



Submission by Brimbank Melton Community Legal Centre to the Sentencing Advisory Council Inquiry into Infringements

Introduction

Community West is a leading non-profit organisation that provides multidisciplinary community services in Melbourne's western suburbs (Brimbank, Melton and Bacchus Marsh). Community West hosts a range of programs: the Community Legal Centre Program (**Brimbank Melton CLC**), Family Support Program, Neighbourhood House Activities and Adult Education Services Program.

The issues outlined in this submission are of particular concern for our clients, who often face multiple social and emotional issues including lack of proficiency in English and limited literacy. The Socio-Economic Indexes for Areas (**SEIFA**) ranks the City of Brimbank as the third most disadvantaged local government area in Victoria. The City of Melton is the seventh most disadvantaged and the Shire of Moorabool is fifty-second most disadvantaged.¹ Many clients in our catchment have limited access to public transport and often need to drive to maintain employment, access educational institutions, children and community services.

Summary of our submission

We endorse the Federation of Community Legal Centre's Infringements Working Group submission. We also make a discrete submission in response to questions 7.1 to 7.3 of the Court Fines and Infringements Fines Project paper², that sections 89A, B and BA of the *Road Safety Act 1986* (Vic) (**RSA**) (**the RSA Provisions**)³ are unfair in their operation, with respect to excessive speed infringements, and should be amended.

We make this submission to advocate on behalf of the clients who have been provided legal advice and our experience working on infringement matters. In this financial year, infringement matters were the most common issue that clients at our clinic sought advice on.

Excessive speed infringements issued by the Traffic Camera Office

The RSA Provisions govern excessive speed, drink driving and drug driving infringements, which carry mandatory licence loss upon conviction. In our opinion, excessive speed infringement notices issued by the Traffic Camera Office (and not in person)⁴ are inherently different from drink driving and drug driving infringements, which must be issued in person by a police officer.

¹ Australian Bureau of Statistics, 2033.0.55.001 - Socio-economic Indexes for Areas (SEIFA), Data Cube only, 2011, available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/2033.0.55.0012011?OpenDocument> as of 11 October 2013.

² This submission may also be relevant to questions 3.1, 5.2, 5.3, 10.1 and 15.1(iii).

³ Sections 89A and BA refer to section 84BE of the RSA, which sets out the nomination process.

⁴ A person can be charged in person for an excessive speed offence, and our argument regarding nominating another driver does not extend to this situation.

Excessive speed infringement notices may be issued where a person drives a motor vehicle at a speed of:⁵

- i. 130 kilometres per hour or more; or
- ii. 25 kilometres per hour or more in excess of that permitted, whether generally or in relation to the particular vehicle or circumstances.

The current law

The legislation deems the registered owner of a vehicle or registration plates (the accused) to be the driver for the purposes of an excessive speed infringement. If an accused, who may or may not be the driver, receives an excessive speed infringement notice:

- i. the accused must meet a strict 28-day timeframe to nominate the actual driver (ss.84BE and 89A RSA); and
- ii. if the accused was unaware of the infringement notice within 28 days after service⁶ (it was sent to their old address or other reasons), then the accused has only 14 days from the time of becoming aware of the infringement notice, to apply for an extension of time to nominate another driver (ss.89B and BA RSA).

However, there is a lack of procedural fairness in the current system because:

- i. if the accused does not meet the above timeframes, it is virtually impossible to nominate another driver, seek internal review, or appeal the infringement notice; and
- ii. there is no flexibility in relation to the timeframe for nominating another driver, even where an accused has special circumstances or exceptional circumstances.

Case study: despite proven innocence, a licence and consequently employment is lost

John⁷, a labourer who worked in the outer western suburbs sold his personalised number plates to his friend Sam⁸. Sam agreed to complete the transfer and John signed off on the transfer form and kept a copy for himself.

John received a bundle of fines, months later including one excessive speeding infringement notice. These were all incurred by Sam after the numberplates were sold. John did not realise that the excessive speed fine was any different from the other speeding fines.

