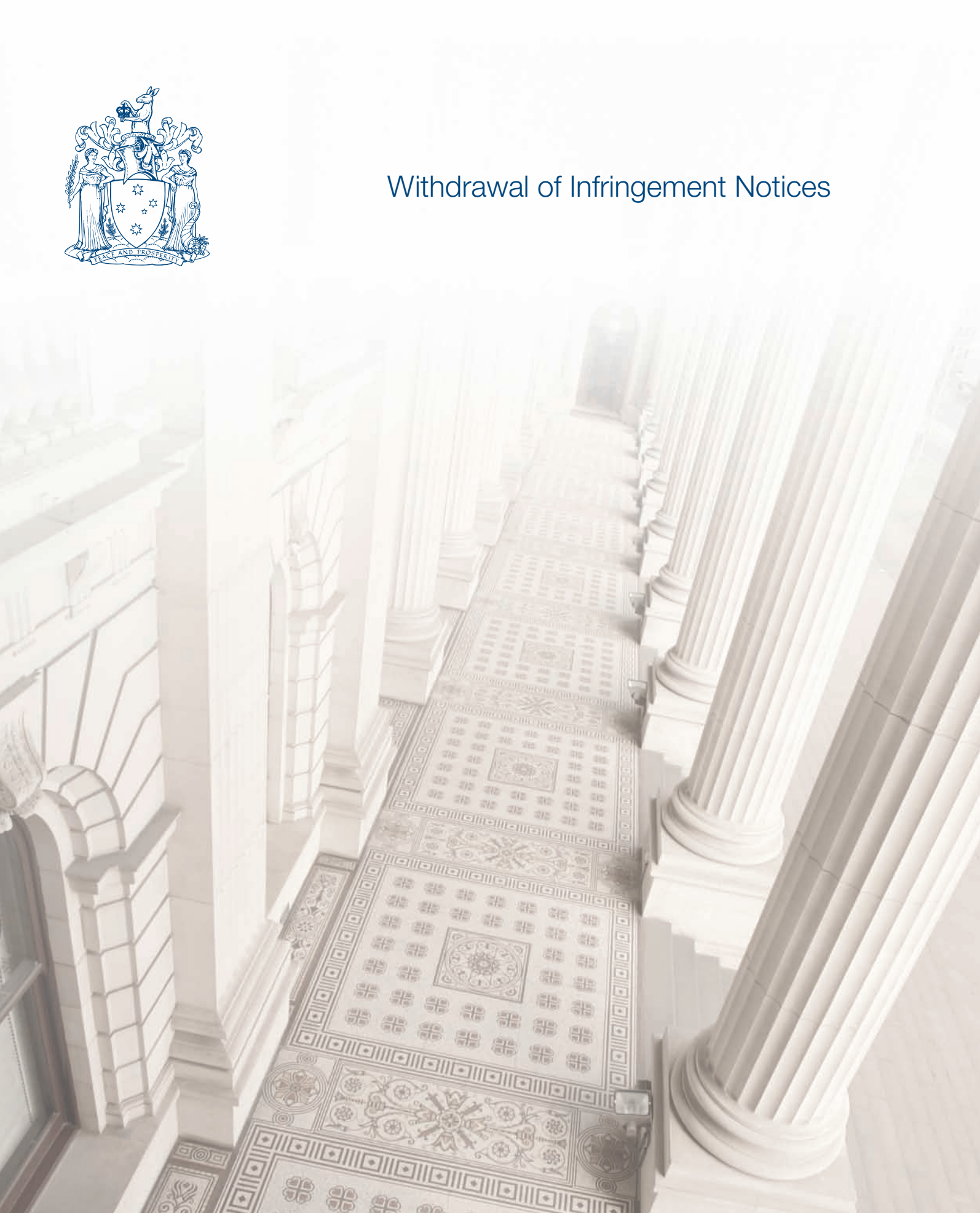


Withdrawal of Infringement Notices



VICTORIA

Victorian
Auditor-General

Withdrawal of Infringement Notices

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Victorian Auditor-General's Office
Auditing in the Public Interest

The Hon. Robert Smith MLC
President
Legislative Council
Parliament House
Melbourne

The Hon. Jenny Lindell MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my performance report on *Withdrawal of Infringement Notices*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Frost', with a long horizontal stroke extending to the right.

DR PETER FROST
Acting Auditor-General

3 June 2009

Foreword

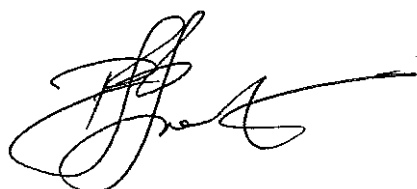
Most of us will come into contact with the infringements system at some time in our lives. It plays a crucial role in maintaining public order, safety and amenity. It is a large system. There are about 130 agencies, mainly local councils and Victoria Police, that can issue about 2 000 types of infringements for offences as disparate as illegal parking, speeding, breaches of local laws and polluting.

