

# 1 Audit summary

## 1.1 Introduction

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The infringements system plays a critical role in regulating community behaviour across industries and occupations as well as protecting the physical environment to achieve public order, safety and amenity.

Around 130 agencies—government departments and authorities, local councils, universities and hospitals issue infringement notices for minor statutory offences relating to parking, speeding, polluting the environment, public transport offences, non-registration of animals and breaches of industry regulations.

Commencing in mid-2006, the new infringements framework introduced significant changes for enacting and administering around 2 000 infringement offences. The changes aim to provide a fairer and firmer fine system.

*Fairer*, in that the system seeks to better protect those who are vulnerable and inappropriately caught up in the system. People who receive an infringement can also request that an agency review the decision to issue the infringement. For *firmer* enforcement, the system also introduces a range of sanctions where payment has not been made.

The Department of Justice (DOJ) established the Infringements System Oversight Unit (ISOU) in mid-2006 to provide whole-of-government system monitoring and oversight. Specifically this involves:

- maintaining and amending the *Infringements Act 2006* (the Act) and regulations
- consulting across government on proposed infringeable offences
- stakeholder engagement including supporting the Infringements Standing Advisory Committee to resolve issues and assist agencies in meeting their obligations under the infringements framework
- collecting data from enforcement agencies and providing the Attorney-General with information to facilitate publication of an annual report on the infringements system.

However, ISOU does not have the power to investigate or discipline agencies.

The infringements system is two and a half years old and is a large system with significant implications in terms of the information required to be collected, verified and analysed on an ongoing basis. Typically, a new system can take several years to bed down.

The audit focused on the withdrawal of infringements. In 2007–08, almost 4.2 million infringement notices were issued and over 209 450 notices were withdrawn. While withdrawal of notices is only one part of the overall infringements system, it is significant and central to the initiative to make the system fairer. The internal review process provides a check on the legitimacy and fairness of the original decision and enables inappropriate decisions to be overturned before any significant enforcement action has commenced. It also affords the agency the opportunity to ascertain the recipient's circumstances and to consider, even if the initial decision is confirmed, the appropriateness and prospects of pursuing payment of the fine.

The audit objective was to determine:

- the extent to which DOJ has complied with its responsibility to monitor the operation of the infringements system, specifically in relation to the withdrawal of infringement notices and the conduct of internal reviews
- whether the withdrawal of infringement notices by selected enforcement agencies is appropriate and in compliance with the Act.

The audit focused on the withdrawal of infringement notices by five enforcement agencies: City of Ballarat, City of Greater Geelong, City of Port Phillip, City of Stonnington and Victoria Police.

## 1.2 Overall conclusion

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### ISOU—system oversight

ISOU has made progress in establishing the infringements system monitoring and oversight function over the past two years, but it is not yet fully effective in monitoring the operation of the system.

Since mid-2006, ISOU has concentrated its efforts on assisting agencies with the basic requirements of the infringement framework such as setting up internal review capability and making agencies aware of the reporting requirements. To this end ISOU has developed guidelines and information papers, established a stakeholder forum and a network of relationships with enforcement agencies. ISOU guidance material is relevant and useful.

Our review of enforcement agency practices, however, found several fundamental areas of non-compliance. This points to a need for ISOU to adopt a more systematic and planned approach to both identifying agency needs and assisting them to meet their obligations.

ISOU has not undertaken any assessment of whether the state's infringements system is operating as intended and the Act is being properly administered by enforcement agencies.

ISOU conducts limited desktop review of agency data to check if agencies are applying and interpreting the legislation for internal review and the withdrawal of notices. The unit also informally follows-up where agencies advise of issues. ISOU relies heavily on its stakeholder advisory committee to inform it of issues in the field. In the absence of specific operational information, it is difficult to see how ISOU can effectively monitor and oversee the infringements system and facilitate improvements.

ISOU had not identified inaccuracies and anomalies in agency data provided to it over the two-year period which were evident to the audit. Reliance on erroneous agency information could lead to ill-informed policy or legislative decisions. Changes have now been made by ISOU to put in place more checks to assure the integrity and quality of data it receives from agencies.

It is pleasing to note that timely action has been taken by ISOU to address some key issues raised by the audit and to enhance their monitoring and oversight of the infringements system.

### Agencies—the withdrawals system in practice

Movements in key infringement indicators are consistent with the system becoming fairer. However, variations between agencies indicate that the legislative requirements are not applied consistently. Our review disclosed inconsistent decision-making within and across agencies. This means further progress is needed to achieve fairness.

The implementation of the new infringements framework has been a significant task for enforcement agencies. Agencies reviewed, in the main, had developed and implemented internal review capability, procedural guidance and management systems to administer the appeals and withdrawals processes and data collection and reporting systems. Notwithstanding, the audit found repeated issues of agency non-compliance with the legislation and their own guidelines.

Withdrawal of infringement notices by agencies was efficient in that appeals were processed within statutory time limits. Given the level of non-compliance in most agencies reviewed, this has been achieved at the expense of quality.

