 1993, 1341-42.

⁷³ *Criminal Code* (NT), s.20.

⁷⁴ *Criminal Code Act* 1899 (Qld), s.3(1).

(Qld) contains a much shorter list of relevant offences than in the Northern Territory.⁷⁵ These are limited to shoplifting to the value of \$75; restaurant or hotel bilking to the value of \$150; and property damage of up to \$250. A fine is the penalty for each. Although Chapter V of the Queensland *Criminal Code* (governing excusing conditions such as bona fide claim of right, involuntariness, mistake of fact, extraordinary emergency and insanity) is declared to no longer apply to regulatory offences,⁷⁶ the provisions defining the offences themselves do admit some mental state defences, but place the burden of proof upon the defendant. In both jurisdictions a conviction will be recorded on a finding of guilt in respect of a regulatory offence, unless the magistrate exercises the normal discretion to make use of a non-conviction order. The recovery of unpaid fines is by way of criminal processes and the offender does acquire a criminal record. The legislation makes no express effort to reduce the legal consequences of being found guilty of a regulatory offence. It may be that among the prohibitions listed as regulatory offences in the Northern Territory and Queensland there are some that are open to being dealt with by way of infringement notices under local law, but these arrangements have not yet been uniformly adopted for all regulatory offences.

10.4 Machinery for change

10.4.1 Some of the faltering steps being taken towards a re-classification of offences to match them with new forms of criminal procedure have been briefly outlined. Although the examples have come from different jurisdictions, certain issues recur. For a start, though a rethinking of the nature and purposes of each of the present offence categories is highly desirable, it is not crucial to settling the legal significance of calling an offence an infringement. Nor does it matter that the term 'infringement' is preferred to 'violation', 'contravention', 'infraction' or 'regulatory offence'. None has any inherent meaning. 'Infringement' is as good a term as any to convey the notion of a less serious transgression or contravention of the law. The examples of the *Contraventions Act* and *Regulatory Offences Act* suggest that to draft a comprehensive legislative definition of a new offence category by describing the essential nature or intrinsic quality of the conduct is too difficult. The position taken in those Acts is simply that a contravention (or regulatory offence) is an offence declared to be such a one. It is to be determined by the executive arm of government rather than through judicial interpretation of the legislation

⁷⁵ *Regulatory Offences Act* 1985 (Qld), s.5-7.

⁷⁶ Except for the defences allowed in *Criminal Code* (Qld), s.22(3) (dealing with ignorance of unpublished statutory instruments); s.29 (infancy) & s.31 (compulsion).

itself. Why one crime fits the bill and another does not, cannot be elucidated by anything contained in the legislation.⁷⁷ While pragmatism of this sort is not of itself objectionable, the policy choices involved in the decision to include certain offences in the special category and not others still have to be articulated. It is better that the decisions be made on a principled basis, than that they be entirely ad hoc in nature. This turns on the government's willingness to put into place machinery for the design, implementation and monitoring of the proposed reform. Consultative and advisory bodies possessing sufficient expertise to be able to assess the merits of the proposal and to evaluate the likely ramifications for the justice system of the shortcuts to be applied to this group of offences do exist. They need to be assigned to the task and assured of sufficient continuity of office to be able to finish it.

10.4.2 In Victoria, a number of entities had served such purposes in the past, or were supposed to do so in the future. However, under the new state government elected in October 1992, the Law Reform Commission of Victoria has been disbanded and replaced by a considerably smaller and under-resourced Attorney-General's Law Reform Advisory Council and Victorian Parliamentary Law Reform Committee. Secondly, the Sentencing Task Force, which designed the state's fourteen-level penalty scale⁷⁸ and pressed forward the idea that jurisdictional and procedural limits for all offences be set by reference to penalty levels,⁷⁹ is no longer in existence. Thirdly, the Bureau of Crime Statistics and Research is being downsized, and, finally, the Judicial Studies Board has been denied funding.⁸⁰ The Sentencing Task Force set up the basic framework for evaluating the gravity of criminal prohibitions in Victoria and for allocating appropriate penalties to them. It was instrumental in revamping the penalties in the *Crimes Act* 1958, but no action has yet been taken to revise the penalty levels in nine other Acts which were reviewed in background papers.⁸¹ Rationalisation of legislative penalties in all Acts and Regulations is essential to the procedural reforms under discussion. The Task Force needs to be reinstated for the purpose of reviewing the thousands of remaining penal provisions in Victorian law. Its recommendations about where offences are to be placed on the penalty scale will simplify decisions about what procedures are appropriate for

⁷⁷ For attempts to do so see Fitzgerald P.J., 'Real Crimes and Quasi-Crimes' (1965) 10 *Natural Law Forum* 21.

⁷⁸ *Sentencing Act* 1991, s.109.

⁷⁹ Sentencing Task Force, *Review of Statutory Maximum Penalties in Victoria: Report to the Attorney-General*, Melbourne, Victorian Government Printer, September 1989, para. 169.

⁸⁰ *Judicial Studies Board Act* 1990; Judicial Studies Board, *Annual Report*, 1991/1992.

⁸¹ Fox R.G. and Freiberg A., 'Ranking Offence Seriousness in Reviewing Statutory Maximum Penalties' (1990) 23 *ANZ Journal of Criminology* 165.

their prosecution. The primary function of the Judicial Studies Board, which was appointed after a major enquiry into sentencing in Victoria,⁸² is to improve judicial sentencing in the state. If criminal courts at any level are to continue to have some function in imposing or reviewing penalty levels for minor offenders, the Board also has a guiding role to play.⁸³ Without ongoing mechanisms for standardising penalties and for grading offences according to their gravity, and for monitoring what is happening in the disposal of the less serious ones, developments on this front will continue as haphazardly as in the past.

10.4.3 At minimum, attention needs to be given to the 785 or more offences that can already be dealt with by way of the infringement notice procedure.⁸⁴ This is especially so in relation to motor vehicle offences which are numerous, complex and probably in need of drastic pruning. There is already in circulation a discussion draft of a major plain English revision of the Victorian Road Traffic Regulations 1988 prepared with the assistance of the now defunct Victorian Law Reform Commission, but it does not specifically deal with any reforms that might be needed for the purposes of the infringement notice system.⁸⁵ Although the regulations under the *Road Safety Act* 1986 are one of the major sources of infringement offences, there are at least fifteen forms of infringement notice supported by some sixteen different state Acts. They cover a wide array of behaviour. It may be counter-productive to have too many individual offences labelled as infringements if it means that the officers who write the tickets have to carry around unwieldy and unworkable code books to catalogue their offences. While this may be overcome by relying on electronic memory in the portable ticket issuing machines now being

⁸² Victorian Sentencing Committee, *Report: Sentencing* (3 vols), Melbourne: VGPO, 1988. A main recommendation of the Committee was that a complete review of the maximum penalties set by statute in Victoria be undertaken by the Judicial Studies Board. The task was undertaken in 1989 only for the *Crimes Act* 1958 by the Sentencing Task Force under the chairmanship of Frank Costigan QC.

⁸³ *Judicial Studies Board Act* 1990, s.5: The objects of the Board are:

- (a) to conduct seminars for judges and magistrates on sentencing matters;
- (b) to conduct research into sentencing matters;
- (c) to prepare sentencing guidelines and circulate them among judges and others;
- (d) to develop and maintain a computerised statistical sentencing data base for use by the courts;
- (e) to provide sentencing statistics to judges, magistrates and lawyers;
- (f) to monitor present trends and initiate future developments in sentencing;
- (g) to assist the courts to give effect to the principles contained in the *Sentencing Act* 1991;
- (h) to consult with the public, government departments and other interested people, bodies or associations on sentencing matters;
- (i) to advise the Attorney-General on sentencing matters.

⁸⁴ See above 5.1.6. This is a minimum number based on the PERIN Court Code Book. There are many more not subject to the PERIN procedure for enforcement of unpaid infringement penalties.

⁸⁵ VicRoads, *Discussion Paper: Road Traffic Regulations 1991*, Melbourne, VicRoads, 1991.

used, ease of computerisation does not weaken the general proposition that a re-evaluation of penalties and procedures will often raise doubts about the need to maintain the substantive prohibition itself. If it is rare for an offence to be committed, detected or prosecuted, its retention on the books should be reconsidered rather than adding it to the list of offences which can be dealt with as infringements. Since one of the objectives of the infringement notice scheme is to reduce the number of petty offences coming before the lower courts, it is inefficient to give equal weight in the design of the system to offences which occur rarely. At minimum, there is a need to excise inconsistencies between the Acts authorising issue of on-the-spot tickets, by checking whether offences of like gravity are being treated alike,⁸⁶ and whether the penalty levels fixed under different Acts are a fair reflection of the degree of wrongdoing. The on-the-spot ticket system is not exempt from the principles of parity and proportionality which are at the heart of any method of allocating punishment.

10.4.4 One obvious way of distinguishing different classes of offence is to locate them in different Acts of Parliament. In Victoria, the *Summary Offences Act* 1966 deals with less serious offences than those found in the *Crimes Act* 1958. This statutory separation is imperfect at the moment since there are many other statutes which create both indictable and summary offences. The *Criminal Law (Regulatory Offences) Act* 1983 in the Northern Territory and the *Contraventions Act* 1992 of Canada both emphasise that the special class of offence is controlled by a statute other than the *Criminal Code*. In Canada, the fact that the new category of offence does not appear as part of the *Criminal Code*, does not mean that the general principles of criminal liability contained in the *Code* have no application to it. However, in Queensland and the Northern Territory, the legislation expressly excludes major *Code* principles of criminal responsibility from being applied to regulatory offences. A limited set of principles of responsibility apply to the special offence category. This points to a fundamental paradox; if the aim in opening the special class is to decriminalise the conduct and relieve it of the stigma associated with breaches of the criminal law, those who commit such offences may also lose many of the protections which are associated with the general criminal law. Howard has argued strongly that regulatory offences ought not to be removed completely from the general criminal law because to do so will involve the loss of essential protections.⁸⁷

⁸⁶ E.g. at moment failing to observe a traffic sign carries a fixed penalty of \$165, but is treated as covering both failure to observe a stop or give way sign and failure to observe notices which prohibit turns at an intersection at particular peak traffic times. Failure to stop etc. is a prohibition designed to avoid danger to life; turn restrictions are related to local traffic management and flow. The latter should have been set at a lower level on the penalty scale, say \$85.

⁸⁷ Howard C., *Strict Responsibility*, London, Sweet & Maxwell, 1963, 72-73.

Once regulatory offences are removed from the criminal law it becomes easy to forget, or even deliberately to reject, the idea that the forcible imposition of a fine is punishment . . . It is difficult to believe that a code which put regulatory offences into a category of infractions of penal law not classified as criminal would not ultimately have the effect of weakening the protection of the individual against the power of the state because the true nature of a regulatory offence prosecution would henceforth be disguised. The fact that the defendant was being exposed to punishment, by whatever name called, would tend to be forgotten. The safeguards to which any individual ought to be entitled when threatened with punishment by the state would not be treated with the same respect as they are in the criminal law.

He also warns that if infringements and related offences are placed in a separate class, under their own legislation, they will be more vulnerable to political and administrative pressure to extend the types of included offences. At the same time those forces will press to jettison any remaining defences and rights regarded as inhibiting the speedy disposal of these minor criminal matters. To keep the new offence within the general framework of the criminal law emphasises that any defendant facing punishment is entitled to protection of the law, however minor the degree of misbehaviour.

10.5 Degree of wrongdoing

10.5.1 Apart from the question of where to place the special offence category within the framework of general criminal law, some guidance must be given regarding the level of wrongdoing which warrants inclusion in the category. It will be argued below that non-conviction and non-custodial measures are an essential part of the package. This means that the offence must involve such a low degree of wrongdoing and moral blameworthiness that the prospect of repeatedly releasing the offender without conviction or any punishment higher than a fine, can be accepted with equanimity. The offences can be more than merely technical or trivial, but cannot be ones whose gravamen is personal injury or exploitation, significant property loss or damage, or a serious affront to the moral sensibilities currently protected by the criminal law. Nor can they be offences which contain highly subjective elements in their proof, particularly those which depend on an evaluation of the reasonableness of conduct, e.g. ones punishing 'carelessness' or 'negligence'. Offences designed to control situations likely to cause inconvenience or minor discomfort are the paradigm for infringement notices. Thus it is proper to offer the driver accused of disregarding a road traffic signal the opportunity to expiate the offence by payment of a fixed penalty, but it is improper to use this penalty as a means of dealing with criminal responsibility for the death or injury which resulted from neglect of the

road signal. Unfortunately there is already clear evidence in Victoria that some of the prohibitions for which infringement notices are being allowed, namely drink-driving and excessive speed offences, carry such a high potential for significant harm as to make failure to reduce the risk by complying with the law morally reprehensible. This has led to higher monetary penalties, mandatory loss of licence and automatic convictions being attached to infringement notices. But to give the infringement procedure this degree of punitive power alters the model and distorts its original purpose. Instead of being used against minor wrongdoing in relation to which some degree of reduced criminalisation can be tolerated, it is being stretched to take in behaviour which carries such a high degree of blameworthiness, that it demands a much higher degree of punishment. Once this is accepted as falling within the ambit of infringement notices, other more serious offences can creep in as well.

10.5.2 The Stewart Committee in Scotland⁸⁸ gave consideration to the level at which wrongdoing should be pitched for the purposes of fixed penalty notices in road traffic legislation in that jurisdiction. While it accepted that there were many additional road traffic offences to which the fixed penalty system could be usefully extended, the Committee balked at recommending it be applied to those offences which attracted mandatory licence disqualification, or for which imprisonment of the offender was an option.⁸⁹ The existence of penalties at this level was taken to be an indicator that the offence was meant to be left to the courts for determination. In coming to this conclusion, the approach it adopted was that the normal statutory maximum for the offence in question could be used as a crude, but direct measure of the legislature's view of the gravity of the offence. The Committee's position was that only offences punishable by fine alone could be said to involve such a minor degree of wrongdoing as to justify them being permitted to be expiated by direct payment of the penalty.

10.5.3 The Canadian Law Reform Commission's Working Party on *Classification of Offences* also recommended that offences be assigned to one or other of the offence classes on the basis of the maximum statutory penalty for each offence.⁹⁰

The penalty is easily capable of measurement; distinguishing classes on the basis of maximum penalties is therefore very simple. The penalty assigned to a crime is arguably one of its most central characteristics. It seems appropriate to use the

⁸⁸ United Kingdom, Scottish Home and Health Department, *Keeping Offenders Out of Court: Further Alternatives to Prosecution*, Second Report by the Committee on Alternatives to Prosecution (Chairman Lord Stewart), Edinburgh, HMSO 1983, Cmnd. 8958.

⁸⁹ United Kingdom, Scottish Home and Health Department, above para. 4.02.

⁹⁰ Law Reform Commission of Canada, *Classification of Offences, Working Paper No. 54*, Ottawa, LRC, 1986, 26.

penalty or sentence prescribed by law as the central reference point for classifying crimes . . . once Parliament has determined the penalty for a crime (for example 10 years imprisonment), the procedures for the disposition of persons charged should be those provided for that class to which crimes with that penalty belong.

In Victoria, the *Sentencing Act* 1991, s.109 contains a 14 point scale of maximum penalties which is intended, ultimately, to be of general application in the state. It has already been applied to the *Crimes Act* 1958. For each level, the scale indicates the maximum prison term, the maximum fine, and the maximum number of hours of unpaid work under a community-based order which can be imposed. This scale already defines jurisdiction by reference to penalties by providing that offences punishable at penalty level 8 or above are presumed to be indictable and that those at penalty levels 5 to 8 inclusive are indictable offences triable summarily. It is suggested that this structure can be easily adapted to provide the cut-off point for offences designated as infringements.

10.5.4 As can be seen from the scale set out in Table 10.1, imprisonment is not available as a punishment at penalty levels 12, 13 and 14. These are subject to maximum fines (expressed in \$100 penalty units) of \$1000, \$500 and \$100 respectively. It would not be difficult to legislate to restrict the expiatory scheme to offences punishable at any of these lowest three penalty levels and to declare that henceforth offences at these levels are to be known as infringements.⁹¹ They then could be prosecuted summarily or expiated under the infringement notice procedure. However, this relatively simple legislative task requires resumption of the more complex administrative one of reviewing all Victorian offences in order to allocate them to one or other of the fourteen levels on the scale. This scale was intended to form the foundation for all statutory maximum penalties in Victoria and so, whether or not it is also to be used in the demarcation of infringements, the job of converting maxima to penalty levels still should be continued if the government seriously wishes to produce a modern, consistent and proportionate set of legislative maximum penalty levels.

⁹¹ The *Equipment (Public Safety) Act* 1994, in permitting regulations to be made for infringement notices under the Act, prohibits the fixed penalty exceeding 10 penalty units (\$1000). This ensures that it is kept to a level 12 fine or below.