The *Infringements Act 2006* was passed over two and a half years ago with the aim of making the system fairer for the public and firmer when it came to non-payment of fines. It also aimed to protect the vulnerable from getting caught up in a process that led to enforcement.

The Act changed how agencies manage the issuing, reviewing and enforcing of infringement notices, with a particular emphasis on recognising peoples' special circumstances when deciding whether or not to withdraw notices.

While agencies have made progress in implementing the new system, there are still many improvements needed to assure the public and Parliament that the withdrawal of notices is contributing to a fairer system. Levels of agency non-compliance were significant in many cases, and internal review and withdrawal frameworks were either inadequate or had gaps. This has led to inconsistent decision-making within and across agencies. This means that people in similar situations are not being treated consistently when notices are being considered for withdrawal. Consistency is a hallmark of a fairer system, and its absence casts doubt over the fairness of the whole system.

The Department of Justice's Infringements System Oversight Unit should put more focus on monitoring the infringements system and assessing whether internal review and withdrawal activities are leading to a fairer system. Greater engagement with agencies is required to identify systemic and operational issues and to facilitate legislative compliance.



DR PETER FROST
Acting Auditor-General

3 June 2009

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1 Audit summary

1.1 Introduction

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

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

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**).

2 Audit Act 1994 section 16— submissions and comments

2.1 Introduction

In accordance with section 16(3) of the *Audit Act 1994* a copy of this report, or relevant extracts from the report, was provided to the Department of Justice, City of Ballarat, City of Greater Geelong, City of Port Phillip, City of Stonnington and Victoria Police with a request for comments or submissions.

The comments and submissions provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

2.2 Submissions and comments received

RESPONSE provided by the Secretary, Department of Justice

The Department of Justice (the Department) welcomes the Auditor-General's performance audit of the withdrawal of infringement notices, which reviewed withdrawal of infringement notices over the first two years of operation of the new infringements system (1 July 2006 to 30 June 2008). The audit has provided an opportunity to reflect on progress made during this time and to enhance planning for continuing improvements.

The Department supports in-principle the Report's recommendations in relation to the Infringements System Oversight Unit. The Department will carefully consider the Report findings and makes additional comments in relation to specific recommendations below.

In general, the Department notes that the first two years of the new system have established significant changes to improve the infringements system in terms of both fairness and flexibility, and enforcement of unpaid infringement penalties.

Government introduced this comprehensive legislative framework in response to the rapid growth of the use of infringement notices, as an expedient way of dealing with lower level criminal offences. In recognition that the automated infringements system can not offer a 'one size fits all' approach to enforcement of unpaid infringements, the framework introduced elements of flexibility and discretion to protect the rights of vulnerable people caught up in the automated system. One of those elements was the introduction of a new right to internal review at agency stage and this right is an important part of the system.

RESPONSE provided by the Secretary, Department of Justice – continued

During the implementation phase of the new system, the Department and the State's 100 plus enforcement agencies have worked to update systems, processes and documentation and as the Audit Report notes, significant progress has been made over that time. However, the Department agrees that there is still work to be done and will continue to work with enforcement agencies and community advocates to address issues and facilitate ongoing improvements.

QUALITY ASSURANCE (RECOMMENDATION 4.1, FIRST DOT POINT)

The first part of Recommendation 4.1 is that the Infringements System Oversight Unit (ISOU) should maintain on an ongoing basis, the robustness of its quality assurance mechanisms in providing assurance of the accuracy of agency information provided.

The Department notes that the new infringements framework introduced, for the first time in Victoria, a requirement for all agencies that issue infringements to report to the Attorney-General each six months on their infringement activity. Agencies have faced a number of challenges in meeting these requirements, including access to appropriate information technology, learning about the new system and implementing new data collection systems.

The Department considers that with its support, agencies have made progress in meeting these requirements, but agrees that improvement is necessary before the reporting system can be regarded as reliable and effective as it can be. As the Report notes, the Department has implemented new quality assurance mechanisms and material for agencies to assist in the production of more reliable reports across the many agencies. The Department has also initiated a series of road shows and improved communication mechanisms to offer additional support to agencies. This includes a new series of training workshops, enhancements to written information about reporting, establishing an enforcement agency working group and planning a schedule of face-to-face meetings with agencies.

OVERALL SYSTEM ANALYSIS (RECOMMENDATION 4.2)

Recommendation 4.2 is that the ISOU should periodically assess how the system is working and whether agencies are applying and interpreting the legislation appropriately.