John called VicRoads regarding the fines and explained his situation. He was advised to obtain a statutory declaration from the purchaser of his old numberplates, thus providing the transfer to Sam, which would be backdated. He also understood that he could then go to the Infringements Court and nominate Sam as the driver of the vehicle. However, he did not understand the separation of the agencies and timeframes in relation his different types of infringements.

The Infringements Court accepted that John was not the driver and withdrew all of the infringement notices except the excessive speeding fine (as John was out of time to nominate Sam as the driver).

John's licence was suspended for six months as a result.

⁵ Section 28(1)(a) of the RSA.

⁶ and, therefore, automatic conviction has taken effect.

⁷ This name has been changed to protect the individual's privacy.

⁸ This name has been changed to protect the individual's privacy.

John came to Brimbank Melton CLC (which also worked with a pro bono barrister) and we commenced a series of correspondence with the Infringements Court, raising procedural fairness and statutory interpretation arguments. We sought review of the Infringement Court's decision, or for the matter to be referred to the Magistrates' Court of Victoria so that John could make an application there for an extension of time to nominate Sam as the driver.

The Infringements Court rejected the applications, taking a rigid view of RSA Provisions. Shortly after his licence loss, John was dismissed from his employment.

Case study: licence loss and language barriers

Hong⁹ is a migrant who speaks English as a second language and has limited literacy skills. He sold his car and the new owner Jim¹⁰ said that he would lodge the transfer forms with VicRoads. Hong later received a traffic infringement notice and contacted Jim, who accepted liability and agreed to pay the fine. Hong telephoned VicRoads and completed the vehicle registration transfer. However, when Hong applied to the Civic Compliance Victoria a number of times to nominate the Jim as the driver, with Jim's consent, his applications were rejected.

Hong then came to Brimbank Melton CLC and it transpired that he had received an excessive speed infringement notice. Therefore, Hong's licence had been suspended for one month already. Due to language barriers, Hong did not realise that his licence had been suspended or that he could have been charged and convicted for the criminal offence 'driving while suspended' during that month.

Practical Barriers to Accessing Justice for Excessive Speed Infringements

a) Limited understanding of how to navigate the infringements system

In our view there is limited understanding in the community about how to navigate the infringements system due to:

- i. a lack of community awareness about processes for internal review;
- ii. clients having limited language and literacy skills;
- iii. clients having a lack of understanding about the agencies and jurisdiction, as they assume that they will have a chance to put their case forward and innocence will prevail.

b) Limitations on free legal advice

There is limited free legal advice provided by a range of legal assistance providers, which means that clients often have to wait for comprehensive legal advice on such matters. Thus, issues related to nominating the actual driver or applying for an extension of time cannot occur by the time legal advice is received.

c) Mandatory licence loss

While deeming provisions are common and sometimes justified for infringement matters, mandatory licence loss can make the operation of the RSA Provisions oppressive. The impact of

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mandatory licence loss due to excessive speed infringements is compounded for our clients living in outer-metropolitan and rural Melbourne. The social impact of licence loss includes:

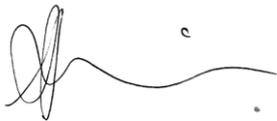
- i. the risk of employment loss;
- ii. limiting access to children;
- iii. limiting access to services; and
- iv. limiting civic participation.

Thus, in our view it is compelling to allow an excessive speed infringement matter to both have an internal review process and to be heard in court, outside of the strict timeframes prescribed by the RSA Provisions.

Recommendations

- i. We recommend that the Sentencing Advisory Council give consideration to amending the RSA to confer the right, even where the 28 and 14 day periods prescribed by the RSA Provisions have lapsed, to:
 - challenge or nominate another driver for an excessive speed infringement notice via internal review; and
 - elect to have an excessive speed infringement notice referred to open court.
- ii. We recommend that the Sentencing Advisory Council ensure that the Provisions of the RSA can be reconciled with the Victoria *Charter of Human Rights and Responsibilities Act 2006* (Vic).

To provide further clarification and evidence to support the submission, please do not hesitate to contact Stephanie Tonkin (Managing Lawyer) on (03) 8312 2020 or stonkin@communitywest.org.au.



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