Table 10.1
Victorian Penalty Scale
Sentencing Act 1991, s.109

Penalty Level	Maximum Prison Term	Max Fine Penalty Units	Community Based Order Maximum Hours of Unpaid Community Work
1	Life	—	—
2	240 months	2400	500 over 24 months
3	180 months	1800	500 over 24 months
4	150 months	1500	500 over 24 months

92			
5	120 months	1200	500 over 24 months
6	90 months	900	500 over 24 months
7	60 months	600	500 over 24 months
8	36 months	360	500 over 24 months

93			
9	24 months	240	375 over 18 months
10	12 months	120	250 over 12 months
11	6 months	60	125 over 6 months
12	—	10	50 over 3 months
13	—	5	—
14	—	1	—

10.6 Non-conviction

10.6.1 Although the normal end of a successful criminal prosecution is the recording of a criminal conviction, it is common for minor offences to be disposed of by way of the non-conviction orders. Under the *Sentencing Act 1991*, the recording of a conviction is not essential to a community based order, fine, adjournment, or other forms of conditional or unconditional discharge of the defendant.⁹⁴ Only for an immediate or suspended sentence of imprisonment, or an intensive correction order is a conviction essential. Given the significance which the *Sentencing Act 1991*

⁹² Offences at levels 5 to 8 inclusive are indictable offences triable summarily, *Magistrates' Court Act 1989*, s.53(1A).

⁹³ Offences punishable by sanctions at level 8 and above are presumed to be indictable, *Sentencing Act 1991*, s.112.

⁹⁴ *Sentencing Act 1991*, s.7 & s.8.

attaches to the conviction, as a sanction in its own right, it is submitted that the expiation of an offence by way of voluntary payment instead of a judicial determination of the matter should never result in the recording of a criminal conviction. To subject the alleged offender to the formal legal condemnation, civil disabilities and permanent alteration of legal status which a conviction entails⁹⁵ is a grave departure from the concept of diversion or decriminalisation which underpins the offer of expiation. A conviction is a badge of criminality and a social stigma. It also amounts to an affirmation of the moral culpability of the offender, even though it may relate to an offence of strict liability for which the defendant has no opportunity to demand that the prosecutor prove the existence of subjective aspects of culpability. As has been pointed out earlier,⁹⁶ the question of whether infringements disposed of non-judicially should be regarded as convictions is a policy issue under state rather than federal law. It would be unconstitutional for commonwealth law to deem an expiated infringement or penalty notice to be a conviction if no court has ever been seised of the matter. Conviction is an exercise of judicial power and to convict a person legislatively would breach the constitutional requirement that the judicial power of the Commonwealth be exercised by the judiciary.⁹⁷ One of the merits of the Canadian *Contraventions Act* 1992 is that it accepts that a conviction must be imposed by a court. It tries to separate convictions for contraventions from those for criminal offences, declaring that the two are not identical in law and endeavours to minimise the collateral legal disabilities which those convicted of a contravention may suffer. No such effort is made in Victoria in relation to the incidental effects of automatic convictions recorded for infringement offences under the *Road Safety Act* 1986, s.89A.⁹⁸

10.6.2 Conviction alone is regarded as such a grave sanction that the *Sentencing Act* 1991 requires the court to take into account the impact of recording it on the offender's economic or social wellbeing or on his or her employment prospects. Again, neither discretion nor guidance is to be found in the *Road Safety Act* 1986. If state legislation establishes infringements as a new class of offence, it will still be possible for a conviction for an infringement to be recorded under the *Sentencing Act* 1991, provided that the matter has been prosecuted before a court. What is objected to is acquiring a conviction as an automatic consequence of receiving an infringement notice. If, notwithstanding this objection, Victorian legislation continues to deem a conviction to have occurred

⁹⁵ Fox R.G. and Freiberg A., 'Sentences without Conviction: From Status to Contract in Sentencing' (1989) 13 *Criminal Law Journal* 297.

⁹⁶ See 4.6.8.

⁹⁷ *Constitution* 1901, s.71; *Palling v. Corfield* (1970) 123 CLR 52.

⁹⁸ See above 4.6.1—4.6.10.

despite the infringement having been expiated, it should prohibit account being taken of that conviction for any purpose other than proceedings against the offender for subsequent offences against the same Act. The person deemed to be convicted of an expiated offence should not be treated as possessing a 'prior conviction' for the purposes of any other legislation. This would not prevent the enforcement agency from recording whether a person has received an infringement notice in the past, if that person is later detected committing the same type of offence. The enforcement agency could use the earlier record to assist it decide whether or not to proceed again by infringement notice, or to bring the matter before a magistrates' court on summons. The range of maximum fines permitted by the last three levels of the sentencing scale allows ample scope for the amount of the fixed penalty to be increased for second or subsequent offences. The prior criminality could depend upon the recording of a prior conviction by a court or a prior 'expiation' by payment of an infringement penalty. The demerit points system in relation to drivers' licences provides an example of what is possible.⁹⁹

10.6.3 However, this depends upon the availability of a satisfactory record-keeping system at some central registry. While this might work in relation to specialist legislation enforced by a single enforcement authority, as in the area of corporate regulation, it is less workable when a number of independent agencies are enforcing the same law. Neither the police nor any other authority takes on the function of maintaining a central criminal registry to cover expiated infringements as well as offences punished judicially. The fragmentation of authority in relation to the enforcement of such matters as littering or parking, makes it difficult to provide for a scheme of escalated penalties for recidivists. In any event, the idea of enlarging the infringement notice scheme in this fashion is at odds with its objective of simplicity and decriminalisation. It is also not in the public interest for there to be central surveillance of the total wrongdoing of citizens, particularly if the conduct designated as an infringement really is the least significant form of misconduct prohibited by the state.

10.7 Limited punishment

10.7.1 Should there be a ceiling on the level of the sanction to be exacted when an offender is invited to expiate an infringement by payment of an on-the-spot ticket? The highest penalty in Victoria at the moment is \$900.¹⁰⁰ In designing an infringement category the issue of capping the possible sanctions should be addressed. This should cover both the type

⁹⁹ See above 4.7.

¹⁰⁰ Exceeding speed limit in large vehicles, *Road Safety (Traffic) Regulations* 1988, r.1001.

of sanction and its quantum. If, as has been argued above, the new category should be confined to offences allocated at levels 12 to 14 of the general penalty scale in the *Sentencing Act* 1991, s.109,¹⁰¹ those same levels would also serve to define the maximum penalty for any single infringement. The scale makes it clear that imprisonment is not permitted as a sanction, but fines of up to 10 penalty units (\$1000) per offence could be imposed. This does not prevent lower maxima being set, including ones based on fractions of a penalty unit.¹⁰² The maximum monetary penalty set by the scale should be regarded as applicable to infringements prosecuted before a court. Separate provision for a reduction from these maxima is needed when the offence is disposed of by payment in response to an infringement notice. To be an effective incentive, that reduction should not only bring the penalty below the normal statutory maximum, but also below the average or most common penalty imposed by a court for that offence in recent times. The aim is to get the defendant to admit guilt and pay up. This was understood in the first Victorian Act to establish infringement notices. The *Road Traffic (Infringements) Act* 1959, set infringement penalties at two levels, the lowest of which was 4 per cent of the statutory maximum and half of the average penalty actually imposed in court. However, these differentials vary greatly from offence to offence. For instance, a sampling of current Victorian infringement notices shows that the prescribed infringement penalty may be as low as 4 per cent of the statutory maximum and as high as 50 per cent. It may be less than a quarter of the most common fine imposed in court for the same offence or may be identical to or exceed it. There is no obvious pattern—see Table 10.2.¹⁰³

10.7.2 In 1980, in Scotland, the Stewart Committee in its report on *The Motorist and Fixed Penalties*¹⁰⁴ recommended that fixed penalties should be set at 20 per cent of the maximum general fine prescribed for the offence in question. That approach has been expressly adopted in some Australian legislation¹⁰⁵ and recommended by the Australian Law Reform Commission,¹⁰⁶ but is not the rule in Victoria. The reason for so

¹⁰¹ This allows fines of up to 10 penalty units (\$1000) per offence, but lower maxima may be set. The latter may include ones based on fractions of a penalty unit, *Sentencing Act* 1991, s.110.

¹⁰² *Sentencing Act* 1991, s.110.

¹⁰³ Based on Victorian Attorney-General's Department, Caseflow Analysis Section, *Sentencing Statistics Magistrates' Courts Victoria 1991*, Table CR 4.1—Statistical Measures of Penalties.

¹⁰⁴ United Kingdom, Scottish Home and Health Department, *The Motorist and Fixed Penalties*, First Report by the Committee on Alternatives to Prosecution (Chairman Lord Stewart), Edinburgh, HMSO 1980, Cmnd. 8027, para. 6.23.

¹⁰⁵ E.g. *Radiocommunications Act* 1983 (Cth), s.93(2)(d). See also *Acts Interpretation Act* 1915 (SA), s.28a, for a scale of expiation fees geared to the maximum term of imprisonment or the maximum fine that can otherwise be imposed.

¹⁰⁶ Australian Law Reform Commission, *Multiculturalism and the Law*, Report No. 57, Sydney, ALRC, 1992, para. 9.28.

severely discounting the fixed penalty is not only to ensure that it obviously falls below the level of penalties the courts are imposing for like offences (which is not occurring in some cases in Victoria), but also in order to compensate for the absence of any form of totality principle when multiple infringement notices are received. When multiple infringements are dealt with in court, the sentencer can exercise a discretion to use the power to impose an aggregate fine¹⁰⁷ to prevent the total impact of multiple fines being oppressive.¹⁰⁸ The Scottish committee argued that the wider the net of infringement notices, the greater the likelihood that an offender would be faced with a number of infringement notices at the same time in respect of the same transaction.¹⁰⁹ To prevent the simultaneous commission of several offences leading to a combined fixed penalty exceeding the probable amount of any fine imposed by a court, it recommended the adoption of some system of discounting for multiple tickets, whereby one of the penalties was charged at the full rate while the others were subject to a preset reduction (possibly 60 per cent of the full fixed penalty) to arrive at the total cumulative fixed penalty. This idea has not been implemented because of problems in its administration.

10.7.3 If no automatic adjustment to the totality of wrongdoing is to be allowed in any new scheme for dealing with infringements as a separate category, it is still necessary to consider whether and how account should

¹⁰⁷ *Sentencing Act* 1991, s.51.

¹⁰⁸ The power to take other pending charges into account under s.100 can also be used to prevent multiple offending from producing crushing sentences.

¹⁰⁹ United Kingdom, Scottish Home and Health Department, above para. 6.24.

Table 10.2
**Infringement Penalty, Maximum Statutory Penalty
 and Most Common Penalty Imposed in Court, 1991, Victoria**

Infringement Offence	Infringement Penalty	Statutory Maximum Penalty	Most Common Penalty Imposed in Court ¹¹⁰	Infring Penalty as % of Maximum Statutory Penalty	Infring Penalty as % of Penalty Imposed in Court
Unregistered Dog ¹¹¹	\$200 ¹¹²	\$500 ¹¹³	\$200 Range \$5-\$200	40	100
Use premises to store prescribed waste ¹¹⁴	\$800 ¹¹⁵	\$20000 ¹¹⁶	\$1,000 Range \$1000-\$3500	4	80
Unlawful deposit of litter ¹¹⁷	\$100 ¹¹⁸	\$2000 ¹¹⁹	\$200 Range \$20-\$2000	5	50
Unlicensed driving ¹²⁰	\$110 ¹²¹	\$2500 ¹²²	\$500 Range \$50-\$500	4	22
Failure to wear a seat belt ¹²³	\$135 ¹²⁴	\$500 ¹²⁵	\$150 Range \$10-\$400	27	90
Fail to obey a traffic control signal ¹²⁶	\$165 ¹²⁷	\$500 ¹²⁸	\$150 Range \$10-\$500	33	110
Fail to give an appropriate signal ¹²⁹	\$105 ¹³⁰	\$300 ¹³¹	\$100 Range \$10-\$300	35	105

¹¹⁰ I.e. the modal penalty.

¹¹¹ Contrary to *Dog Act* 1970, s.4(2).

¹¹² *Dog Act* 1970, s.22A(6)(a).

¹¹³ *Dog Act* 1970, s.4(2).

¹¹⁴ Contrary to *Environment Protection Act* 1970, s.27(1A).

¹¹⁵ *Environment Protection Act* 1970, s.63B & Schedule.

¹¹⁶ *Environment Protection Act* 1970, s.27A(1A).

¹¹⁷ Contrary to *Litter Act* 1987, s.5.

¹¹⁸ *Litter Act* 1987, s.9 & Schedule. Note that if the offence involves an extinguished cigarette butt, a ring pull, or other small item, the infringement penalty is \$20.

¹¹⁹ *Litter Act* 1987, s.5.

¹²⁰ Contrary to *Road Safety Act* 1986, s.18(1)(a).

¹²¹ *Road Safety (Procedures) Regulations* 1988, Schedule 6.

¹²² *Road Safety Act* 1986, s.18(1).

¹²³ Contrary to *Road Safety (Traffic) Regulations* 1988, r.1506.

¹²⁴ *Road Safety (Procedures) Regulations* 1988, Schedule 6.

¹²⁵ *Road Safety (Traffic) Regulations* 1988, r.1506.

¹²⁶ Contrary to *Road Safety (Traffic) Regulations* 1988, r.401(1).

¹²⁷ *Road Safety (Procedures) Regulations* 1988, Schedule 6.

¹²⁸ *Road Safety (Traffic) Regulations* 1988, r.401(1).

¹²⁹ Contrary to *Road Safety (Traffic) Regulations* 1988, r.803(1).

¹³⁰ *Road Safety (Procedures) Regulations* 1988, Schedule 6.

¹³¹ *Road Safety (Traffic) Regulations* 1988, r.803(1).

Table 10.2 continued

Fail to display "L" plates ¹³²	\$105 ¹³³	\$200 ¹³⁴	\$100 Range \$20-\$200	53	105
Fraudulently alter registration label ¹³⁵	\$50 ¹³⁶	\$1000 ¹³⁷	\$200 Range \$10-\$750	5	25
Make a journey without valid ticket ¹³⁸	\$50 ¹³⁹	\$200 ¹⁴⁰	\$50 Range \$20-\$200	25	100
Fail to give name/address to an authorised person ¹⁴¹	\$100 ¹⁴²	\$200 ¹⁴³	\$100 Range \$25-\$200	50	100

be taken of the economic situation of the offender, or other special reasons for mitigating the penalty. At the moment, it is not until an unpaid infringement penalty has been registered for enforcement under the PERIN system that additional time to pay or payment by instalments can be authorised.¹⁴⁴ These applications are considered when attempts to enforce the fine by default imprisonment are made. The draft customs and excise legislation allows the recipient of an infringement notice to notify the issuing authority of any facts or matters which ought to be taken into account in relation to the alleged offence, but these only go to the question of whether the notice should be withdrawn because liability is disputed. It is already permissible to make submissions to the enforcement agency in an effort to persuade it to withdraw one of its tickets, but statutory recognition of that right may persuade the agency to treat such submission conscientiously. The Canadian *Contraventions Act* 1992 goes further and allows the defendant to make representations to the Contraventions Court at which the ticket has been filed, requesting it to fix a lower fine. Under

¹³² Contrary to *Road Safety (Procedures) Regulations* 1988, r.223(1).

¹³³ *Road Safety (Procedures) Regulations* 1988, Schedule 6.

¹³⁴ *Road Safety (Procedures) Regulations* 1988, r.223(1).

¹³⁵ Contrary to *Road Safety Act* 1986, s.72(1)(b).

¹³⁶ *Road Safety (Procedures) Regulations* 1988, Schedule 6.

¹³⁷ *Road Safety Act* 1986, s.72(1).

¹³⁸ Contrary to *Transport Act* 1983, s.221(3).

¹³⁹ *Transport (Infringements) Regulations* 1990, r.202 (Table). Note penalty increased to \$100 after 15 June 1992.

¹⁴⁰ *Transport Act* 1983, s.221(3).

¹⁴¹ Contrary to *Transport (Public Road and Rail Vehicle) Regulations* 1984, r.48(2).

¹⁴² *Transport (Infringements) Regulations* 1990, r.202 (Table).

¹⁴³ *Transport (Public Road and Rail Vehicle) Regulations* 1984, r.48(2).

¹⁴⁴ See above 4.11.1. See also 4.11.2. for the discharge of amount owing by service of an unpaid community work under a community based order.

neither the Australian draft nor the Canadian legislation can any admission made in the course of these submissions be used as evidence against the person making them, should the issuing authority choose to withdraw the infringement notice and pursue the matter by ordinary summary proceedings. In drafting any new legislation, it must be appreciated that it is one thing to allow an issuing authority to withdraw an infringement notice, or to allow payment of the statutory penalty by instalments; it is another to permit it to reduce the penalty. Apart from problems of consistency and uniformity in exercising the discretion to depart from the fixed penalty, those departures from the standard penalty will create major administrative headaches when the time comes to enforce the reduced penalty. The PERIN system automatically rejects all infringements registered for enforcement if the penalty demanded is not the prescribed one. Anything in excess of or below the prescribed penalty is treated as an error. If individual variations in the penalty demanded are permitted, the system will have difficulty in distinguishing error from deliberate variation. Consideration might have to be given to the full statutory penalty reviving if the offender does not discharge the mitigated penalty within a reasonable time.