The Department agrees that it is important to periodically assess how the system is working, noting that it has always envisaged that it would be beneficial to wait until a meaningful body of data was available (at least three years) before drawing conclusions about the system.

In relation to comments about agency compliance, please see the comments below in relation to the second dot point of recommendation 4.1.

RESPONSE provided by the Secretary, Department of Justice – continued

**ADDRESSING COMPLIANCE ISSUES AND STAKEHOLDER ENGAGEMENT
(RECOMMENDATIONS 4.1 (SECOND DOT POINT), 4.3 AND 4.4)**

The audit has been a valuable tool in identifying areas where the ISOU could do more to guide agencies in a non-prescriptive manner. In particular, the audit has given the Department an insight into the internal processes of enforcement agencies, which, without investigative powers, it would not otherwise have had. This has assisted in identifying areas that future work needs to focus on.

Recommendation 4.1 (second dot point) is that ISOU should clarify its responsibility for detecting and remedying non-compliance with the Act. ISOU's role is one of engagement, support and guidance and ISOU will continue to fulfil this role, with an extended focus on stakeholder engagement and support across all aspects of the system. ISOU will achieve this by promoting collaboration, cooperation and information sharing between ISOU and enforcement agencies, and by facilitating the sharing of best practice between agencies as set out below.

The Department agrees with Recommendation 4.3 regarding dissemination of information about agency best practice in relation to internal review and withdrawals. As the Report notes, in addition to the established and ongoing Infringements Standing Advisory Committee, workshops and in-person meetings with agencies, ISOU has now surveyed enforcement agencies to gather information on a range of matters, including whether agencies have operating procedures in place. Over the next six to twelve months, ISOU will work directly with agencies to facilitate sharing of best practice policies and procedures and to offer additional support to those agencies requiring assistance. ISOU is also scoping the development of a web based service for enforcement agencies that would be designed to provide agencies with easier access to this information.

The Department agrees with Recommendation 4.4, that ISOU meet regularly with enforcement agencies and has already taken steps to establish a more structured approach to communication with agencies. In addition to existing stakeholder engagement mechanisms, ISOU has established a number of new initiatives, including: a schedule of regular individual meetings with agencies; a new working group of enforcement agencies; a series of workshops for agencies to provide information and discuss issues; development of a manual to assist agencies to appropriately classify internal review applications by ground; and a guide to revocation issues.

OTHER ISSUES

Attorney-General's Annual Report

Recommendation 4.5 is that more information be included in the Attorney-General's annual report on the infringements system. The Department will take this under consideration but notes that this is a matter for the Attorney-General.

RESPONSE provided by the Secretary, Department of Justice – continued
Special circumstances and regional Victoria

Recommendation 5.5 suggests that DOJ should review the provision of services to people with special circumstances in regional centres. DOJ will consider this recommendation, but notes that while the specialist Enforcement Review Program is only available at the Melbourne Magistrates' Court, Magistrates in Courts all over Victoria are equipped with the tools to address special circumstances issues. In that regard, services for applicants with special circumstances are available across Victoria.

Exercise of Discretion and the Role of ISOU

The report makes a number of references to the exercise of discretion and the relationship between exercise of discretion and the Infringements Act. The Department considers it important to add that it is the role of enforcement agencies such as Victoria Police and local Councils to enforce the law and to make prosecutorial decisions about which matters to pursue. The legislative infringements framework provides enforcement agencies with a broad discretion to undertake a number of actions, including making decisions on internal review, withdrawing infringement notices and choosing which matters to pursue through the Infringements Court or Magistrate's Court.

It is reasonable to expect that enforcement agencies will not make decisions in an arbitrary or biased manner. In that regard, the infringements legislation, Attorney-General's Guidelines and ISOU information papers on internal review seek to offer guidance to agencies in the exercise of their discretion. The ISOU was established to be a 'gatekeeper' of the infringements system and is keenly aware of the need to balance the roles of advice, guidance, legislation and policy making, with the responsibilities of the State Government to respect the separation of powers doctrine by not prescriptively directing independent agencies in the execution of their statutory duties. In practice, this means that while the ISOU does not have power to investigate or discipline agencies, it does have the role of providing guidance.

RESPONSE provided by the Chief Executive Officer, City of Ballarat

The audit is welcomed by the City of Ballarat and the findings are viewed as an opportunity for improvement. Whilst the audit report identifies a number of instances where the procedures have not been up to an accepted standard and this is acknowledged, the City of Ballarat considers that in the vast majority of cases withdrawn infringement notices have been dealt with professionally and in accordance with recently adopted policies. As a result of the audit report a number of changes to the processes for reviewing and withdrawing infringements have already been implemented, policies and procedural documents have been approved by management and further development work is continuing to ensure on-going compliance with the Infringements Act 2006.