Key areas of non-compliance included:

- inadequate procedures to support the withdrawal of notices, and lack of guidance for assessing appeals claiming special circumstances
- poor records to justify decisions to withdraw notices
- failure to adequately verify claims or a lack of evidence that agency processes had been followed
- inaccurate classification of appeals, data capture and reporting to ISOU.

The level of agency non-compliance in the audit sample was significant in many cases. In some cases agencies' internal review and withdrawal frameworks were inadequate or had gaps. Agency staff who processed appeals and exercised discretion in withdrawing infringements did not understand legislative requirements, agency procedures and sound business practice including recordkeeping. Agencies have indicated that staff turnover is an issue. In such an environment, management should have rigorous quality assurance programs in place to provide reasonable assurance that practice complies with legislative requirements.

Cases of inappropriate withdrawals and inconsistent decision-making within agencies were identified. Such circumstances do not illustrate a fairer system.

A key aspect of the new infringements system is the requirement for agencies to consider a person's circumstances. The Act seeks to divert those with special circumstances from the infringements system. Councils reviewed did not manage a high level of special circumstance cases. In 2007–08, Victoria Police denied a high proportion of appeals claiming special circumstance. This is at variance with the *Attorney-General's 2006 Guidelines* and the intent of the legislation to divert such persons from the system. Further review is required to ascertain whether Victoria Police should change its practices or a change or clarification in policy is needed. Once resolved, guidelines to operationalise the intent of the legislation and to assist review staff in assessing this unique cohort's claims, should be developed by agencies as a priority.

The audit findings relate specifically to the five agencies examined in detail, which together issued around 64 per cent of all 2007–08 infringements. Nevertheless, they are likely to be indicative of practices in other enforcement agencies.

## 1.3 Recommendations

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### ISOU—system oversight

#### ISOU should:

- review and maintain, on an ongoing basis, the robustness of its quality assurance mechanisms in providing assurance of the accuracy of agency information provided (**Recommendation 4.1**).
- clarify its responsibility for detecting non-compliance with the Act by enforcement agencies, and any remedial action to be taken (**Recommendation 4.1**).
- periodically assess how the infringements system is working and whether enforcement agencies are applying and interpreting the Act in accordance with the *Attorney-General's 2006 Guidelines*. Developments and challenges identified should be referred to in the Attorney-General's annual report (**Recommendation 4.2**).
- better leverage its oversight and monitoring role by collating and disseminating examples of good practices to enforcement agencies (**Recommendation 4.3**).

- meet periodically with enforcement agencies (in addition to the Infringements Standing Advisory Committee) to assist them to identify systemic and operational issues and to share knowledge about managing their infringements (**Recommendation 4.4**).
- expand the performance information it includes in the Attorney-General's annual report to provide more comprehensive information and analysis of the operations of the infringements system (**Recommendation 4.5**).

## Agencies—the withdrawals system in practice

### Enforcement agencies should:

- periodically review their infringement policies, procedures and guidelines to make sure they:
  - are consistent with legislative requirements, including recordkeeping requirements
  - are comprehensive
  - reflect current practices
  - are approved by the governing body (**Recommendation 5.1**).
- ascertain the extent to which they use multiple reviews and if significant, confirm that:
  - these reviews comply with the *Infringements Act 2006*
  - they are a cost-effective use of resources (**Recommendation 5.2**).
- develop, in consultation with DOJ, guidelines that clearly articulate operational processes consistent with legislative requirements for appeals claiming special circumstances (**Recommendation 5.3**).
- undertake annual reviews of the competencies and capabilities of personnel involved in processing internal reviews and implement a targeted training strategy to address knowledge gaps (**Recommendation 5.6**).
- strengthen their quality assurance processes to confirm that:
  - personnel are maintaining full, accurate and timely records of actions to support decisions
  - decisions comply with approved policies and guidelines
  - internal review and withdrawal processes comply with the legislation
  - performance information reported to ISOU is accurate and reliable (**Recommendation 5.7 and 6.2**).
- periodically review the information they provide to the community so that it adequately includes information on appellant rights and options, the internal review process and agency requirements (**Recommendation 5.9**).

In addition to the above, **Victoria Police should:**

- in consultation with ISOU, clarify the legislative requirements for appeals claiming special circumstances and whether its practices comply, or further policy guidance is needed (**Recommendation 5.4**).
- better educate staff of the procedural requirements in seeking an exemption from complying with the road rules, and proactively monitor their compliance (**Recommendation 5.8**).

**DOJ should** review the provision of services to people with special circumstances in regional centres (**Recommendation 5.5**).

## Agencies—quality assurance and analysis

**Enforcement agencies should:**

- in consultation with DOJ, develop a framework for measuring the performance of their infringements systems. It should include key performance indicators, benchmarks and reporting arrangements for assessing the extent to which the enforcement agency has fulfilled its obligations under the *Infringements Act 2006* (**Recommendation 6.1**).
- analyse infringements information with a view to achieving potential improvements in issuing infringements and appeals and withdrawals processing (**Recommendation 6.2**).

**Victoria Police should** assess the accuracy of its 2007–08 internal review statistics and, if necessary, re-submit the data to DOJ for analysis (**Recommendation 6.3**).

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