10.7.4 It is no longer true that admission of liability and payment of the standard penalty demanded by an infringement notice brings an end to the matter. The Victorian road safety provisions now also allow drivers' licences to be automatically suspended whether or not the infringement penalty is paid. The Canadian legislation recognises that forfeiture of other rights may occur in relation to convictions for contraventions. However, it vests a discretion in the court to decline to make such an order. In any new categorisation of infringements, some limits will have to be placed on the extent to which ancillary orders of this nature can attach to lesser offences. Again, a distinction should be drawn between the sentencing powers of the courts in dealing with infringements and the legislative consequences of expiating infringements by payment of the prescribed penalty. Lesser powers of forfeiture and confiscation should apply to the latter. A Magistrates' Court has potent powers of forfeiture and confiscation under various statutes. These permit a court to order forfeiture or destruction of weapons, instruments of crime, or related items possessed or owned by offenders.¹⁴⁵ Where a person is charged with an infringement there is no reason why one of these orders should not be made if it is ordinarily available on summary conviction for such an offence. However, legislation also frequently authorises courts to order destruction of forfeited or seized goods whether or not a conviction has

¹⁴⁵ E.g. *Control of Weapons Act* 1990, s.9; *Firearms Act* 1958, s.37; *Fisheries Act* 1968, s.49; *Liquor Control Act* 1989, s.156; *Lotteries, Gaming and Betting Act* 1966, s.73; *Summary Offences Act* 1966, s.33; *Transport Act* 1983, s.223D.

been obtained.¹⁴⁶ The point of principle here is that, if the law draws a distinction between powers of forfeiture dependent upon a conviction and those that are not, that distinction should be respected in determining whether persons committing infringements are also subject to those orders. Thus, no confiscation or forfeiture should follow the expiation of an infringement by payment of the fixed penalty if the particular forfeiture requires a conviction and a judicial order. If it does not depend upon a conviction the case is stronger for accepting that it should be able to come into play automatically on the admission of guilt involved in the expiation of an infringement notice. The same must also hold true for the cancellation or suspension of drivers' licences and the disqualification of offenders from holding licences in the future. It is self-evident that any forfeiture, loss of licence etc. that follows automatically upon an infringement notice should be no more severe than that which can be ordered by a Magistrates' Court on conviction for the same offence. Indeed, the duration and form of the loss should be less for expiated offences. Just as the fine is discounted, so should licence suspension be used rather than cancellation. Already, for drink-driving infringements in Victoria, the disqualification period is shorter when the matter is dealt with by an infringement notice than if it comes before a court.¹⁴⁷

10.8 Civil v. criminal enforcement

10.8.1 The threat of imprisonment has always been regarded as incidental to the recovery of fines. Current legislative policy in Victoria is that imprisonment should be used as a sanction of last resort. It is reserved for fine defaulters who have the means and ability to pay the fine, but wilfully refuse to do so. The options available for enforcing fines, other than imprisonment, are distress and community service orders. A number of jurisdictions have acted on the suggestion that enforcement measures against those who refuse to pay on-the-spot tickets should be decriminalised to the extent that imprisonment is no longer an option, even for wilful defaulters. Instead the fine is to be enforced through normal civil processes. Civil procedures are more cumbersome and less effective than those available to the Sheriff executing a warrant of a criminal court to seize property, or to imprison. Ordinarily, the sanction for non-payment of a civil debt is court ordered execution upon the property of the person owing the money, but where that person possesses no unencumbered

¹⁴⁶ E.g. *Classification of Films and Publications Act 1990*, s.69; *Lotteries, Gaming and Betting Act 1966*, s.82; *Firearms Act 1958*, s.42 and *Summary Offences Act 1956*, s.60A.

¹⁴⁷ *Road Safety Act 1986*, s.89C and Schedule 1, Column 2.

assets upon which the Sheriff may levy in satisfaction of the judgment, there is no other effective means of enforcement.

10.8.2 Because of this weakness in the use of civil processes, most of the overseas jurisdictions which claim to have abandoned imprisonment as a means of enforcing on-the-spot tickets, have had to add a further array of measures to enforce payment. These include regulations allowing the immobilisation and/or impounding of vehicles to support writs of execution and the administrative suspension or cancellation of drivers' licences and vehicle registration. It is the latter that give the real teeth to the civil process. For not only are they severe restrictions in their own right, they bring heavy criminal penalties in their wake when breached.

10.9 Strict liability

10.9.1 A general principle of criminal liability is that the accused must be proven to have had a culpable state of mind. However, many minor offences are treated as though they are punishable irrespective of any criminal intention, recklessness or even negligence in the alleged offender. Should mens rea and all other fault elements be excluded from consideration in determining whether a person is guilty of an infringement? Bottoms has made the observation that the modern growth of these minor summary offences which are punishable only by a fine signifies a concentration on offences rather offenders; a shift from individual to collective interests; and a move from subjective to objective liability.¹⁴⁸ They allow little scope for any excuses based on subjective states of mind. Because 'legal regulation of this kind is directed not at enforcing rights and responsibilities, but at achieving particular policy objectives as efficiently as possible',¹⁴⁹ it has been contended that a permanent change to the general principles of criminal responsibility should be made for select groups of minor offences. This is exemplified by the *Model Penal Code's* treatment of violations. For these offences the basic principles of voluntariness, purposefulness, knowledge, recklessness and negligence are excluded 'unless the requirement is involved in the definition of the offence or the Court determines that its application is consistent with effective enforcement of the law defining the offence'.¹⁵⁰ A similar alteration to the applicable principles of criminal responsibility has been made in respect of regulatory offences in the Northern Territory and

¹⁴⁸ Bottoms A.E., 'Neglected Features of Contemporary Penal Systems' in Garland D. and Young P. (eds), *The Power to Punish*, London, Heinemann Educational Books, 1983, 166.

¹⁴⁹ Hogg R., 'Criminal Justice and Social Control: Contemporary Developments In Australia' (1988) 2 *Journal of Studies in Justice* 89, 92.

¹⁵⁰ *Model Penal Code*, s.2.05(1).

Queensland. The latter jurisdiction also excludes the requirement of a voluntary act. This may promote certainty of conviction, but at the expense of justice. At least the *Model Penal Code* approach allows the court a discretion to decide that a fault requirement is expressly or impliedly included in the definition of the particular offence.

10.9.2 The reason for deliberately withdrawing these elements from the definition of minor offences is said to be that it is impracticable to enquire into mens rea in each prosecution and that the simplification of issues assists in expediting the business of the courts. But even if the legitimacy of pursuing case flow speed at the expense of substantive law is conceded, to make all infringement offences ones of strict liability gains nothing. The entire thrust of the on-the-spot ticket system is to divert cases from the main flow of judicial business. It already relieves the courts from having to enquire into *any* aspect of liability for over 2 million offences a year. It works because those accused are encouraged to admit *all* elements of the offence and to accept the set penalty. They do so because of convenience, the discounted penalty and the promise of non-conviction. Fear of strict liability plays little part in the decision. The freed up judicial time should be allocated to those who do want to have the accusation against them tried on the merits. The point in preserving a right of access to the courts for those charged with infringements who decline to pay the fixed penalty must surely be to allow them to receive fuller consideration of their culpability and an individualised sentence. They should not be denied these basic features of a fair hearing by rules which presume they possess a degree of responsibility they may not have and which seek to expedite the remaining matter despite the risk of compromising justice in the individual case.

10.10 Recommendations

10.10.1 Public concern about any new social problem often produces new criminal legislation. As the process of reflexive criminalisation continues, its consequence is to expose significant numbers of the public to the risk of entanglement with some level of the criminal law in their normal workaday activities. When they are caught, the use of on-the-spot penalties offers them an important means of avoiding criminalisation for the least serious forms of wrongdoing, while still subjecting them to a deterrent penalty. But the group of offences for which this muted legal response should be available is ill-defined and the types of penalty are getting harsher. To provide both principle and stability to these developments, it is submitted that the lower three levels of the Victorian sentencing scale contained in the *Sentencing Act* 1991, s.109 should be

used to define a new category of summary offences to be known as 'infringement'. This will confine the class of offences for which on-the-spot tickets can be used to offences for which imprisonment is not a sentencing option. Determining the size of this class and identifying what offences fall within it requires completion of the process, commenced in 1989, of allocating all Victorian statutory offences to the various levels of the penalty scale. An *Infringements Act* for Victoria will be needed to bring together the law governing the definition of the class and the arrangements for dealing with infringements. These arrangements would include both the procedure for expiating infringements by payment of a fixed penalty and for prosecuting infringements summarily before a Magistrates' Court. Because the expiation scheme is designed to achieve a high degree of decriminalisation, it should specify that expiation of an infringement by payment of a fixed penalty does not result in the person accused acquiring any form of prior conviction. It should also set limits on any consequential forfeitures and disqualifications. The legislation should allow for either the enforcement authority, or the person accused, to decline to make use of the opportunity to have the offence expiated. This means that the accusation would be heard and determined summarily. The magistrate may then exercise his or her normal discretions regarding conviction and sentence. The statute should not include any presumption that infringements are offences of strict liability. The prosecution has already gained enough ground through use of the infringement notice system to achieve inappropriately high levels of punishment. Infringements should not be removed from the general criminal law, nor deprived of the protection offered by adherence to its basic culpability requirements. If burden of proof rules are altered and defences are withdrawn by statute, there should be a corresponding effort to limit the punitive consequences which flow from conviction for such offences.

10.10.2 While less burdensome procedures can be accepted for infringements than can be tolerated in prosecuting serious offences, it must always be remembered that those alleged to be guilty of infringements are facing punishment. Whatever procedure is adopted, the sanction is intended to hurt to a degree that will alter behaviour. Alleged offenders are entitled to fairness in the way in which they are treated. Better definition of infringements as a separate class of offence, clarification of the applicable procedures, and setting firm limits on the levels of punishment appropriate to offences in this class, will assist in attaining that fairness.

Conclusions

11.1 A permanent feature of criminal justice

11.1.1 The infringement notice system is here to stay. From seeds planted forty years ago, it has matured into the main arrangement for keeping offenders out of court. It provides relief from the high number of prosecutions that would otherwise have to be conducted to enforce the law relating to summary offences and reduces the costs of criminal justice. By simplifying procedure and relying on monetary forms of punishment which are offered at a discounted rate, the state, through its various enforcement agencies, encourages offenders to admit responsibility and expiate their guilt without any need for the courts to become involved. The growth in Victoria in the use of on-the-spot fines for minor offences is not unique. The public policy issues raised by its experience have significance beyond local State boundaries. The emergence of the infringement notice procedure is a response to the incapacity of the ordinary apparatus of prosecution and hearing to handle the myriad of summary offences which the regulation of a modern society casts up for prosecution. Of all of these varied offences, those relating to the use of motor vehicles are most responsible for swamping the legal system.

11.1.2 The mass production and growth in ownership of motor vehicles, the need to regulate traffic flow and parking, concern with the physical dangers, congestion and environmental hazards of vehicle use and the huge number of resultant motor vehicle offences, guarantee that there will be no release from the pressure placed on the legal system by the advent of cars. The possibility of decriminalising road traffic offences is minimal. The same is true of those offences which seek to protect the property and revenue of the public transport system and of other aspects of communal regulation which are now also punished by way of on-the-spot fines. These include littering and pollution offences aimed at safeguarding the environment, laws for the maintenance of health, food and other standards in the interest of consumers and those controlling

businesses and corporations to ensure their proper registration and some degree of accountability. Some of the offences are highly technical in nature because they seek to regulate some complex aspect of technology. Though the new regulations amount to a widening of the area of criminality, high levels of moral or social stigma do not accompany them. The future will produce more rather than fewer summary offences of this kind. It is inevitable that administrators will continue to demand that criminal procedures be simplified to accommodate this changing face of the criminal law and the increased number of offences committed.

11.1.3 Reliance on 'technocracy' in detecting offenders and issuing on-the-spot fines has been a major feature of the dramatic expansion in the use of this measure in the 1990s.¹ But, even before then, it was steadily growing as a technique for diverting minor offenders from the courts. There are now some eighteen Acts in the State which authorise the issue of such notices with fixed penalties ranging from \$15 to \$900. There are literally hundreds of offences subject to this procedure. New administrative arrangements have been introduced for the enforcement of these notices. In Victoria, a special PERIN Court (Penalty Enforcement by Registration of Infringement Notices) has been established to process, by largely automatic means, the steps which have to be taken in attempting the recovery of the amounts fixed by the notices.

11.1.4 The number of infringement notices issued in Victoria since they first became available in 1959 as an alternative to prosecution is not known. Nor was it known how many were issued statewide over any set period. Because no central record or count of issued notices was assembled by any government authority, basic statistical data was lacking. It is important to know the rate at which business flows through this part of the criminal justice system. Growth in the base figure as the result of changes in ticket writing policies will inexorably add to demand for the more labour intensive enforcement side of the system. Already evidence exists of an unmanageable backlog of unpaid penalties awaiting enforcement. No forward planning or cost-benefit analysis can be undertaken without measures of the scope of the enterprise.

11.1.5 In an effort to fill this gap, this research involved obtaining a count of all infringement notices issued in Victoria during a single twelve-month period. The financial year 1 July 1990 to 30 June 1991 was selected to allow the outcome of notices issued in this period to be later tracked for 18 months from the last infringement notice issued in the sample. At the time of the study some 123 agencies, including police, shires and municipalities, transport bodies, government departments, tertiary institutions and hospitals were authorised to issue infringement notices and make use of the enforcement procedures. It was originally estimated that

¹ O'Malley P., 'Technocratic Justice in Australia' (1984) 2 *Law in Context* 31.

there would be possibly close to a million such notices issued in the financial year under investigation. The data collected from the 123 agencies revealed that over 2.3 million on-the-spot tickets were issued in Victoria, the majority of which were written by local government authorities rather than the police. They carried a face value of over \$150 million. This is the main exposure which citizens have to the criminal justice system. This growth is explicable in terms of a new model of the criminal process, one which places expediency ahead of rights in the criminal justice system.

11.2 Liberal bureaucratic model

11.2.1 In the robust world of expediency, the view prevails that an offender will be more inconvenienced by delays, complexity and costs in facing allegations of wrongdoing, than by diminution of his or her legal rights. On this view, it is acceptable to use administrative and executive processes, rather than judicial ones, to dispose of minor criminal cases when the defendant is not going to dispute guilt. Two lines of argument can be advanced to support state intervention in this fashion. The first is based on consent; the second on necessity. The case based on consent emphasises that those administering the infringement notice system do not make a conclusive determination of guilt or innocence; guilt is admitted by the defendant. That admission of liability is sufficient to assume jurisdiction. The argument from necessity is independent of the consent of the accused. It points to the fact that it is operationally impracticable to process, in the courts, all the cases that are now handled by way of infringement notices. Because the inundation of the courts by petty cases threatens a breakdown in law enforcement at this level, it is said that many traditional rights (which are in any event more appropriate to trials of serious offences) must be jettisoned. If that is true, and necessity rather than consent is accepted as the ground for giving administrative needs priority over substantive rights, the ultimate right of recourse to the courts may be the next to go.

11.2.2 The argument from necessity approximates what Bottoms and McClean² have described as the 'liberal bureaucratic model' of the criminal process. They offer it in contradistinction to the 'crime control' and 'due process' models originally advanced by Herbert Packer.³ The liberal bureaucratic model differs substantially from the crime control one in that it dissents from the latter's central value that the repression of criminal conduct is the most important function of the criminal process.

² Bottoms A.E. and McClean J.D., *Defendants in the Criminal Process*, London, Routledge and Kegan Paul, 1976, 228-229.

³ Packer H.L., *The Limits of the Criminal Sanction*, Stanford University Press, 1969.

But it also departs from the due process model because the latter's concern with quality control in terms of maintaining standards of justice too severely restricts the quantitative output of cases. As they explain:⁴

The liberal bureaucrat is a practical man; he realises that things have to get done, systems have to be run. It is right that the defendant shall have substantial protections; crime control is not the overriding value of the criminal justice system. But these protections must have a limit. If it were not so, then the whole system of criminal justice, with its ultimate value to the community in the form of liberal and humane crime control, would collapse. Moreover, it is right to build in sanctions to deter those who might otherwise use their 'Due Process' rights frivolously, or to 'try it on'; an administrative system at State expense should not exist for this kind of time wasting.

11.2.3 Bottoms has identified the growth in summary offences punishable by fine alone as an expression of the spread of this liberal bureaucratic model⁵ and the infringement notice system makes sense as an extension of this model. Its aim is deterrence without undue disruption and its focus is offences punishable only by monetary means. These are linked in turn to the role of the state in regulating an increasing range of social and economic activities. It is in these regulatory offences, which support the modern administrative state, that collective interests take precedence over personal ones: 'Legal regulation of this kind is directed not at enforcing rights and responsibilities, but at achieving specific policy objectives as efficiently as possible.'⁶ It is administered in a context in which criminal prosecution is often only one amongst a number of available legal avenues of intervention. It is often less concerned with harm as an actual and immediate result of wrongdoing, than with conduct that carries with it the potential for harm or inconvenience to many others. It is characterised by a move away from individualism towards control of groups through manipulation of their behaviour and attitudes with the aim of increasing their compliance with the particular regulatory regime that applies to them. The law here serves different interest groups and different domains of activity in different ways.