RESPONSE provided by the Chief Executive Officer, City of Greater Geelong

Council welcomes the feedback and recommendations made in the report. The City of Greater Geelong had embarked on a continuous improvement process in respect to infringement management over the past 20 months. These efforts are acknowledged in this report particularly in terms of better practices as identified by your staff in appendix D.

Council acknowledges that there were a small number of undocumented practices identified during the audit, such as some gaps in our decision making matrix that specify the nature of proof required to support some appeal decisions. The City has expanded its decision matrix to address any gaps and has redeveloped our existing template to address all types of appeals.

Council has met with DOJ to clarify classification of appeal decisions. In relation to withdrawals in the field Council has reviewed and strengthened its processes and documentation to support these types of withdrawals.

Council supports ongoing training and education of staff and further strengthening our excellent relationship with the Infringements System Oversight Unit and DOJ.

RESPONSE provided by the Chief Executive Officer, Port Phillip City Council

This is an important issue for the City of Port Phillip and the reason we are pleased to participate in the audit. We welcome the chance to improve our procedures and guidelines and hope that the audit is also of benefit to other agencies.

We support the recommendations relevant to the City of Port Phillip and will work to implement all the identified improvements.

As a result of the audit, we have already made a number of improvements and will continue to work internally and with our contractor to fully implement the recommendations of the review. Specifically, we have clarified in writing the circumstances for withdrawal of infringements in the field so that staff will only withdraw a fine when an error has been made. Council is also finalising the complete documentation of our review process to complement our existing process and decision guidelines. This responds to the findings in Figure 5A.

We believe our procedures are fair and indeed are fairer than simple legislative compliance would require. We plan to continue in this vein to ensure we fairly manage the scarce resource of parking under our control.

We would also be pleased to participate in any review of the collection of unpaid infringements, as in our view, this is an area that is also worthy of attention.

RESPONSE provided by the Chief Executive Officer, Stonnington City Council

Council views such audits as opportunities for continuous improvement of service delivery. In relation to the recommendations of the report, Council supports those relevant to Stonnington and is confident many of them are already undertaken or can readily be implemented at Stonnington. Several issues identified in the early stages of the audit were addressed immediately.

RESPONSE provided by the Chief Commissioner, Victoria Police

The content of the audit report- Withdrawal of Infringement Notices reflects a fair and factual finding relative to the Victoria Police, Traffic Camera Office (TCO) in its adjudication processes.

I have considered the recommendations applicable to Victoria Police. Several of the recommendations can be addressed by improved training procedures coupled with Information Technology (I.T.) enhancements. Those I.T. enhancements are in development and will be applied in the near future.

As you would be aware the Traffic Camera Office, as an enforcement agency, relies heavily on its private contractors to supply the necessary I.T. functionality for its adjudication process in delivering a fair and transparent outcome to reviews.

The Traffic Camera Office will continue to engage in discussions with the Department of Justice and its contractors regarding I.T. enhancement capabilities to its systems.

Victoria Police will undertake to consult with the Department of Justice and the Infringements System Oversight Unit to rectify issues nominated in the report relative to strengthen procedural processes, in particular in the application of special circumstances appeals. Additional training and information will also be provided to TCO staff in the application of the special circumstances policy.



3 Background

3.1 The infringements system

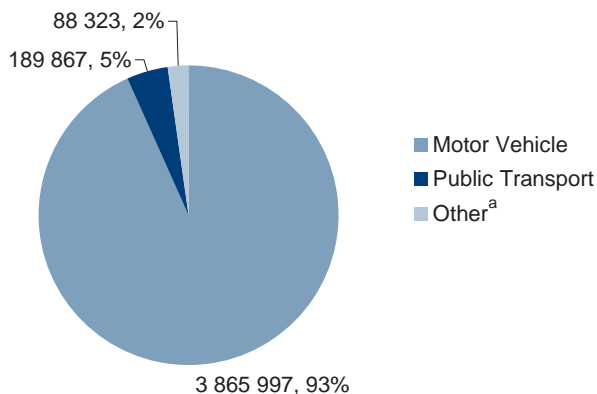
Infringement notices, more commonly known as ‘on-the-spot’ fines, were first introduced in Victoria in the 1950s. Given technological advances, infringement notices are also issued following detection by red light and speed cameras. The infringements system performs a critical role in regulating community behaviour across industries and occupations as well as protecting the physical environment in order to achieve public order, safety and amenity.