⁴ Bottoms A.E. and McClean J.D., *Defendants in the Criminal Process*, London, Routledge and Kegan Paul, 1976, 229.

⁵ Bottoms A.E., 'Neglected Features of Contemporary Penal Systems' in Garland D. and Young P. (eds), *The Power to Punish*, London, Heinemann Educational Books, 1983, 166.

⁶ Hogg R., 'Criminal Justice and Social Control: Contemporary Developments In Australia' (1988) 2 *Journal of Studies in Justice* 89, 92.

11.3 Rights v. expediency

11.3.1 Heydebrand⁷ has commented on how mechanisms of social control based on scientific-technical systems and instrumental rationality in decision-making can be at odds with judicial decision-making based on concepts of justice, rights and the rule of law. The 'judicial' approach to the problem of heavier demands on judicial time is to increase the number of courts and/or the resources allocated to them in order to maintain the quality of justice by guaranteeing a hearing on the merits in each case in accordance with accepted due process standards. By contrast, the bureaucrat's technocratic response to increased pressure on judicial services is to try to make more efficient use of existing facilities and to implement new rules and procedures to simplify and expedite the trial process, or to divert matters from the courts entirely. These latter techniques have always been a feature of summary criminal prosecutions and are now making their appearance in the higher criminal courts.⁸ The streamlining and foreshortening of conventional summary procedure in court was a forerunner of the infringement notice system in Victoria and in other jurisdictions. Only when these efforts failed to cope with the rising tide of cases, was the system of voluntary expiation by payment of a fixed penalty substituted for conventional forms of judicial adjudication. It is not uncommon in the criminal justice system for existing rights to give way to the convenience of police or administrators, but the expediency that shapes such reforms ought neither to be unprincipled, nor short-sighted.

11.3.2 Bypassing the courts altogether tends to be regarded as inconsistent with liberal-democratic values which hold due process, the adversary system and equality before the law to be cornerstones of a fair legal system. With on-the-spot fines, it is said that these protections have not been lost because they are still available, on demand, through the right of recourse to the courts. However, that right is little more than rhetoric. First, the court system would not have the capacity to provide individual adjudication if a significant number of the 2.3 million or more persons issued with infringement notices in any one year in Victoria, demanded it. Secondly, defendants are deterred from attempting to exercise their right to an open hearing by a powerful set of disincentives. These include the inconvenience and increased legal costs of a hearing, the difficulty of overcoming many of the statutory presumptions which render the readings of detection devices practically inviolable and the risk of receiving a higher penalty in court than that demanded by the infringement notice itself. It must be recognised that this places recipients of infringement notices under great pressure to settle the allegation against them by payment of the

⁷ Heydebrand W., *Technocratic Administration of Justice*, in Spitzer S. (ed.), (1979) 2 *Research in Law and Sociology* 29.

⁸ See, for example, *Crimes (Criminal Trials) Act* 1993.

fixed penalty even though they consider themselves to be innocent. The limited availability of legal aid for defended summary matters adds to the disincentives.

11.3.3 It is also important to recognise that the simplification which has been occurring in the infringement notice system is more than just procedural. It also affects substantive law and blurs the relationship between the two. Problems in identifying the actual person responsible for committing the actus reus of certain motor vehicle offences, led to owner-onus provisions first making their appearance as an element in infringement offences. And an unwillingness to devote time to an inquiry into mens rea, resulted in the mental state of the accused being treated as irrelevant to guilt. Though couched in procedural terms, these developments have encouraged an attitude that summary offences are to be drafted and interpreted as if, almost inevitably, they involve vicarious and strict liability. This mind-set brings with it all the attendant risks of working injustice in individual cases. The fact that the courts cannot handle large numbers of offenders, does not exempt policy makers from their obligation to judge the appropriateness of the elements in each particular prohibition and the aptness of the particular legal procedures selected for its enforcement. A clear distinction needs to be drawn between the circumstances in which monetary penalties may be demanded under legislative arrangements for the issue of infringement notices and when fines may be imposed by a court. These techniques are quite separate and already show differences in the type of offence for which a monetary penalty may be imposed, the level of penalty which may be exacted, and the alternatives available if the offender does not have the means to pay. These differences need to be clarified and systematised.

11.3.4 One of the obvious effects of the introduction of infringement notices and the technology which supports it, is that the ratio between the number of non-judicial criminal dispositions and the number of judicial ones has been dramatically altered. The norm now is punishment without prosecution or trial. In caseload terms, the courts have been effectively pre-empted,⁹ although most criminal lawyers and criminologists appear not to have noticed.¹⁰ They have been so absorbed with orthodox criminal law and procedure that they have overlooked the new responses to offending that directly compete with the criminal law and threaten to supplant it, particularly in relation to summary offences.

11.3.5 Expediency in disposing of offenders encourages greater efficiency in detecting them. Since the 1960s, much effort has gone into improving the means by which offences can be detected and recorded

⁹ See above 1.1.1.

¹⁰ Cf. Bottoms A.E., 'Neglected Features of Contemporary Penal Systems' in Garland D. and Young P. (eds), *The Power to Punish*, London, Heinemann Educational Books, 1983, 166; Duff P., 'The Prosecutor Fine and Social Control' (1993) 33 *British Journal of Criminology* 481.

rapidly, accurately and automatically by electronic or other methods involving minimal human intervention or independent judgment. This, too, is a continuing trend. The growth in traffic volume has provided the imperative to explore the full potential of the latest developments in computerisation, communications and technical innovation. Not only has this pushed traffic safety issues further up the political agenda, but it has also thrust the infringement system itself into greater public prominence. The manner in which infringement notices appear to have been issued to fill public coffers has attracted much attention. It is naive to expect State or local government to ignore the benefits of a steady stream of penal revenue collected as the result of an overabundance of detected offences, but this produces an inevitable conflict between revenue objectives and correctional ones. In Victoria, the signs of that conflict have been clear with the former government raising traffic fine levels to meet budget short falls, and the current government's Parliamentary Public Accounts and Estimates Committee being troubled by falling traffic camera revenue,¹¹ despite police protests that the fall was evidence of their success in improving the behaviour of motorists. The public's perception that many of the enforcement practices are motivated by revenue goals and are a toll on marginally deviant conduct, rather than a serious effort to suppress significant social misconduct, threatens the legitimacy of what are otherwise meritorious law enforcement programs. The integrity of any road safety program will be undermined if the public's sense of fairness is affronted by some of the enforcement methods used. This in turn tends to erode the cooperative relationship between enforcers and the enforced on which modern policing still relies for its efficiency, as well as its goodwill.

11.3.6 Because the on-the-spot ticket is frequently not given on the spot in any direct human exchange between the person enforcing the law and the offender, the infringement notice system lends itself to an unusually depersonalised form of criminal justice. The detection of the offence may be automatically recorded by an unattended electronic device without the immediate knowledge of the offender; the infringement notice is likely to be served by post some time later having been routinely compiled and issued by a computer; the penalty is fixed in advance by statute or regulation; no consideration of differing levels of personal culpability or mitigation of penalty, or any other special circumstances, is ordinarily entertained; and repeat offenders are treated in the same way as first ones. This lack of individualisation militates against effective deterrence. One of the reasons for tolerating this situation is that the spread of technology on the detection side has produced an efficiency in identifying those who commit summary offences not matched by a

¹¹ The Committee noted that the rate of dollar collections per camera hour had fallen from over \$2000/hour to under \$1000/hour in 18 months—Victoria, Parliamentary Public Accounts and Estimates Committee, *1992-93 Budget Estimates and Outcomes*, November 1993, 108-112.

corresponding capacity to dispose of them, except en masse. Justice is based on collective, rather than individual equality of treatment. Apart from being a preferred bureaucratic solution, this makes sense when it is recognised that motoring, the main class of infringement offences, concentrates upon the driver as motorist rather than as an individual suffering from some personal behavioural problem. The law is seeking to shape the collective behaviour of motorists in settings in which normally law abiding persons are as much influenced by the on-road behaviour and attitudes of their fellow drivers, as by what the law arbitrarily dictates.

11.3.7 Although infringement notices are not solely the remit of the police or traffic officials, nor exclusively concerned with motoring offences, expediency in handling recidivist driving offenders led to a fundamental alteration in the underlying infringement notice paradigm in Victoria in 1989. By an amendment to the *Road Safety Act 1986* in that year,¹² for certain driving offences the infringement penalty changed from being expiatory in nature and an alternative to recording a conviction, to one which can automatically result in a conviction despite the absence of any judicial determination of guilt.¹³ However pressing the immediate problem of repeat offenders might have been, such a change in the infringement model itself was wrong—it corrupted the essential nature of the infringement system itself. The wider implications for agencies enforcing other areas of the law and for the future use of infringement notices as a means of dealing expeditiously with minor offenders were never debated. Nor were the long-term consequences of the automatic legislative allocation of convictions. Except for the planned design of the PERIN component, the infringement notice system in Victoria has, so far, evolved out of a reactive strategy of crisis management, rather than any systematic attempt at reform of the court and criminal justice systems. This ad hoc approach to the identification of certain summary offences as a subsidiary class called infringements cannot continue. There is a need for a considered review of all the alternatives to prosecution and a more principled approach to the design of each one, including the establishment of the infringement as a distinct category under its own special legislation.

11.4 Advantages and disadvantages

11.4.1 Since it is certain that the liberal bureaucratic model will continue to prevail in relation to summary offences, the question is how best to balance the tensions between expediency and rights. It has already been pointed out in Chapter 6 that not only is empirical data lacking for many of the quantifiable elements required for a proper assessment of the

¹² *Road Safety (Miscellaneous Amendments) Act 1989*, s.18.

¹³ See above 4.6.1.

efficiency of the infringement notice system, but most of the equity considerations which have to be weighed in the balance are non-quantifiable. While it is well understood that expediency can be bought at too great a price in terms of loss of rights, finding the balance is extremely difficult. Each of the main advantages of the infringement notice system is subject to countervailing considerations:

- Use of infringement notices is not mandatory. It does not exclude the exercise of discretion to dispose of an alleged offence by administering a verbal or written warning, or proceeding to court. *On the other hand*, there appears to be a reduction in the use of warnings as an alternative because of the ease with which infringement notices can be issued and their value to revenue. The greater use of warnings needs to be encouraged and formalised to prevent this diversionary strategy sweeping up a wider group of citizens for formal action than might otherwise have been the case.¹⁴ The public expect a 'fair' chance of escaping or avoiding action leading to a fine. They are unhappy when the threshold of intervention is lowered and the odds of escaping are reduced, particularly if no apparent distinction is drawn between major and minor summary offences in the leeway allowed. The principle of proportionality of response operates, intuitively, even in relation to summary offences.
- The use of non-police personnel (such civilians employed by the police, or municipal by-law and traffic officers) to issue infringement notices for certain classes of offence relieves police of minor law enforcement tasks that would otherwise fall upon them. *On the other hand*, demand is growing from non-police agencies for wider powers in relation to the type of offence for which they may write on-the-spot tickets and for access to the detection technology currently controlled by the police. Criteria for access to both the enforcement powers and the technology and for training and supervision in these areas need to be formulated.
- The overwhelming majority of persons receiving infringement notices opt for the convenience of expiating their offence by paying the amount of the fixed infringement penalty set out in them. No further prosecutorial action, nor use of court resources is required. *On the other hand*, the difficulties of enforcing the payment of infringement penalties in relation to the 10-15 per cent who do not pay are considerable. They are as great as those in relation to judicially imposed fines, but occur on much a larger scale. They

¹⁴ See above 9.2.

place a great burden on the Sheriff's Office. The search for efficiency in this area must continue, not only to stem a significant loss to revenue, but also to maintain the credibility of the infringement notice system itself.

- Infringement notice procedures lend themselves to automation and computerisation. *On the other hand*, this advantage is bought at too high a price in equity terms if it prevents special circumstances of a mitigating nature being considered other than by demanding a full hearing in open court. Mechanisms for bringing mitigating factors to official attention need to be given a legislative foundation.
- The infringement penalty is fixed at a lower monetary level than the normal statutory maximum fine for the offence. *On the other hand*, there is no consistency in the degree of the discount, nor does it necessarily result in a penalty falling below that which the courts have been imposing for like offences. Consistency in this regard requires clarification of the discount policy and clearer legislative direction that it be followed.¹⁵
- Timely payment of the fixed penalty specified in the infringement notice ordinarily results in the offender acquiring neither a conviction nor a record. The offender thus avoids the social stigma and legal disabilities which attach to prosecution and conviction in a criminal court. *On the other hand*, the newer forms of infringement notice leave the offender with a conviction and other disabilities, despite having paid the monetary penalty demanded by way of expiation.
- Because it is easier and quicker to issue an infringement notice than to mount a prosecution in court, it is more likely that the prohibition will be enforced. *On the other hand*, the benefit to revenue of a vigorous enforcement program may lead to enforcement for the wrong reasons. This may be manifested in lower thresholds of official tolerance of the penalised conduct, enforcement practices that smack of entrapment, and the criminalisation of forms of secondary deviance engaged in by those seeking to avoid what they see as unfair and excessively rigid enforcement practices.¹⁶

Uneven and incomplete law enforcement is partially welcome because we may have a sense that perhaps the rules passed by the legislature are not the best of all possible rules. Standards may be too harsh or may miss the point; the penal or correctional process may not fulfil any of the goals established for it. . . . Absolute enforcement is only desirable when the society is

¹⁵ See above 10.7.

¹⁶ Price M.E., 'Criminal Law and Technology: Some Comments' (1968) 16 *U.C.L.A. Law Review* 120, 134.

absolutely confident that the rule it has passed should be observed. But have we achieved that sort of hubris?

- The sanction for the offence remains a deterrent. *On the other hand*, the moral and deterrent force of the law may be reduced when it responds to wrongdoing administratively with minimal formality and with reduced penalties. The sanction becomes seen as an inconvenience, or a cost of doing business, rather than a meaningful deterrent.
- Infringement notices are an effective way of dealing with large numbers of lesser summary offences without stigmatisation of the offender and with less expenditure on the criminal justice system. *On the other hand*, the level of the fixed monetary penalties which are attached to the notices is creeping upwards and the sanctions are beginning to include ancillary measures such as loss of driver's licence or other forms of disqualification which are stigmatic. Even though there are moves afoot to extend the class of offences open to being disposed of by way of infringement notices to more serious summary offences, this procedure is not appropriate to all. This is particularly so in relation to those in which liability requires a distinction to be drawn between different mental states, or the behaviour in question has to be tested against some standard of reasonableness.

11.5 Net-widening

11.5.1 The growth in alternatives to conventional forms of procedure and punishment has troubled many observing the expansion and extension of penal control.¹⁷ Not only have prison populations been maintained or increased in size, but the proliferation of non-custodial alternatives has meant that an even larger pool of citizens is now subject to official attention. Instead of diverting individuals away from the criminal justice system, the new forms of sanction appear to be directing more people into it. The number of drivers' licences lost automatically on the issue of certain types of infringement notice under the *Road Safety Act 1986* is a case in point. Not only is the net itself being widened, but its mesh is becoming finer. The overall intensity of surveillance is increasing.¹⁸ High technology is being used routinely to screen large groups of the populace

¹⁷ Decker S., 'A Systemic Analysis of Diversion: Net-Widening and Beyond' (1985) 13 *Journal of Criminal Justice* 207; McMahon M., "'Net-widening'"—Vagaries in the Use of a Concept' (1990) 30 *British Journal of Criminology* 121; Australian Law Reform Commission, *Report No. 57: Multiculturalism and the Law*, Sydney, 1992, para. 9.10.

¹⁸ On the other hand the infringement notice scheme is intended to reduce the involvement of offenders in the court system and to reduce stigma.

in order to identify those who may be offenders. Although Duff has asserted that ‘the fact that a degree of net-widening is taking place does not automatically lead to the conclusion that the state is thereby intruding further into the life of its citizens’, the modern anxiety is that the technology is ominously different from that employed in earlier forms of policing.¹⁹ The sense of intrusion not only comes from the increasing number of forms of surveillance, but also from the potential which advanced technology offers for the matching of information held on various databases thus created and for the assembly of dossiers on individuals.²⁰

11.5.2 Bottoms²¹ does not read the widening of the range of criminal sanctions, or the increased monitoring, as a deliberate authoritarian device for the more effective exercise of social control and social power by the state. However, he does concede that there has been a widening of the dimensions of social control to bring a larger number of individuals within the ambit of the criminal justice system. He sticks with his theme that what is occurring is part of a more general phenomenon in the transformation of society to bring about collective rather than individual compliance with legal norms. The criminal law is only one of a number of ways of achieving this. Whether to make use of it at all, or in its judicial or administrative manifestations, has more to do with issues of cost, efficiency and ease of management than any deliberate plan by the state to surreptitiously strengthen its disciplinary powers over citizens.

11.6 The Pareto principle

11.6.1 The Pareto principle, named after an Italian economist-sociologist of the turn of this century,²² states that the significant items in a given group normally constitute a relatively small proportion of the total. Sometimes it is referred to as the ‘vital few’ versus the ‘trivial many’, or the 80/20 rule. It translates into the proposition that 20 per cent of the clients account for 80 per cent of the problems. So too with infringements. In this study, 16 per cent of the penalties for which payment was required had to be sent to the PERIN Court for enforcement. Eighteen months after the last of the on-the-spot tickets was written in the sample period, just on 10 per cent of all the tickets issued, and over 60 per cent of those sent for enforcement remained unpaid.²³

¹⁹ Duff P., ‘The Prosecutor Fine and Social Control’ (1993) 33 *British Journal of Criminology* 481, 498.

²⁰ See above 8.41.

²¹ Bottoms A.E., ‘Neglected Features of Contemporary Penal Systems’ in Garland D. and Young P. (eds), *The Power to Punish*, London, Heinemann Educational Books, 1983, 166.

²² Vifredo Pareto 1848-1923.

²³ See above, 5.2.

The failure to pay on-the-spot fines undermines the credibility of the criminal justice system, both on a specific and a general level. Offenders escaping payment may, individually, be less deterred in future and may come to believe that they can commit similar offences with impunity. At a general level, the normal inclination to write off unpaid fines has to be resisted because of the risk of widespread disregard of the law. As awareness of inefficiencies in enforcement and slackness in fine recovery grows, the deterrent value of the default sanction, whether it be licence suspension, vehicle deregistration, or default imprisonment, is weakened. If the backlog of unpaid fines reaches a critical mass, it will produce a chain reaction which will bring down the whole system. The recent need to escalate default penalties in Victoria because recipients of on-the-spot tickets were wilfully ignoring the sanctioning system is an attempt to retrieve the situation. However, experience elsewhere in Australia and overseas indicates that difficulties in collecting fines are endemic and are not peculiar to those imposed through the infringement notice system.

11.6.2 Most jurisdictions in Australia have recently been, or are presently in the throes of reforming or refining their fine enforcement arrangements. A considerable body of experience has now developed in relation to fine enforcement generally and motor vehicle related offences in particular. The new efforts are specifically directed towards the small proportion of offenders who prove the Pareto principle by their recalcitrance and their demand on enforcement resources. Encouragement is being given to the establishment of a unified system of fine enforcement throughout Australia administered by appropriately resourced agencies possessing adequate powers to discharge the enforcement function. At the moment these agencies include police and sheriffs' officers, road traffic authorities and correctional departments, but other possibilities such as the use of private debt collecting agencies have yet to be fully explored. Upgrading the quality of databases recording those who hold driving licences, or own motor vehicles, and improvements in the speed with which a demand for payment is followed by efforts at enforcement are two of the priorities which have been suggested for upgrading fine enforcement standards generally in this country.²⁴

11.7 Model legislation

11.7.1 There is a need for model infringement legislation, preferably to operate nationally on a cooperative basis between the States and Territories. As has been suggested in Chapter 10, an *Infringements Act* is needed to define the group of offences designated as infringements and

²⁴ Freiberg A. and Fox R., *Enforcement of Fines and Monetary Penalties*, Discussion Paper prepared for the National Road Transport Commission, October 1994.

the procedural arrangements for issuing and enforcing infringement penalties. The statute should include both the procedure for expiating infringements by payment of a fixed penalty, and for prosecuting this class of summary offences before a Magistrates' Court in the event of an election being made. The legislation is needed to restrain the degree of punishment and the collateral consequences which may be attached to this class of offence. The penalties which apply to infringements should be both proportionate to the wrongdoing and take their proper place in the lower echelons of the hierarchy of penalty levels available in Victoria under the *Sentencing Act* 1991.

11.7.2 A model infringement notice scheme should include the following features:

- The scheme should apply only to offences triable summarily;
- The infringement must be completely expiated by payment of a legislatively fixed sum of money, but the issue of the notice may also lead to the suspension or withdrawal of a right or licence to undertake an activity to which the alleged offence relates;
- The maximum amount of any single infringement penalty should not exceed 5 penalty units (level 13 of the Victorian penalty scale),²⁵ or one-quarter of the maximum statutory penalty that applies if the offence is dealt with summarily by a court;
- The right or licence should be suspended rather than cancelled and, ordinarily, for a period of no longer than six months. Longer suspension, or outright cancellation, should be only upon a court order;
- The scheme should be administered by the police or officers of the public authority ordinarily responsible for enforcing the particular legislation creating the offence;
- The officials empowered to enforce the legislation and to issue infringement notices must also retain and exercise a discretion to issue a warning or a caution in less serious cases, or a summons to court in more serious ones, instead of automatically issuing an infringement notice. Guidelines for exercising that prosecutorial discretion should be drawn up and disseminated to those making the enforcement decisions;
- Each infringement notice should be in plain English with foreign language warnings of its significance;
- Infringement notices should contain, at minimum, the name and address of the person to be served; the offence alleged to have

²⁵ See above,

been committed; particulars of the offence, including information on where and when it was alleged to have been committed; an indication of the maximum statutory penalty a court is permitted to impose for the offence; an indication of the fixed penalty that is required to be paid in order to expiate the offence; an indication of how and where the penalty is to be paid, including an indication that payments may be made by instalment; an indication of any other penalties, disqualifications or disability that apply as a result of the alleged offence; an indication that if the amount specified in the infringement notice is paid as required, further proceedings will not be taken against the person in relation to the alleged offence; and information on any defences which may be available or steps which could be taken to permit the recipient of the infringement notice who has been identified under owner-onus provisions, to deny liability or assign responsibility to another alleged to have actually committed the offence;

- The infringement notice must make it clear that the alleged offender has the right to elect to go to court to contest the accusation, but the matter may be disposed of in court by way of a ‘hand-up brief’ procedure whereby both the informant and the defendant are compelled to state their case in writing prior to the hearing;
- A person against whom an infringement notice has been issued should not be treated as having been convicted of the alleged offence, except by a court order. Expiation of the offence by payment should not lead to a conviction and if the matter is defended in court, and the grounds on which the notice was issued are established beyond reasonable doubt, the court should still have the right not to record a conviction. An alleged offender who contests the accusation instead of expiating it by payment, should not be penalised, other than in costs, for exercising that right;
- The infringement notice should give the alleged offender an opportunity to advise the agency issuing the notice, formally in writing, of any factual matters which the person considers ought to be taken to account in relation to the alleged offence. These matters should be taken into account in exercising the discretion to withdraw the notice either absolutely, or with a formal or informal warning;
- Monetary penalties should be recoverable by civil enforcement; non-payment of an infringement penalty should not be punishable by imprisonment;
- The legislation should permit records to be retained of offending so that repeat offenders can be identified. Reference to these records

should be statute barred after a limited period, say 5 years. Escalated infringement penalties for recidivists should be permitted, provided the penalties do not exceed the maximum of any individual infringement penalty, i.e. 5 penalty units. Thereafter, matters must be dealt with by prosecution in an open court.

11.7.3 The enforcement of the law by way of infringement notices is a useful administrative adaptation of the criminal process. It is defensible in terms of bureaucratic expediency and savings in the costs of justice when dealing with summary offences. In many cases it offers a more appropriate response to minor wrongdoing than a hearing in open court. Based on the Victorian data gathered in this study, use of on-the-spot fines has increased to such an extent that it now represents the primary mode of responding to breaches of criminal prohibitions. While originally conceived as a non-stigmatic form of diversion for least serious offences, there are signs of infringement notices expanding into other areas of the criminal law and producing more punitive and stigmatic consequences than originally planned. Departures from the underlying model and increases in infringement penalty levels suggest that the concept is in need of some legislative redefinition and restraint. This study has explored the territory and charted some of its main features.

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Chapter 13

Infringement Offences

The following is a list of categories of infringement offences based on the offence code list in use by the PERIN Court as at 2 October 1991. The legislative source of the prohibition is shown in an abbreviated form as is the description of the offence. The list is not a complete catalogue of infringing offences. It records only those that can be enforced under the PERIN system.

PARKING

CODE	ACT/SECTION	SHORT DESCRIPTION
521	9921R:1101(1)(b)	LEAVE VEHICLE IN NO STANDING AREA
522	9921R:1101(1)(b)	LEAVE VEHICLE IN NO PARKING AREA
523	9921R:1102(1)	VEHICLE LEFT NOT PARALLEL TO BOUNDARY
524	9921R:1102(1)	VEHICLE LEFT TOO FAR FROM BOUNDARY
525	9921R:1102(1)(e)	LEAVE VEHICLE CAUSING UNDUE OBSTRUCTION
526	9921R:1102(1)(f)	FAIL TO PARK WITHIN SINGLE BAY
527	9921R:1104(1)(b)	VEHICLE LEFT WITHIN 9M OF SAFETY ZONE
528	9921R:1104(1)(C)	VEHICLE LEFT IN FRONT OF PRIVATE DRIVE
530	9921R:1104(1)(g)	LEAVE VEHICLE ON FOOTWAY
531	9921R:1104(1)(g)	LEAVE VEHICLE ON RESERVATION
532	9921R:1104(1)(1)	VEHICLE LEFT OPPOSITE DOUBLE LINE
533	9921R:1104(1)(j)	LEAVE VEHICLE WITHIN INTERSECTION
534	9921R:1104(1)(1)(i)	LEAVE VEHICLE WITHIN 1M OF FIRE HYDRANT
535	9921R:1104(1)(1)(i)	LEAVE VEHICLE WITHIN 1M OF FIRE PLUG
536	9921R:1104(1)(m)	LEAVE VEHICLE WITHIN 3M OF LETTER PILLAR
538	9921R:1104(1)(n)(i)	LEAVE VEHICLE WITHIN 9M OF INTERSECTION
539	9921R:1104(1)(n)(v)	LEAVE VEHICLE WITHIN 9M OF TRAM STOP
540	9921R:1104(1)(d)(iii)	LEAVE M/CAR WITHIN 18M BUS STOP APPROACH
541	9921R:1104(1)(n)(ii)	LEAVE M/CAR WITHIN 9M BUS STOP DEPARTURE
542	9921R:1104(1)(n)(vii)	LEAVE VEHICLE 9M TRAFFIC SIGNAL -ONE WAY
543	9921R:1104(1)(n)(vi)	LEAVE VEHICLE 9M TRAFFIC SIGNAL -TWO WAY
544	9921R:1104(1)(o)(ii)	LEAVE M/CAR 18M TRAFFIC SIGNAL APPROACH
545	9921R:1104(1)(o)(i)	LEAVE VEHICLE 18M RAILWAY LEVEL CROSSING
546	9921R:1104(1)(k)	LEAVE VEHICLE ON KEEP CLEAR AREA
547	9921R:1103(1)	LEAVE M/CAR PARTLY INSIDE/OUTSIDE AREA
548	9921R:1103(1)	PARK PARTLY IN PARKING & NO PARKING AREA
549	9921R:1103(1)	PARK PARTLY NO STANDING & PARKING AREA
550	9921R:1101(1)(c)	PARK VEHICLE OTHER THAN INDICATED - SIGN

551	9921R:1106(1)(a)	OVERLENGTH VEHICLE PARKED EXCESS OF 1HR
552	9921R:1103(2)	PARK AT WRONG ANGLE CENTRE CARRIAGEWAY
553	9921R:1103(2)	VEHICLE LEFT NOT APPROX 45 DEGREES
554	9921R:1102(1)(d)	PARK -FAIL TO LEAVE 3M CLEAR CARRIAGEWAY
555	9921R:1104(1)(b)	PARK BETWEEN SAFETY ZONE AND KERB
556	9921R:1104(1)(d)	LEAVE VEHICLE IN FRONT OF FOOTWAY
557	9921R:1104(1)(d)	LEAVE VEHICLE IN FRONT OF BICYCLE PATH
558	9921R:1104(1)(c)	LEAVE VEHICLE IN FRONT OF RIGHT OF WAY
559	9921R:1104(1)(c)	LEAVE VEHICLE IN FRONT OF PASSAGE
560	9921R:1104(1)(e)	LEAVE VEHICLE ALONGSIDE EXCAVATION
561	9921R:1104(1)(e)	LEAVE VEHICLE OPPOSITE EXCAVATION
562	9921R:1104(1)(e)	LEAVE VEHICLE OPPOSITE OBSTRUCTION
563	9921R:1104(1)(e)	LEAVE VEHICLE ALONGSIDE OBSTRUCTION
564	9921R:1104(1)(f)	PARK ON ROAD BOUNDED BY TRAFFIC ISLAND
565	9921R:1203(2)	LEAVE VEHICLE WITHOUT LIGHTED LAMPS
567	9921R:1104(1)(h)	LEAVE VEHICLE ON BRIDGE
568	9921R:1104(1)(h)	LEAVE VEHICLE ON ELEVATED STRUCTURE
569	9921R:1104(1)(h)	LEAVE VEHICLE IN TUNNEL
570	9921R:1104(1)(h)	LEAVE VEHICLE IN UNDERPASS
572	9921R:(1)(1)	PARK WITHIN 1M OF CENTRE WHITE DIAMOND
576	9921R:1107	LEAVE VEHICLE ON FREEWAY
577	9921R:1101(e)	LEAVE VEHICLE STANDING IN BUS LANE
578	9921R:1101(e)	LEAVE VEHICLE STANDING IN TRUCK LANE
579	9921R:1101(e)	LEAVE VEHICLE STANDING IN TRANSIT LANE
580	9921R:1101(f)	LEAVE VEHICLE STANDING IN SHARED ZONE
583	9921R:1102(1)(c)	PARK LESS THAN 1M FROM FRONT OF VEHICLE
584	9921R:1102(1)(c)	PARK LESS THAN 1M FROM REAR OF VEHICLE
585	9921R:(1)(c)	PARK VEHICLE OVER 6M IN LENGTH
600	9921R:1101(1)(b)	LEAVE VEHICLE ON CLEARWAY
601	9921R:1104(1)(a)	DOUBLE PARK
602	9921R:1104(1)(n)	PARK WITHIN 9M PEDESTRIAN CROSSING
603	9921R:1104(1)(o)	PARK WITHIN 18M SCHOOL CROSSING
604	RS(T)R 1101 (1) (D)	PARK CONTRARY TO FIXED CONDITIONS
605	S/R 274/90	PARK IN AREA RESERVED FOR DISABLED
606	RS(T)R 1101(B)	PARK IN STANDING CONTROL ZONE
610	9921;R	VEHICLE STANDING OPPOSITE DOUBLE LINES
611	9921;R	VEHICLE NOT PARALLEL TO CENTRE OF ROAD
612	9921;R	VEHICLE STANDING ON PEDESTRIAN CROSSING
613	9921;R	VEHICLE LEFT STANDING ON SCHOOL CROSSING
614	9921;R	VEHICLE STANDING ON MARKED CROSS-WALK
615	9921;R	OBSTRUCT DRIVEWAY/PASSAGE/RIGHT OF WAY
616	9921;R	VEHICLE WITHIN 1M OF REFLECTIVE MARKER

CORPORATIONS

CODE	ACT/SECTION	SHORT DESCRIPTION
1056	6839:113(1)	FAIL LODGE COPY RETURN ALLOTMENT IN TIME
1088	6839:137(1)	SH/HOLDER FAIL NOTIFY CO PRESCRIBED FORM
1091	6839:138(1)	FAIL TO NOTIFY CHANGE RELEVANT INTERESTS
1093	6839:139(1)	FAIL NOTIFY CESSATION SUBSTANT SH/HOLD
1161	6839:217(3)	FAIL LODGE NOTICE OF CHANGE REG OFFICE
1163	6839:218(1)	FAIL AFFIX CO NAME ON VARIOUS DOCUMENTS
1164	6839:218(2)	FAIL TO COMPLY -PUBLICATION OF CO. NAME
1165	6839:218(4)	FAIL HAVE CO NAME AT REQUIRED PLACES
1197	6839:238(7)	FAIL TO LODGE REQUIRED RETURNS

1217	6839:254(1)	MINUTE BOOK NOT OPEN FOR INSPECTION
1243	6839:263(1)	FAIL COMPLY REQUIREMENTS -ANNUAL RETURN
1247	6839:267(1)(a)	FAIL TO KEEP ACCOUNTING RECORDS
1312	6839:328(1)(b)	FAIL PREPARE REPORT WITHIN REQUIRED TIME
1368	6839;375(2)	FAIL TO PROVIDE REPORT TO LIQUIDATOR

TRAFFIC

Excessive Speed

CODE	ACT/SECTION	SHORT DESCRIPTION
2003	RS(T)R 1001 TA 224	EXCEED SPEED LIMIT BY 30 BUT LESS THAN 40 KPH
2005	RS(T)R 1001 TA 224	EXCEED SPEED LIMIT BY 40 BUT LESS THAN 45 KPH
2006	RS(T)R 1001 TA 224	EXCEED SPEED LIMIT BY 45 BUT LESS THAN 50 KPH
2007	RS(T)R 1001 TA 224	EXCEED SPEED LIMIT BY 50 KPH OR MORE