Around 130 Victorian agencies have the legislative authority to issue infringements but not all exercise this authority. Government departments, statutory authorities, local councils, universities and hospitals issue infringement notices for minor statutory offences. These cover parking offences, speeding and other driving related offences, polluting the environment, failing to vote at elections, public transport offences, non-registration of animals and breaches of licensing conditions, local laws, consumer safety and industry regulations. Appendix A provides a listing of agencies that issued infringement notices in 2007–08.

The number of infringement notices issued has almost doubled from 2.3 million in 1990–91 to almost 4.2 million in 2007–08. Infringement offences are included in more than 60 Victorian acts and provide for more than 2 000 different offences.

Figure 3A highlights that motor vehicle-related offences account for around 93 per cent of infringements issued in 2007–08.

Figure 3A
Number of infringement notices issued by key infringement categories, 2007–08

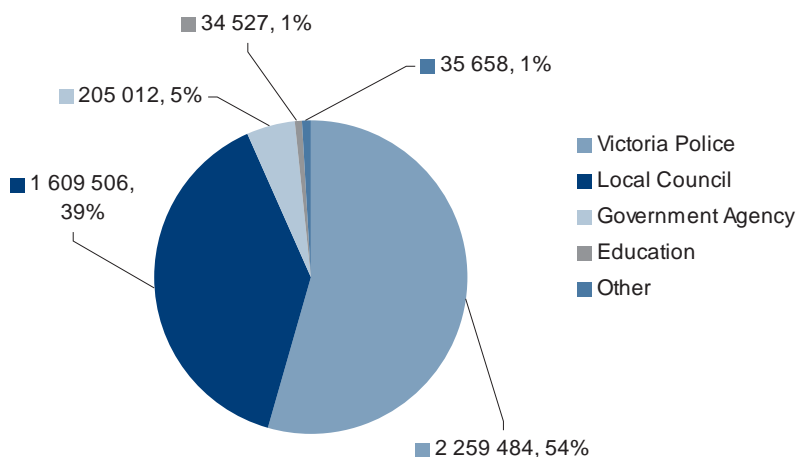


Note: (a) 'Other' comprises: Consumer safety and industry regulation: 4 886; Environment and pollution: 21 141; Marine: 2 436; Animal: 28 147; Local law: 14 195; Electoral: 11 000; Other: 6 518.

Source: Infringements System Oversight Unit, Department of Justice.

Figure 3B shows the key sectors that issued infringements in 2007–08. Victoria Police and local councils were the main issuers, accounting for 54 per cent (mainly moving vehicle offences such as speeding, traffic and signal violations) and 39 per cent (mainly parking infringements), respectively. Appendix A outlines the agencies within each sector.

Figure 3B
Number of infringement notices issued by key sectors, 2007–08



Source: Infringements System Oversight Unit, Department of Justice.

3.2 The 2006 legislation: a fairer, firmer system

The *Infringements Act 2006* (the Act) introduced a revised infringements system on 1 July 2006. The legislation outlines a consolidated framework and aims to improve administration and management of the infringements system by:

- creating consistent procedures for issuing and enforcing infringements, thereby simplifying the system
- enhancing data collection and providing a whole-of-system oversight function, for better monitoring
- creating guidelines that outline practices and processes for managing infringements.

Offences are also still created under other acts.

The Attorney-General issued guidelines under section 5 of the Act that explain the fundamental elements of the Act and the manner in which agencies exercise their responsibilities.¹ Each agency is to prepare operational guidelines consistent with the Attorney-General's guidelines and legislative intent.

The Act does not cover serious offences involving excessive speed or driving whilst drug or alcohol affected—whether in a road, rail or seagoing vehicle. Other legislation specifies processes for road, rail and marine safety.²

In addition to enhancing administration of infringements management, the primary purpose of the new system is to ensure *fairness*. Fairness is promoted in the legislation by procedural regularity that aims to see 'like cases treated alike' both within and across enforcement agencies. Other aims of the Act are to improve the community's rights and options in the process and to better protect vulnerable persons inappropriately caught up in the system. Additional enforcement sanctions are intended to motivate people to pay their fines so the integrity of the system is maintained. The key elements of the system are outlined below.

3.2.1 Right of review

Any person receiving an infringement notice can apply to the issuing agency for a review where the person believes:

- the notice is contrary to law
- there has been a mistake of identity
- exceptional circumstances exist which excuse the offence
- special circumstances apply to the person.

¹ Department of Justice, *Attorney-General's Guidelines to the Infringements Act 2006*, Melbourne 2006.

² *Road Safety Act 1986* (sections 89A to 89D), prescribed concentration of alcohol (transport workers) under the *Transport Act 1983* (section 215C), and prescribed concentration of alcohol (boating) under the *Marine Act 1988* (sections 61A and 61BA).