Drink Driving

2094	RSA 49	ALCOHOL LEVEL OF .05% BUT LESS THAN .10%
2095	RSA 49	ALCOHOL LEVEL OF .10% BUT LESS THAN .11%
2096	RSA 49	ALCOHOL LEVEL OF .11% BUT LESS THAN .12%
2097	RSA 49	ALCOHOL LEVEL OF .12% BUT LESS THAN .13%
2098	RSA 49	ALCOHOL LEVEL OF .13% BUT LESS THAN .14%
2099	RSA 49	ALCOHOL LEVEL OF .14% BUT LESS THAN .15%

Large Vehicle

1901	RS(T)R 1001	EXCEED SPEED LIMIT BY 15KPH OR LESS
1902	RS(T)R 1001	EXCEED SPEED MORE THAN 15KPH LESS THAN 30KH
1903	RS(T)R 1001	EXCEED SPEED BY 30KM/H BUT LESS THAN 40KPH
1904	RS(T)R 1001	EXCEED SPEED BY 40KPH BUT LESS THAN 45KPH
1905	RS(T)R 1001	EXCEED SPEED BY 45KPH BUT LESS THAN 50KPH
1906	RS(T)R 1001	EXCEED SPEED LIMIT BY MORE THAN 50KPH
1907	RS(T)R 510	FOLLOW TOO CLOSELY IN LARGE VEHICLE
1908	RS(T)R 1601/ RS(V)R 822	USE UNSAFE LARGE VEHICLE

Speeding

2001	RS(T)R 1001	EXCEED SPEED BY 15K BUT LESS THAN 30K
2002	RS(T)R 1001	EXCEED SPEED LIMIT BY 15 KPH OR LESS

Failing To Give Way

2011	RS(T)R 701(2)	FAIL TO GIVE WAY TO PEDESTRIAN
2012	RS(T)R 602 & 603	FAIL TO GIVE WAY AT INTERSECTION
2013	RS(T)R 511, 604 & 606	FAIL TO GIVE WAY NOT AT INTERSECTION
2014	RS(T)R 605	FAIL GIVE WAY POLICE/EMERGENCY VEHICLE

Failing To Stop

2021	RS(T)R 702(2)	FAIL STOP/REMAIN STATIONARY SCHOOL CROSS
2022	RS(T)R 701 & 702	PASS STATIONARY M/CAR SCHOOL/PED CROSS
2023	RS(T)R 1401 & 1402	PASS STATIONARY TRAM
2024	RS(T)R 901	FAIL TO STOP AT LEVEL CROSSING

Offences Related To Lateral Position

2031	RS(T)R 504	FAIL TO KEEP LEFT OF ONCOMING VEHICLE
2032	RS(T)R 511	DRIVE ON WRONG SIDE OF DIVIDED HIGHWAY
2033	RS(T)R 509	FAIL TO KEEP LEFT OF DOUBLE LINES
2034	RS(T)R 1403	FAIL TO KEEP LEFT OF SAFETY ZONE
2035	RS(T)R 512	FAIL TO KEEP LEFT OF CENTRE
2036	RS(T)R 503	DRIVE CENTRE LANE 3/5 LANE CARRIAGEWAY
2037	RS(T)R 501	FAIL TO KEEP AS FAR LEFT AS PRACTICABLE
2038	RS(T)R 507	FAIL TO STAY WITHIN LANE MARKINGS
2039	RS(T)R 507	DIVERGE WHEN UNSAFE

Improper Overtaking

2041	RS(T)R 502	PASS TO RIGHT OF TRAM
2042	RS(T)R 502	PASS TO RIGHT OF RIGHT TURNING VEHICLE
2043	RS(T)R 502	OVERTAKE VEHICLE ON LEFT
2044	RS(T)R 505	ACCELERATE/NOT MOVE LEFT WHEN BEING OVERTAKEN

Improper Signalling

2051	RS(T)R 803	FAIL TO GIVE SIGNAL
2052	RS(T)R 804	FAIL CANCEL/INCORRECTLY OPERATE SIGNAL

Improper Turning

2061	RS(T)R 603	PERFORM UNSAFE U TURN
2062	RS(T)R 801, 802 & 805	MAKE INCORRECT LEFT OR RIGHT TURN

Lighting

2071	RS(V)R 811 & 812	FAIL TO HAVE LAMPS LIT
2072	RS(V)R 813/RS(T)R 1203	FAIL TO HAVE PRESCRIBED LIGHTS LIT
2073	RS(T)R 1202	FAIL TO DIP HEADLIGHTS

Failure To Comply With Safety Procedures

2078	RS(T)R1505	USE COMMUNICATION EQUIPMENT DRIVING
2081	RS(T)R 1507	CHILD NOT RESTRAINED FRONT SEAT

2082	RS(T)R 1507	CHILD NOT RETRAINED REAR SEAT
2083	RS(T)R 1507	PASSENGER NOT RESTRAINED
2084	RS(T)R 1506	SEAT BELT NOT PROPERLY FASTENED/ADJUSTED
2085	RS(T)R 1503	M/CYCLE RIDER PASSENGER WITHOUT HELMET
2086	RSA, S18	CARRY PASSENGER LIC LESS THAN 12 MONTHS
2087	RS(T)R 1503	PASSENGER NOT IN SIDECAR/ON PILLION SEAT
2088	RS(T)R 1502	FAIL TO HAVE CONTROL/UNINTERRUPTED VIEW
2089	RS(T)R 1608	OPEN DOOR/ALIGHT TO IMPEDE OR ENDANGER
2090	RS(T)R 1503	DRIVE OR TRAVEL WITH LIMB PROTRUDING
2091	RS(T)R 1506	FAIL TO WEAR SEAT BELT PROPERLY (DRIVER)
2092	RS(T)R 1506	FAIL WEAR SEAT BELT PROPERLY (PASSENGER)
2093	RSA 49	ALCOHOL LEVEL LESS THAN .05%

Signs And Signals

2101	RS(T)R 401	FAIL TO OBEY TRAFFIC CONTROL SIGNAL
2102	RS(T)R 402	DISOBEY TRAFFIC SIGN AT INTERSECTION
2103	RS(T)R 402	DISOBEY TRAFFIC SIGN NOT AT INTERSECTION

Licensing And Registration Offences

2108	RSA59/TA216/ T(TT)R29	FAIL TO PRODUCE LICENCE ON REQUEST/7 DAY
2109	RSA 21	PROB DRIVER FAIL TO CARRY LICENCE
2110	RS(P)R CL206	PROB DRIVER USING HIGH POWERED VEHICLE
2111	RSA S 18	FAIL TO OBEY LICENCE CONDITION
2112	RS(P)R 223	FAIL TO DISPLAY 'L' PLATES WHEN REQUIRED
2113	RSA, S18	UNLICENSED DRIVING
2114	RS(P)R 225	DISPLAY P PLATES WHEN NOT REQUIRED
2115	RS(P)R 223	DISPLAY L PLATES WHEN NOT REQUIRED
2116	RS(V)R 106/ RS(P)R 203	FAIL NOTIFY AUTHORITY CHANGE OF ADDRESS
2117	RSA, S7	USE VEHICLE 28 DAYS AFTER EXPIRY OF REG
2118	RS(V)R 222	OBSURED/ALTERED/DEFACED/NO NUM PLATE
2119	RS(V)R 223 & 226	OBSURED/ALTERED/DEFACED/NO REG LABEL
2120	RS(V)R 218	FAIL TO RETURN NUMBER PLATES
2122	RS(V)R 310	FAIL COMPLY REPOSSESS/RESTORATION REQUIREMENT
2123	RS(V)R 303, 304 & 306	FAIL COMPLY TRANSFER REQUIREMENT -DEALER

Miscellaneous Offences

2131	RS(T)R 604	REVERSE FROM CENTRE PARKING
2132	RS(T)R 1603	REVERSE WHEN UNSAFE
2133	RS(T)R 1604	DRIVE ON FOOTWAY OR RESERVATION
2134	RS(T)R 1609	PLACE/LEAVE DANGEROUS SUBSTANCE ON HWY
2135	RS(T)R 1602	LEAVE VEHICLE KEY IN IGNITION/RUNNING
2136	RS(T)R 510	FOLLOW TOO CLOSELY
2137	RS(T)R 202	FAIL TO OBEY POLICE TRAFFIC INSTRUCTION
2138	RS(T)R 508	FAIL TO KEEP LEFT OF TRAM-LANE LINE
2139	RS(T)R 607	ENTER INTERSECTION BLOCKED/LIKELY TO BE
2140	RS(T)R 513, 602 & 802	IMPEDE A TRAM

2141	RS(T)R 514-517	DRIVE IN BUS/TRANSIT/BICYCLE/TRUCK LANE
2142	RS(V)R 602	USE VEHICLE PROHIBITED BY NOTICE
2143	RS(V)R 822	USE UNSAFE VEHICLE OR TRAILER
2144	RSA S60	FAIL TO DISCLOSE IDENTITY OF DRIVER
2145	RS(V)R602(8)	REMOVE UNROADWORTHY LABEL WITHOUT AUTH
2158	RS(V)R 928 & 931	FAIL TO COMPLY WITH REQUIREMENTS

COMMERCIAL VEHICLE OFFENCES

CODE	ACT/SECTION	SHORT DESCRIPTION
2161	RS(T)R 1205	FAIL COMPLY USE PORTABLE WARNING SIGNS
2162	RS(P)R 604	FAIL OBSERVE LIMIT ON DRIVING HOURS
2163	RS(P)R 605, 609 & 611	LOG BOOK OFFENCE
2164	RS(P)R 605	PAGES OF LOG BOOK USED OUT OF ORDER
2165	RS(P)R 605	LOG BOOK NOT SIGNED
2166	RS(T)R 1606	INSECURE LOAD
2167	T(PV)R 71	FAULTY TYRE (BUS OR TAXI)
2168	T(PV)R 98	FAIL DISPLAY SCHOOL BUS SIGN REQUIRED
2169	T(PV)R 98	FAIL ACTIVATE HAZARD WARNING DEVICE -BUS
2170	T(PV)R 108	BUS DOOR OPEN WHILE VEHICLE IN MOTION
2171	T(PV)R 109	CARRY PASSENGER ON BUS FORWARD OF DRIVER
2172	RS(V)R 723	FAIL CARRY AND PRODUCE PERMIT -TRUCK
2173	RS(V)R 823-4	NAME/ADDRESS/MASS LIMITS NOT DISPLAYED
2174	RS(V)R 702	EXCEED PRESCRIBED MASS UP TO 1 TONNE
2175	RS(V)R 702	EXCEED PRESCRIBED MASS 1.01 - 2 TONNES
2176	RS(V)R 702	EXCEED PRESCRIBED MASS 2.01 - 3 TONNES
2177	RS(V)R 702	EXCEED PRESCRIBED MASS 3.01- 4 TONNES
2178	RS(V)R 702	EXCEED PERMITTED DIMENSIONS

TOW TRUCK OFFENCES

CODE	ACT/SECTION	SHORT DESCRIPTION
2181	T(TT)R 29.6	FLASHING LIGHT NOT BREAKDOWN/ACCIDENT
2182	T(TT)R 29.13	T/TRUCK DRIVER CONSUME LIQUOR ON DUTY
2183	T(TT)R 46	PORTABLE LIGHTS/SIGNALS NOT POSITIONED
2184	T(TT)R 25	FAIL TO NOTIFY RTA OF ADDRESS CHANGE
2185	T(TT)R 29(16)	FAIL TO PROVIDE JOB NUMBER ON REQUEST
2186	T(TT)R 51(1)	AUTHORITY TO TOW BOOK NOT CARRIED
2187	T(TT)R 53	TOW CAR BEFORE OBTAINING SIGNATURE
2188	T(TT)R 53	PARTICULARS ON AUTHORITY TOW NOT ENTERED
2189	T(TT)R 53	COPY AUTHORITY TOW NOT GIVEN SIGNATORY
2190	T(TT)R 45	TOW TRUCK WITHOUT PORTABLE LIGHTS/SIGNAL
2191	T(TT)R 47	OWN TOW TRUCK NOT EQUIPPED WITH BROOM
2192	T(TT)R 48	T/TRUCK NOT EQUIPPED WITH EXTINGUISHERS
2193	T(TT)R 33	FAIL TO MAINTAIN COPIES OF INVOICES
2194	T(TT)R 42	NO SPACER BARS/SAFETY CHAINS -TOW TRUCK
2195	T(TT)R 52	ORIGINAL TOW AUTHORITY NOT OBTAINED/KEPT
2196	T(TT)R 58	FAIL MAINTAIN REGISTER TOW TRUCK DRIVERS
2197	T(TT)R 58	FAIL GIVE NAME/ADDRESS TOW TRUCK DRIVER
2198	T(TT)R 67	FAIL NOTIFY NON-ATTEND WHEN ALLOCATED
2199	TA 183A	UNLAWFULLY OBTAIN AUTHORITY TO TOW
2200	TA 183A	OWNER UNLAWFULLY OBTAIN AUTHORITY TO TOW
2201	TA 177	UNLAWFULLY OBTAIN REPAIR/QUOTE AUTHORITY

TAXI OFFENCES

CODE	ACT/SECTION	SHORT DESCRIPTION
2211	T(PV)R 104	EXTERNAL TARIFF INDICATOR NOT OPERATING
2212	T(PV)R 105	OBSURED/NOT OPERATE OR NO TARIFF METER
2213	T(PV)R 120	TOUTING FOR PASSENGERS
2214	T(PV)R 121	NEEDLESSLY STANDING
2215	T(PV)R 122	UNATTENDED VEHICLE
2216	T(PV)R 194	FAIL TO RECORD APPROPRIATE TARIFF RATE

RECREATION VEHICLE

2151	RSA, S35	UNREGISTERED RECREATION VEHICLE
2152	RS(V)R 915	NO NUMBER PLATE ON RECREATION VEHICLE
2153	RS(V)R 918	NO REGISTRATION LABEL RECREATION VEHICLE
2154	RS(V)R 1005	USE UNSAFE VEHICLE IN PUBLIC PLACE
2155	RS(V)R 1002	CUT OUT DEVICE OR NO SILENCER
2156	RS(V)R 1003	DRIVE WITHOUT LIGHTS ON AT NIGHT
2157	RS(V)R 1004	FAIL TO WEAR HELMET

BICYCLE

2221	RS(T)R 202	FAIL TO OBEY TRAFFIC INSTRUCTION BY POLICE
2222	RS(T)R 401	FAIL TO OBEY TRAFFIC CONTROL SIGN
2223	RS(T)R 402	FAIL TO OBEY TRAFFIC SIGN
2225	RS(T)R 509	RIDE OVER DOUBLE LINES
2226	RS(T)R 511, 602, 701	FAIL TO GIVE WAY
2227	RS(T)R 803	FAIL TO GIVE SIGNAL -RIGHT TURN/ U TURN
2228	RS(T)R 1206	FAIL TO HAVE LAMPS AND EQUIPMENT
2229	RS(T)R 1301	RIDING IMPROPERLY
2230	RS(T)R 1302	MISUSE BICYCLE LANE
2231	RS(T)R 1303	BICYCLE DRAWN BY OTHER VEHICLE
2232	RS(T)R 1304	RIDE MORE THAN TWO ABREAST
2233	RS(T)R1305(1)	FAIL TO WEAR APPROVED BICYCLE HELMET
2234	RS(T)R 1305(2)	USE BICYCLE TO CARRY PERSON W/OUT HELMET
2235	RS(T)R 1604	RIDE BICYCLE ON FOOTWAY/RESERVATION

PEDESTRIAN

2241	RS(T)R 202	FAIL OBEY TRAFFIC INSTRUCTION BY POLICE
2242	RS(T)R 401	FAIL TO OBEY TRAFFIC CONTROL SIGNAL
2243	RS(T)R 703, 704 & 705	WALK IMPROPERLY ON CARRIAGEWAY
2244	RS(T)R 704	ALIGHT FROM OR BOARD MOVING VEHICLE
2245	RS(T)R 705	CROSS ROAD WITHIN 20M OF CROSSING

DOG

2701	8079:4	OWN UNREGISTERED DOG
2702	8079:11	OWNERS NAME/ADDRESS NOT ON DOG COLLAR
2703	8079:12	DOG OUTSIDE OWNERS PREMISES NO COLLAR

2704	8079:13	UNREGISTERED DOG WEARING REG COLLAR
2705	8079:14	REMOVE/ALTER/DEFACE DOG REG COLLAR
2706	8079:15	DOG AT LARGE OUTSIDE OF OWNERS PREMISES
2707	8079:15	DOG AT LARGE BETWEEN SUNSET AND SUNRISE
2708	8079:16(1)(a)	DOG ON SCHOOL/SHOP PREMISES
2709	8079:16(1)(b)	DOG ON RAILWAY STATION/SHOPPING AREA
2710	8079:16(2)	DOG UNLAWFULLY ON BEACH
2711	8079:18	DOG IN RAILWAY YARD WHILE SHEEP PRESENT
2712	8079:19	GREYHOUND NOT MUZZLED AND UNDER CONTROL
2713	8079:25	SEIZE/SELL/INJURE/DESTROY DOG

LITTER

CODE	ACT/SECTION	SHORT DESCRIPTION
2761	54/1987, s.9	FAIL TO REMOVE LITTER ON REQUEST
2762	54/1987, s.9	DEFACE RECEPTACLE FOR LITTER
2763	54/1987, s.9	SET FIRE TO RECEPTACLE FOR LITTER
2764	54/1987, s.9	HAVE UNSECURED LOAD ON VEHICLE
2765	54/1987, s.9	DEPOSIT SMALL ITEM OF LITTER
2766	54/1987, s.5	DEPOSIT LITTER
2767	82/91 (SCH)	DEPOSIT BURNING LITTER
2768	82/1991 (SCH)	DEPOSIT ADVERTISING MATERIAL
2769	82/1991 (SCH)	DEPOSIT MATERIAL IN/ON ANY VEHICLE
2770	82/1991 (SCH)	REQUIRE PERSON TO DEPOSIT MATERIAL
2771	82/1991 (SCH)	FAIL TO DISCLOSE NAME OF DISTRIBUTOR
2772	82/1991 (SCH)	FAIL TO DISCLOSE NAME OF DEPOSITOR
2773	82/1991 (SCH)	FAIL TO COMPLY WITH E.P.A NOTICE
2774	82/1991 (SCH)	FAIL TO COMPLY WITH ABATEMENT NOTICE
2775	82/1991 (SCH)	FAIL TO SUPPLY INFORMATION
2776	82/1991 (SCH)	REQUIRE ANOTHER TO CONVEY UNSECURED LOAD

TOBACCO

CODE	ACT/SECTION	SHORT DESCRIPTION
2781	81/1987 s.12	SELL TOBACCO PRODUCT TO PERSON UNDER 16
2782	81/1987 s.12	PURCHASE TOBACCO FOR PERSON UNDER 16
2783	81/1987 s.12	PERMIT PERSON UNDER 16 TO OBTAIN TOBACCO

ENVIRONMENT PROTECTION

CODE	ACT/SECTION	SHORT DESCRIPTION
2801	EPA, S48A(8)	FAIL OBEY POLICE TO ABATE NOISE
2802	EPA, S56(2)	FAIL TO NAME/PLACE OF RESIDENCE
2803	EPA, S56(2)	GIVE FALSE NAME/PLACE OF RESIDENCE
2804	8056.48AB(4)	FAIL TO ABATE NOISE ENTERTAINMENT VENUE
2821	EPA, REGS	AUDIBLE ALARM OPERATE MORE THAN 10 MIN
2822	EPA, REGS	AUDIBLE ALARM REACTIVATE WITHOUT RESET
2823	EPA,REGS	USE VEHICLE NOT MAINTAINED CORRECTLY
2824	EPA,REGS	DRIVE NOISY VEHICLE
2825	EPA,REGS	DRIVE SMOKY VEHICLE

MARINE

Registration

CODE	ACT/SECTION	SHORT DESCRIPTION
2251	M.A. s.8(1)(a)	OPERATE UNREGISTERED VESSEL
2252	M.A. s.8(1)(b)	OPERATE UNREGISTERED VESSEL
2253	M.A. s.8(2)	OPERATE VESSEL IN BREACH REG CONDITION
2254	M(V)RR 204(1)	REG LABEL NOT IN CONSPICUOUS POSITION
2255	M(V)RR204(2), 204(4)	IDENTIFICATION MARK NOT DISPLAYED
2256	M(V)RR205	FAIL COMPLY WITH TRANSFER REQUIREMENTS

Operation

State Waters

2257	M.A. s.15 CL.2(a)	EXCEED 5 KNOTS WITHIN 30M OF PERSON
2258	M.A. s.15 CL.2(b)	EXCEED 5 KNOTS 90M OF DIVERS FLAG
2259	M.A. s.15 CL.2(c)	EXCEED 5 KNOTS WITHIN 30M OF VESSEL
2260	M.A. s.15 CL.17	SAILBOARD IN CONTRAVENTION OF A NOTICE

Inland Waters

2261	M.A. s.15 CL.3	EXCEED 5KN 30M OF WATERS EDGE/STRUCTURE
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Coastal Waters And Ports

2262	M.A. s.15 CL.4	EXCEED 5KN 200M OF RESTRICTED AREA
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Miscellaneous Navigation Offences

2263	M.A. s.15 CL. 6	USE ACCESS LANE CONTRARY TO A NOTICE
2264	M.A.s.15 CL.7	EXCEED SPEED LIMIT CONTRARY TO A NOTICE
2265	M.A. s.15 CL.8	WATER-SKI IN PROHIBITED AREA
2266	M.A. s.15 CL.9	OPERATE IN PROHIBITED AREA
2267	M.A. s. 15 CL.10	USE VESSEL WITH MOTOR PROHIBITED AREA
2268	M.A. s.15 CL.11	CREATE WASH IN NO WASH ZONE
2269	M.A. s.15 CL.14	OPERATE CONTRARY TO NOTICE
2270	M.A. s.15 CL.12	USE VESSEL/ENGAGE IN ACT PROHIBITED AREA
2271	M.A. s.15 CL.13	USE WATER CONTRARY CONDITIONS IN NOTICE

Water-skiers

2273	M.A. s.15 CL.18	FAIL WEAR FLOATATION DEVICE WATERSKING
2274	M.A. s.15 CL.19	TOW WATER SKIERS CONTRARY TO NOTICE
2275	M.A. s.15 CL.20	VESSEL EMITTING SMOKE/VAPOUR/SMELLS
2276	M.A. s.15 CL.21	FAIL TO HAVE ADEQUATE SILENCING DEVICE
2277	M.A. s.15 CL.21(b)	VESSEL WITHOUT CUT OUT OR SIMILAR DEVICE
2278	M.A. s.15 CL.21(2)	CREATE UNDUE NOISE

Underage Operation

2279	M.A. s.17(1)	LESS THAN 12 YRS USE VESSEL WITH ENGINE
2280	M.A. s.17(1)	ALLOW/CAUSE LESS THAN 12 YRS USE VESSEL

2281	M.A. s.17(2)	PERSON 12-16 YRS USE VESSEL CONTRARY ACT
2282	M.A. s.17(2)	ALLOW/CAUSE 12-16 YRS USE VESSEL

Miscellaneous

2283	M.A. s.20(3)	FAIL PROPERLY REPORT ACCIDENT TO BOARD
2284	M.A. s.21 (2)	FAIL OBEY POLICE/AUTHORISED OFFICER
2286	M.A. s.24	TAMPERING WITH VESSEL
2287	M.A. s.91	REMOVE/DAMAGE NAVIGATION AID
2288	M.A. s.92	OBSTRUCT OFFICER
2289	M(V)RR 605(1)	RE-FUELLING WITH PASSENGERS ON BOARD
2290	M(V)RR 605(2)	PERMIT SMOKING DURING RE-FUELLING
2291	M(V)RR 606(1)	APPLIANCE WITH NAKED FLAME INSTALLED
2292	M(V)RR 606(2)	NAKED FLAME USED NEAR MOTOR/FUEL TANK
2293	M(V)RR 606(1), 606(2), 606(4)	OVERLOADED VESSEL
2294	M.A. s.18	FAIL TO GIVE INFORMATION
2295	M.A. s.19(3)	FAIL TO STOP WHEN REQUIRED
2296	M.A. s.19(4).60(7)	REFUSE OR STATE FALSE NAME AND ADDRESS
2297	M.A. s.58(2)	CONTRAVENE COLLISIONS REGULATIONS
2298	M.A. s.15 CL.16	BATHE CONTRARY TO A NOTICE
2299	M.A. s.13(3)	REFUSE/FAIL ALLOW INSPECTION OF VESSEL
2300	M.A. s.15 CL.22	DIVING VESSEL WITHOUT PRESCRIBED FLAG
2301	M.A. s.15 CL.23	DIVING WITHOUT BUOY/PRESCRIBED FLAG

Equipment^{3/4} Recreational Vehicles

2302	M(V)RR 603	FAIL CARRY SUFFICIENT FLOATATION DEVICES
2303	M(V)RR 603	FAIL TO CARRY PADDLES/OARS
2304	M(V)RR 603	NO BAILER/MANUAL PUMP/BILGE PUMP
2305	M(V)RR 603	FAIL TO CARRY WATERPROOF TORCH/LANTERN
2306	M(V)RR 603	FAIL TO CARRY FIRE EXTINGUISHER
2307	M(V)RR 603	FAIL TO CARRY BUCKET
2308	M(V)RR 603	FAIL TO CARRY LIFEBOUY
2309	M(V)RR 603	FAIL TO CARRY COMPASS
2310	M(V)RR 603	FAIL TO CARRY DINGHY/LIFE RAFT
2311	M(V)RR 603	FAIL TO CARRY FLARES
2312	M(V)RR 603	FAIL TO CARRY ANCHOR
2313	M(V)RR 603	FAIL TO CARRY ANCHOR CABLE
2314	M(V)RR 604(1)	UNDER 10 YRS NO FLOATATION DEVICE

TRANSPORT**Ticket**

CODE	ACT/SECTION	SHORT DESCRIPTION
3001	9921.212 & 221(3)	TRAVEL WITHOUT VALID TICKET
3002	9921.212 & 221	FAILURE TO PRODUCE VALID TICKET
3100	9921.221	FAIL TO PRODUCE EVIDENCE OF CONCESSION
3101	T(PRRV)R	FAIL TO PERMIT INSPECTION OF TICKET
3102	T(PRRV)R	EXPIRED TICKET
3103	T(PRRV)R	TRANSFER TICKET TO ANOTHER PERSON
3104	9921.221	MAKE JOURNEY WITHOUT VALID TICKET

3105	T(PRRV)R	REMAINING WITHOUT TICKET/ASKED TO LEAVE
3106	9921.221	JOURNEY WITHOUT PRODUCING VALID TICKET

Behaviour

3003	9921.212 & 222	SMOKE IN NO SMOKING AREA
3004	9921.212 & 222	PROTRUDING BODY
3005	9921.212 & 221	FEET ON SEAT
3120	T(PRRV)R	DISTRIBUTE HANDBILLS OR SOLICIT MONEY
3121	T(PRRV)R	PLAY MUSICAL INSTRUMENT
3122	9921.223	TRESPASS
3123	T(PRRV)R	FAIL TO GIVE CORRECT NAME AND ADDRESS
3124	T(PRRV)R	FAIL TO VERIFY NAME AND ADDRESS
3125	T(MET)R	UNAUTHORISED OPERATION OF PROPERTY
3126	T(MET)R	NOT PLACING LUGGAGE/GOODS AS DIRECTED
3140	9921.222	SMOKE IN CARRIAGE OR ON PREMISES
3141	T(PRRV)R	OPEN LOCKED DOOR OF VEHICLE
3142	T(PRRV)R	LOCK UNLOCKED DOOR OF VEHICLE
3143	T(PRRV)R	CAUSE VEHICLE TO BE STOPPED
3144	T(PRRV)R	DRINK INTOXICATING LIQUOR
3145	T(PRRV)R	REMAINING IN AREA WHEN REQUESTED NOT TO
3146	T(PRRV)R	CREATE OBSTRUCTION OR ANNOYANCE
3147	T(PRRV)R	INDECENT/OFFENSIVE LANGUAGE OR GESTURE
3148	T(PRRV)R	CAUSE ANNOYANCE BY RADIO/TAPE/TELEVISION
3149	T(PRRV)R	UNAUTHORISED EXIT/ENTRY
3150	T(PRRV)R	INTERFERE WITH GATES/DOORS ON PREMISES
3151	T(PRRV)R	LIGHT/EXTINGUISH LAMPS
3152	T(PRRV)R	SPIT
3153	T(PRRV)R	DRIVER FAIL TO OBEY REASONABLE DIRECTION
3154	T(PRRV)R	PERSISTENT OFFENDER REFUSE TO LEAVE
3155	T(PRRV)R	CONSIGN CONNECTED/OILED ENGINE
3156	T(PRRV)R	LITTER
3157	T(PRRV)R	ADULT ALLOWING CHILD TO OFFEND
3158	T(PRRV)R	PLACE ARTICLES PREVENTING USE OF SEAT

Offences Causing Danger

3006	9921.212 & 222	BOARD MOVING TRAIN
3007	9921.212 & 222	ALIGHT FROM MOVING TRAIN
3008	9921.212 & 221	WILFUL TRESPASS
3009	9921.212 & 222	PEDESTRIAN DISOBEY RAIL CROSSING WARNING
3010	9921.212 & 222	UNAUTHORISED CROSSING OF RAILWAY LINE
3170	T(PRRV)R	TRAVEL ON UNAUTHORISED PART OF VEHICLE
3171	T(PRRV)R	APPLY BRAKE OR EMERGENCY DEVICE
3172	T(PRRV)R	THROWING ARTICLE WHEN DANGEROUS
3173	T(PRRV)R	DRIVE IN DANGEROUS MANNER
3174	T(PRRV)R	DRIVE ON FOOTPATH
3175	T(PRRV)R	SPEED WHILE DRIVING OR RIDING
3176	T(PRRV)R	EXPLOSIVES AND OTHER DANGEROUS ARTICLES
3177	T(PRRV)R	GOODS THAT DAMAGE/ANNOY/CAUSE INJURY
3178	T(PRRV)R	DISORDERLY OR OFFENSIVE BEHAVIOUR
3179	T(PRRV)R	FORCE DOORS OF VEHICLE
3180	T(PRRV)R	INTERFERE WITH MECHANICAL EQUIPMENT

3181	T(PRRV)R	CROSS LINES WHILE GATES CLOSED
3182	T(PRRV)R	CROSS AGAINST SIGNALS
3183	T(PRRV)R	CROSS AGAINST EMPLOYEES DIRECTION
3184	T(PRRV)R	HEAVY VEHICLES CROSS TRACKS
3185	T(PRRV)R	VEHICLE LIKELY TO CAUSE OBSTRUCTION
3186	9921.222	ENTER/BOARD/LEAVE CARRIAGE IN MOTION
3187	9921.222	PROTRUDE FROM CARRIAGE IN MOTION
3188	9921.222	CROSS LINE NOT AT CROSSING PLACE
3189	9921.222	CROSS LINE WHEN WARNING DEVICE OPERATING
3190	T(MET)R	ENTER/LEAVE VEHICLE THE WRONG WAY
3200	T(PRRV)R	WRITE OR DRAW ON VEHICLE OR PREMISES

Offences Causing Damage

3200	T(PRRV)R	WRITE OR DRAW ON VEHICLE OR PREMISES
3201	T(PRRV)R	DAMAGE PROPERTY
3202	T(PRRV)R	LIGHT FIRE
3203	T(PRRV)R	BRING BURNING SUBSTANCE
3204	T(PRRV)R	THROW BURNING SUBSTANCE
3205	9921.222	FEET ON FURNITURE/NOT CARRIAGE FLOOR
3206	T(PRRV)R	OVERDIMENSIONAL VEHICLE CROSS TRACKS

Wattle Park Offences

3220	T(MET)R.	RIDE BICYCLE/DRIVE VEHICLE OFF ROADWAY
3221	T(MET)R.	LEAVE VEHICLE NOT IN PARKING AREA
3222	T(MET)R.	BRING VEHICLE INTO PARK WITHOUT PERMIT

CONSERVATION, FORESTS AND LANDS

CODE	ACT/SECTION	SHORT DESCRIPTION
4001	41/1987	ANGLE IN INLAND WATERS WITHOUT LICENCE
4002	41/1987	TAKE CRAYFISH WITHOUT LICENCE
4003	41/1987	USE NET WITHOUT LICENCE
4004	41/1987	POSSESS UNDERSIZE FISH
4005	41/1987	USE UNREGISTERED BOAT
4006	41/1987	NO IDENTIFYING MARK ON BOAT
4007	41/1987	EXCEED BAG FRESHWATER CRAYFISH
4008	41/1987	POSSESS MORE THAN FIVE CHINOOK SALMON
4009	41/1987	POSSESS MORE THAN TEN MACQUARIE PERCH
4010	41/1987	EXCEED BAG BREAM
4011	41/1987	POSSESS MORE THAN TEN SQUID
4012	41/1987	EXCEED BAG TROUT LAKE DARTMOUTH WATERS
4013	41/1987	POSSESS MORE THAN 5 TROUT-EILDON PONDAGE
4014	41/1987	USE MORE THAN TWO SQUID JIGS
4015	41/1987	USE MORE THAN TWO LINES AT SAME TIME
4016	41/1987	TAKE MOLLUSC/CRUSTACEA FROM HABITAT
4017	41/1987	USE IMPLEMENT IN SHELLFISH HABITAT
4018	41/1987	CAUSE/PERMIT VEHICLE USE OFF ROAD
4020	41/1987	CROSS SAND DUNE EXCEPT BY DEFINED TRACK
4021	41/1987	LITTER/DEPOSIT RUBBISH IN NATIONAL PARK
4022	41/1987	ILLEGAL CAMPING