The internal review process enables those who receive infringement notices to test the lawfulness and fairness of those decisions. It provides the enforcement agency with feedback and the opportunity to assess the consistency, reliability and efficiency of its processes. Appendix C provides an outline of the withdrawal and internal review process.

If an agency confirms the decision to issue the infringement notice after an internal review, the defendant may pay the penalty or decide to have the matter heard in court.

The withdrawal process is explained further in Figure 3C.

3.2.2 Withdrawal of infringement notices

During 2007–08, 209 452 infringement notices were withdrawn. The Act allows for two approaches to withdrawing infringement notices, as outlined in Figure 3C.

Figure 3C
Agency withdrawal of an infringement notice

Agency issuing officer serves an infringement notice ^a	
General discretion	Internal review
<p>In 2007–08, 27 756 infringements were withdrawn at the discretion of the agency.</p> <p>An enforcement agency, of its own initiative, may withdraw an infringement notice that has been issued and:</p> <p>(a) issue an official warning to the offender, or (b) proceed in a Magistrates' Court by summons or (c) abandon the matter.</p> <p>Exercise of this discretion is not triggered by an aggrieved citizen. Agency discretion is used to remedy faults in the system such as:</p> <ul style="list-style-type: none"> defective meters poor or inadequate signage an error by the issuing officer misinterpretation of rules statute barred cases ^b an inability to locate the registered driver. 	<p>In 2007–08, 181 696 notices (51 per cent of cases internally reviewed) were withdrawn following an internal review. This is 87 per cent of all withdrawals in that year.</p> <p>The recipient of an infringement notice may apply for an internal review on the following grounds:</p> <p>(a) contrary to law (b) mistake of identity (c) special circumstances apply to applicant such as a mental or intellectual disability, a serious addiction to drugs, alcohol or substances that result in a person being unable to understand or control their offending behaviour, or homelessness that resulted in a person unable to control their behaviour (d) exceptional circumstances exist which excuse the offence. The circumstances were unforeseen or unpreventable, such as a medical emergency which resulted in a parking offence.</p>

Figure 3C
Agency withdrawal of an infringement notice – *continued*

Agency issuing officer serves an infringement notice ^a	
General discretion	Internal review
<p>It may also not be cost-efficient to pursue the recovery of the fine, i.e., overseas drivers.</p> <p>Administrative law principles require that the exercise of discretion be:</p> <ul style="list-style-type: none"> • relevant to the purpose of the legislation • based on a proper evidential foundation • not be exercised in an arbitrary fashion • not be used for corrupt or improper purposes. 	<p>An enforcement agency:</p> <ul style="list-style-type: none"> • must undertake an internal review upon request • may request additional information • must within 90 days review the decision to issue the notice or it will be deemed to have been withdrawn (a further 21 days is allowed if further information is requested from the applicant). <p>Following the review the enforcement agency may:</p> <ul style="list-style-type: none"> • confirm the issuing of the infringement notice • withdraw the notice and serve an official warning instead • withdraw the infringement notice and abandon the matter • withdraw the infringement notice and refer the matter to the Magistrates' Court • in the case of an infringement offence involving additional steps, alter or vary those steps • waive all or any prescribed costs • approve a payment plan • do any combination of any of the above actions.

Notes: (a) The *Infringements Act 2006*, section 8, provides issuing officers with discretion to issue an official warning to offenders in lieu of an infringement notice. This is not considered a withdrawal of an infringement notice.

(b) Proceedings for unpaid infringement not filed with the Magistrates' Court within 12 months of the offence date or not registered with the Infringements Court for enforcement within 6 months.

Source: Victorian Auditor-General's Office.

It should be noted that the internal review provision does not remove the ability of the agency to exercise its general discretion after the review.

The enforcement agency may withdraw an infringement notice and replace it with an official warning. The warning is retained on the appellant's infringement history and is considered should the person apply for an internal review. In 2007–08 around 94 300 official warnings were issued.

3.2.3 Recognising special circumstances

The Act seeks to divert vulnerable people from the infringements system. Examples would be people who by virtue of their circumstances or disability are unlikely to be able to avoid committing an offence or do not have the ability to understand the consequences of their actions.

As an added protection, the Act provides that where a person has had their application for internal review on special circumstances grounds rejected by an agency, the agency can only prosecute the matter in open court.

3.2.4 Fine payment options

The Act requires agencies to offer a payment plan to persons meeting certain eligibility criteria. Persons who hold a Health Care Card or Pensioner Concession Card are automatically entitled to be offered a payment plan. Eligible persons alleged to have committed an offence have the option of paying a fixed penalty rather than going to court. This is a more convenient and less costly process, and no conviction is recorded if there is timely payment of the penalty.