4023	41/1987	BRING HORSE/ALLOW TO REMAIN IN NAT PARK
4024	41/1987	BRING DOG/ALLOW TO REMAIN IN NAT PARK
4025	41/1987	BRING CAT INTO/ALLOW REMAIN IN NAT PARK
4026	41/1987	KEEP APIARY IN NAT PARK WITHOUT PERMIT
4027	41/1987	DRIVE OFF ROADWAY IN NATIONAL PARK
4028	41/1987	DRIVE WRONG WAY ON ONE WAY RD (NAT PARK)
4029	41/1987	ILLEGAL PARKING IN NATIONAL PARK
4030	41/1987	HANG GLIDE IN NATIONAL PARK
4031	41/1987	FAIL TO PAY FEE IN NATIONAL PARK
4032	41/1987	LIGHT FIRE OTHER THAN IN FIRE PLACE
4033	41/1987	ENTER CLOSED AREA IN PARK
4035	41/1987	LITTER IN PARK
4036	41/1987	BRING HORSE INTO/ALLOW TO REMAIN IN PARK
4037	41/1987	BRING DOG INTO/ALLOW TO REMAIN IN PARK
4038	41/1987	BRING CAT INTO/ALLOW TO REMAIN IN PARK
4039	41/1987	KEEP APIARY IN PARK WITHOUT A PERMIT
4040	41/1987	DRIVE OFF ROAD IN PARK
4041	41/1987	ILLEGAL PARKING IN PARK
4042	SR45/1991	NO GAME LICENCE
4043	SR45/1991	FAIL TO PRODUCE LICENCE/PERMIT
4044	SR45/1991	HAVE WILDLIFE DURING CLOSE SEASON
4045	SR45/1991	FAIL TO NOTIFY CHANGE OF ADDRESS
4046	SR45/1991	EXCEED BAG LIMIT FOR GAME BIRDS
4047	SR45/1991	USE BAIT LURE ETC TO ATTRACT GAME
4048	SR45/1991	USE DOG WITHOUT TAGS FOR HUNTING DEER
4049	SR45/1991	HUNT/TAKE DUCK FROM OPERATING MOTOR BOAT
4050	SR45/91	FAIL TO KILL GAME UPON RECOVERY
4051	SR45/91	NO HEAD OR WING ON DUCK
4052	SR45/91	POSSESS FEMALE HOG DEER WITHOUT TAG
4053	SR45/91	POSSESS MALE HOG DEER WITHOUT TAG
4054	SR45/91	FAIL TO ATTACH HOG DEER TAG CORRECTLY
4055	SR45/91	REMOVE HOG DEER TAG FROM HOG DEER
4056	SR45/91	REMOVE HEAD OR DISMEMBER HOG DEER
4057	SR45/91	HUNT HOG DEER WITHOUT PRESCRIBED TAG
4058	SR45/91	FAIL TO SUBMIT RETURN/TAGS WITHIN 7 DAYS
4059	SR45/91	LIGHT/MAINTAIN FIRE IN OPEN AIR
4060	SR45/91	FAIL TO COMPLY WITH CAMPING REQUIREMENTS
4061	SR45/91	CUT/DIG/REMOVE TIMBER ON CROWN LAND
4062	SR45/91	TAKE/POSSESS OVER 5 SPINY CRAYFISH
4063	SR45/91	USE PARK FACILITIES WITHOUT PAYING FEE
4064	SR45/91	ENTER PARK WITHOUT PAYING FEE
4065	SR45/91	LEAVE VEHICLE IN PARK WITHOUT TICKET
4066	SR45/91	FAIL TO REMOVE VEHICLE BEFORE SUNSET
4067	SR45/91	FAIL TO PAY VEHICLE ENTRY FEE
4068	SR262/91	TAKE OR POSSESS MORE THAN 5 SNAPPER
4069	SR262/91	TAKE OR POSSESS MORE THAN 20 WHITING
4070	SR304/91	USE UNMARKED EQUIPMENT TO HOLD CRAYFISH
4071	SR304/91	USE MORE THAN 10 FRESHWATER HOOPNETS
4072	SR304/91	USE UNTAGGED FRESHWATER/MARINE HOOPNET
4073	SR304/91	USE MORE THAN 5 FRESHWATER HOOPNETS
4074	SR304/91	NO FOREST PRODUCE LICENCE OR PERMIT
4075	SR304/91	POSSESS FOREST PRODUCE WITHOUT LICENCE
4076	SR304/91	DESTROY GROWING TREE WITHOUT PERMIT
4077	SR304/91	BREACH MARINE RESERVE REGULATIONS
4078	SR304/91	TAKE VERMIN SUBJECT TO NOTICE
4079	SR304/91	FAIL TO ACT ON NOTICE TO DESTROY VERMIN

4080	SR304/91	SELL LIVE VERMIN WITHOUT APPROVAL
4081	SR304/91	FAIL TO DESTROY NOXIOUS WEEDS ON NOTICE
4082	SR304/91	FAIL TO DESTROY NOXIOUS WEEDS ON PROCLM
4083	SR304/91	SELL OR EXPOSE FOR SALE ANY NOXIOUS WEED

Subject Index

References are to paragraph numbers.

Auditor-General reports (Victoria),

6.9.9-6.9.22

Australia, federal jurisdiction, 3.6.1-

3.6.5

Canada, 10.3.6-10.3.9

classification of offences, 10.3.6-10.3.9

regulatory offences, 10.3.9

CENS, 3.3.4

Civil liberties, 8.1.1, 8.1.3

Classification of offences, 10.1.1-

10.10.2

Composition, 3.4.1, 3.4.2

Convictions

loss of licence, and, 4.6.1-4.6.10

proof of, 4.13.1-4.13.2

Credit reference databases

locating defaulters through, 6.9.17-6.9.19

Criminal justice system

cause and effect in, 6.5.1-6.5.2

correctional objectives of, 6.10.1-6.10.3

cost-benefit analysis of, 6.2.1-6.2.5

detection costs in, 6.7.1-6.7.6

deterrent effect in, 6.7.1

efficiency in, 6.3.1-6.3.2, 6.7.1-6.7.6, 11.3.1-11.3.7

equity considerations in, 6.3.1-6.3.2, 9.3.1-9.3.5

liberal bureaucratic model of, 11.2.1-11.2.3

net-widening in, 11.5.1-11.5.2

penalties and detection rates, 6.7.4-6.7.6

profit motive in, 6.6.4, 6.8.1-6.8.3

rights in, 11.3.1-11.3.7

Criminal law

devaluation of, 10.2.1-10.2.4

regulatory offences and, 10.4.4

Demerit points, 4.7.1-4.7.4

Detection of offenders, 8.1.1-8.6.3

Deterrence, 7.2.1

Dog infringement notices, 4.3.3

Drink-driving infringements, 4.3.2

Driver's licence

licence loss infringements,

4.6.1-4.6.10

loss of, 4.6.1-4.6.10, 4.7.1-4.7.4

Driving behaviour

infringement notices and, 6.10.5-6.10.16

measures to improve, 6.10.7-6.10.16

Enforcement, 11.6.1-11.6.2

civil process and, 10.8.1-10.8.2

corporations, against, 4.15.1-4.15-2

fairness in, 9.3.1-9.3.5

infringement notices, of, 4.3.1-4.3.5, 6.9.14-6.9.24

juveniles, against, 4.14.1-4.14.2

PERIN procedure, 4.9.1-4.9.10

Enforcement thresholds, 9.1.1-9.5.6

discretionary allowances, 9.4.1, 9.4.3-9.4.5

fairness in procedure, 9.3.1-9.3.5

technical tolerances, 9.4.1-9.4.3

recidivism, tolerance of, 9.5.1-9.5.6

warnings, 7.1.1-7.1.3, 9.2.1-9.2.4

Entrapment, 8.3.1-8.3.3

Excessive speed infringements,

4.3.2

Expiation, 1.2.3, 1.3.4- 1.3.5, 3.3.1-3.3.6

Fines

collection of, 6.9.9-6.9.13, *and see*
Infringement notices,
 enforcement of
 levels of, 7.4.1-7.4.6, 10.7.1-10.7.4
 limits on, 7.4.1-7.4.6, 10.7.1-10.7.4
 payment of, 4.10.1-4.10.2

Gaming infringement notices, 4.3.3

Imprisonment in default, 6.9.7-6.9.8

Incapacitation, 7.2.3

Infringement notices, 4.3.1-4.3.5,
 11.1.1-11.1.5
 accountability under, 7.3.1-7.3.2
 advantages of, 1.6.1- 1.6.2, 11.4.1
 agencies issuing, 5.3.1-5.3.8
 assessing system of, 6.6.1-6.6.4
 building, 4.3.3
 by whom issued, 5.3.1-5.3.8
 civil liberties implications of, 8.1.1, 8.1.3, 8.4.1-8.4.2
 conviction under, 4.6.1-4.6.10
 corporations and, 4.15.1-4.15.2, 7.5.1-7.5.3
 correctional objectives of, 6.10.1-6.10.3, 7.2.1-7.2.5
 cost-benefit analysis of, 6.2.1-6.2.5,
 cost recovery and, 6.9.3
 costs of enforcing, 5.5.1-5.5.3
 defaulters, postcodes of, 5.8
 demerit points, 4.7.1-4.7.4
 disadvantages of, 1.6.3, 11.4.1
 discretionary allowances and, 7.1.1-7.1.3, 9.4.1, 9.4.3
 dogs, 4.3.3
 driving behaviour and, 6.10.5-6.10.16
 enforcement of, 6.9.14-6.9.24, 10.8.1-10.8.2
 enforcement threshold and, 9.1.1-9.5.6

entrapment and, 8.3.1-8.3.3
 evolution of, 1.1.3, 1.1.5
 fairness of system, 6.11.10-6.11.12, 9.4.1
 fiscal objectives of, 6.9.1-6.9.24
 gaming, 4.3.3
 intervention and, 7.1.1-7.1.3
 juveniles and, 4.14.1-4.14.2, 7.6.1
 licence loss under, 4.6.1-4.6.10, 4.7.1-4.7.4
 litter, 4.3.2
 marine, 4.3.2
 model legislation for, 11.7.1-11.7.3
 motor vehicle offences, 1.4.4-1.4.5
 offences generally, 5.3.1-5.3.8,
 owner-onus and, 4.7.2
 particulars on, 4.3.4
 penalty levels under, 7.4.1-7.7.1, 10.7.1-10.7.4
 planning, 4.3.3
 prior convictions and, 4.13.1-4.13.2, 10.6.2-10.6.3
 privacy considerations and, 8.4.1-8.4.2
 profit motive and, 6.8.1-6.8.3
 recidivism
 tolerance of, and, 9.5.1-9.5.6
 reclassification of, 10.4.1-10.4.4
 reform, machinery for, 10.4.1-10.4.4
 remission of penalties, 4.16.1-4.16.3
 service of, 4.5.1-4.5.2
 strict liability and, 10.9.1-10.9.2
 technological innovations and, 8.1.1-8.6.3
 access to, by municipalities, 8.5.1-8.5.4
 texts on, 1.6.4
 time saving and, 6.9.4-6.9.5
 transport, 4.3.3
 types of,
 building, 4.3.3
 dogs, 4.3.3
 drink-driving, 4.3.2

Infringement notices, contd.

- excessive speed, 4.3.2
 - gaming, 4.3.3
 - littering, 4.3.2- 4.3.3
 - marine, 4.3.3
 - menacing driving, 4.3.2
 - parking, 4.3.2
 - planning, 4.3.3
 - probationary driver, 4.3.2
 - traffic, 4.3.2
 - transport, 4.3.3
 - value of, 5.4.1-5.4.2
 - warnings and, 7.1.1-7.1.3, 9.2.1-9.2.4
 - withdrawal of, 4.12.1-4.12.3
- INREP**, 3.5.4
- Interventions and warnings**, 7.1.1-7.1.3
- Juveniles**, 4.14.1-4.14.2
- Licence loss infringements**, 4.6.1-4.6.10
- Licence to drive**
loss of, 4.6.1-4.6.10, 4.7.1-4.7.4
- Littering infringements**, 4.3.2- 4.3.3
- Marine infringements**, 4.3.3
- Menacing driving infringements**, 4.3.2
- Motor vehicle ownership**
growth in, 1.4.1-1.4.5
statistics, 1.4.2
- Motor vehicle registration**
loss of, 4.8.1-4.8.3
- Municipalities**
access to speed cameras, 8.5.1-8.5.4
access to technical innovations, 8.5.1-8.5.4
- Net widening**
criminal justice system and, 11.5.1-11.5.2
- New South Wales**, 3.1.1-3.1.7
Privacy Committee Inquiry, 6.9.19
Public Accounts Committee Inquiry, 6.9.17-6.9.19
- SEINS, 1.3.5, 3.1.5-3.1.7, 3.4.4, 3.5.4
- Non-conviction**, 10.6.1-10.6.3
- Offences**
classification of, 10.1.1-10.10.2
Canada, 10.3.6-10.3.9
- On-the-spot-fines**, *see*
Infringement notices
- Owner-onus**, 1.4.5, 4.1.2, 4.4.1-4.4.8
demerit points and, 4.7.2
extension to littering offences, 4.4.6
identification of driver and, 4.4.4
other identification and, 4.4.8
- Pareto principle**, 11.6.1-11.6.2
- Parking infringements**, 1.4.5, 4.3.2
- Parking regulations**
effectiveness of, 6.10.4
- Penalties**
administrative, 10.3.3-10.3.5
discounted, 6.9.6, 10.7.1-10.7.4
increased, effect on enforcement, 6.7.4-6.7.6
levels of, 7.4.1-7.4.6
degree of wrongdoing and, 10.5.1-10.5.4
limits on, 10.7.1-10.7.4
remission of, 4.16.1-4.16.3
unpaid, 5.6.1-5.6.5, 5.7.1-5.7.7
- Penalty notices**, 4.2.2
- PERIN**, 1.3.5, 3.4.4, 3.5.4, 3.6.2, 4.1.9, 4.2.1- 4.2.2, 4.6.4, 4.9.1-4.9.10, 4.12.2, 4.16.1, 10.7.3
data-base, limitations of, 5.1.7
flow chart, Figure 5:1
payment of penalty, 4.10.1-4.10.2, 4.11.1
procedure for enforcement, 4.9.1-4.9.10
statistics, 5.1.1-5.8.2
reliability of, 5.1.8-5.1.12
time to pay penalty, 4.11.1
- Planning infringements**, 4.3.3
- Police**

- public relations, 6.11.8-6.11.9, 6.11.11
- Prior convictions**
 - infringement notices and, 10.6.2-10.6.3
 - proof of, 4.13.1-4.13.2
- Privacy**
 - threats to, 8.4.1-8.4.2
- Privacy Committee Inquiry (NSW)**, 6.9.19
- Probationary driver infringements**, 4.3.2
- Public Accounts Committee Inquiry (NSW)**, 6.9.17-6.9.19
- Punishment**,
 - limited, 10.7.1-10.7.4
 - objectives of, 7.2.1-7.2.5
- Queensland**, 3.2.1-3.2.3
 - SETONS, 3.2.3
- Recidivism**, 9.5.1-9.5.6
- Registration, vehicle**
 - loss of, 4.8.1-4.8.3
- Regulatory offences**
 - Canada, 10.3.9
 - criminal law and, 10.4.4
 - Northern Territory, 10.3.10
 - Queensland, 10.3.10
- Rehabilitation**, 7.2.5
- Responsibility, allocation of**, 7.3.1-7.3.2
- Retribution**, 7.2.2
- Secondary deviance**, 6.11.1-6.11.7
- SEINS**, 1.3.5, 3.1.5-3.1.7, 3.4.4, 3.5.4
- SETONS**, 3.2.3
- Social control**
 - expansion of, 8.6.1-8.6.3
- South Australia**, 3.3.1-3.3.7
 - CENS, 3.3.4
 - TINS, 3.3.3, 3.3.6
- Speed cameras**
 - counter-measures, 6.11.1-6.11.7
 - effectiveness of, 6.10.13-6.10.16
 - technical tolerances of, 9.4.1-9.4.3
- Statistics**, 5.1.1-5.8.2
- Strict liability**, 10.9.1-10.9.2
- Summary proceedings**
 - expedition of, 1.3.1-1.3.6
- Surveillance and detection**, 1.5.1, 8.1.1-8.6.3
- Tasmania**, 3.4.1-3.4.4
- Technological innovations**, 1.5.1, 8.1.1-8.6.3
 - access to, 8.5.1-8.5.4
 - capacities of, 8.2.1-8.2.6
- Thresholds, enforcement**, 9.1.1-9.5.6
- TINS**, 3.3.3, 3.3.6
- Traffic Camera Office (Victoria)**, 6.9.20-6.9.22
- Traffic infringements**, 4.3.2
- Transport infringements**, 4.3.3
- United Kingdom**, 2.2.1-2.2.14
- United States**, 2.1.1-2.1.9
- Vehicle registration**, loss of, 4.8.1-4.8.3
- Victoria**, 4.1.1-4.16.3
 - Auditor-General reports, 6.9.9-6.9.22
 - PERIN, 1.3.5, 3.4.4, 3.5.4, 3.6.2, 4.1.9, 4.2.1-4.2.2, 4.6.4, 4.9.1-4.9.10, 4.12.2, 4.16.1
 - Traffic Camera Office, 6.9.20-6.9.22
- Warnings**
 - infringement notices and, 7.1.1-7.1.3, 9.2.1-9.2.4
- Western Australia**, 3.5.1-3.5.5
 - INREP, 3.5.4