The new legislation provides options to compel people to pay fines and also to deter re-offending. Depending on the type of warrant, these may include temporary measures to encourage fine defaulters to pay such as wheel clamping. More serious and permanent sanctions include the seizure and sale of assets, licence or registration suspension or, as a final option, arrest and imprisonment.

3.3 Infringements System Oversight Unit

The Infringements System Oversight Unit (ISOU) within the Department of Justice (DOJ) oversees and monitors the infringements system.

The unit assists the Attorney-General with an annual report outlining information collected from agencies on the infringements system. The information is used to assess how the system is operating from a whole-of-system perspective, and whether individual agencies are following the Act's guidelines.

The unit also maintains and proposes amendments to the Act and Regulations and consults across government on proposed infringeable offences.

3.4 The audit

3.4.1 Audit objective

The objective of the audit 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 selected enforcement agencies are withdrawing infringement notices appropriately in compliance with the Act.

3.4.2 Audit scope

The audit examined the withdrawal of infringement notices by five selected enforcement agencies. These agencies issued around 2.7 million infringement notices or 64 per cent of all notices in 2007–08 and withdrew about 108 900 or around 4 per cent of those issued.

Audit of enforcement agencies

Victoria Police, City of Ballarat, City of Greater Geelong, City of Port Phillip and City of Stonnington were selected for review on the basis of:

- the level of infringements issued and managed
- location of agencies. Agencies were selected from both metropolitan and regional areas
- in-house / contracted infringements management. Councils chosen covered both those using in-house teams and contracted services.

The agencies issued infringements for parking, speeding and other driving-related offences, polluting the environment, failing to vote at elections, public transport offences, non-registration of animals and breaches of local laws, consumer safety and industry regulations.

Figure 3D outlines key infringements information.

Figure 3D
Enforcement agencies selected for audit review—
infringements information 2007–08

Enforcement agency	Infringement notices issued no.	Notices withdrawn outside the internal review process		Notices withdrawn following internal review ^e		Total notices withdrawn	
		no.	% of issued	no.	% of issued	no.	% of issued
City of Ballarat	15 381	705	4.6	369	2.4	1 074	7.0
City of Greater Geelong	54 384	906	1.7	1 916	3.5	2 822	5.2
City of Port Phillip ^a	170 435	338	0.2	14 133	8.3	14 471	8.5
City of Stonnington ^b	167 345	160	0.1	4 637	2.8	4 797	2.9
Council sub-total	407 545	2 109	0.5	21 055	5.2	23 164	5.7
Victoria Police^c							
• General policing	467 010	3 320	0.7	8 589	1.8	11 909	2.6
• Traffic Camera Office	1 284 362	3 248	0.3	46 236	3.6	49 484	3.9
• Toll Enforcement Office	508 112	331	0.1	24 018	4.7	24 349	4.8
Victoria Police sub-total	2 259 484	6 899	0.3	78 843	3.5	85 742	3.8
Totals	2 667 029^d	9 008	0.3	99 898	3.7	108 906	4.1

Notes: (a) The administration (management and collection) of parking infringements including the conduct of internal reviews is outsourced to a service provider. Other infringements processing such as animal management, local laws and planning and environment, are carried out in-house.

(b) The administration of parking infringements is outsourced. The contractor provides parking officers and undertakes internal review and back office activities on behalf of the council. Other infringements processing, animal management, local laws and planning and environment, are carried out in-house.

(c) Does not include the Firearms Licensing Service.

(d) All enforcement agencies issued 4 144 187 infringement notices in 2007–08.

(e) These figures include withdrawals with warning: City of Ballarat—nil; City of Greater Geelong—521; City of Port Phillip—6 934; City of Stonnington—2 762; Victoria Police—General Policing: 3 602; Traffic Camera Office: 32 871; Toll Enforcement Office: 2 443, total for Victoria Police: 38 916.

Source: Infringements System Oversight Unit, Department of Justice and enforcement agencies. These figures were current at 25 March 2009.

Since a significant number of notices were issued for parking and traffic offences, the review of infringement notices at the above agencies focused on these offences.

Appendix B provides details of the type of infringement notices issued by the five enforcement agencies and the number of internal reviews in 2007–08.

The audit of enforcement agencies involved:

- an assessment of the extent to which:
 - the *Attorney-General's 2006 Guidelines* provided a fair, objective and clear basis for agencies to withdraw infringement notices
 - agency policies, procedures, guidelines, and processes for the withdrawal of infringement notices were consistent with the 2006 Guidelines and the Act
 - internal review processes were independent, impartial, rigorous and conform with the principles of procedural fairness
- the review of a representative sample of infringement notices withdrawn during 2007–08 to assess whether agencies were complying with their procedures and the Act. At each of the five selected agencies, this included:
 - 35 withdrawals via the internal review process
 - 15 notices subject to internal review but not withdrawn, that is, the decision to issue the notice was upheld
- the review of a sample of notices withdrawn at the discretion of the agency.

Audit of DOJ

The audit also examined whether DOJ in its monitoring role has:

- collected and analysed relevant and accurate information from agencies
- provided timely and relevant advice and guidance to enforcement agencies to assist them to meet their legislative responsibilities.

The audit was performed in accordance with the Australian auditing standards applicable to performance audits, and included tests and procedures sufficient to enable audit conclusions to be reached.

3.4.3 Cost of the audit

The total cost of the audit was \$450 000. This cost includes staff time, overheads, expert advice and printing.

4 ISOU — system oversight

At a glance

Background

The Infringements System Oversight Unit (ISOU) was established in mid-2006. The unit collects information on the operation of the infringements system and provides advice and guidance to agencies issuing infringement notices.

Findings

- The movement in key infringement indicators between 2006–07 and 2007–08 is consistent with the system becoming fairer. Audit analysis however, identified significant variations between and across agencies for these indicators.
- ISOU quality assurance mechanisms, designed to check the accuracy and completeness of agency information, were inadequate. As a result, monitoring of system initiatives and proposing system improvements is compromised. In response, ISOU has enhanced its quality assurance processes.
- ISOU has not yet assessed whether the state's infringements system is working as intended.
- ISOU has given timely and useful guidance to agencies, however, a more systematic approach to identifying agency needs is required.

Recommendations

ISOU should:

- review and maintain, on an ongoing basis, the robustness of its quality assurance mechanisms
- periodically assess how the infringements system is working
- better leverage its oversight and monitoring role by:
 - collating and disseminating examples of good practices to agencies
 - meeting periodically with agencies to identify systemic and operational issues
- expand the information in the Attorney-General's annual report to provide more comprehensive information and analysis of the infringements system.

4.1 Background

To assist the Attorney-General perform his functions under the *Infringements Act 2006* (the Act), the Department of Justice established the Infringements System Oversight Unit (ISOU) in mid-2006. The *Attorney-General's 2006 Guidelines* state that the unit's role is to:

- monitor the success of the government's infringements system initiatives and in consultation with stakeholders and advocacy groups, examine potential improvements
- assess how the infringements system is working from a whole-of-system perspective and whether individual agencies are applying and interpreting the Act in accordance with its guiding principles and the guidelines
- advise agencies on the guidelines and the administration of the Act
- build and maintain relationships with stakeholders including supporting the operation of the Infringements Standing Advisory Committee
- assist the Attorney-General to provide reports on the operation of the system
- provide authoritative advice to ministers, the Victorian Government and agencies on request.

The unit also maintains and proposes amendments to the Act and regulations and consults across government on proposed infringeable offences.

4.2 Monitoring the system

Effective monitoring of the state's infringements system would involve:

- collecting accurate information on the operation of the state's infringements system to determine whether agencies are applying and interpreting the Act in accordance with its guiding principles and the guidelines
- assessing whether agencies have established relevant policies and procedures
- managing non-compliance with the Act and guidelines.

4.2.1 Collecting accurate information

The infringements regulations set out the information that enforcement agencies are required to supply to ISOU. This includes the number of:

- infringement notices served and withdrawn by the enforcement agency for each category of infringement offence
- persons served with infringement notices who elect to have the offence heard and determined by a court
- applications for internal review under each of the grounds of the Act and as far as possible, the action taken for each review.

Appendix A has details of the agencies which reported to ISOU in 2007–08 on the operation of their infringements systems.

ISOU collection processes and procedures

ISOU provides agencies with electronic reporting templates and counting rules to assist them record and submit accurate and reliable information on their infringements systems. The templates include all information required by the regulations.

Once it receives the completed templates, ISOU does a desktop review. Incomplete, unusual or abnormal items identified during the review are followed up with the respective agencies.

Each agency is given a confidential benchmark report that compares the information provided on its infringements systems with similar agencies and the system as a whole.

The audit identified that:

- ISOU has not documented staff procedures for the request, capture and review of information provided by agencies
- ISOU's template design does not have any built-in checks to enable the unit to quickly identify inaccuracies in the data supplied by agencies
- a checklist was developed by ISOU and provided to agencies in December 2008 to assist them to record and report information on their infringements system.

Information provided by agencies

Agencies bound by the Act are required to provide ISOU with information on their infringements system. The audit noted one agency that issued infringement notices but did not provide information to ISOU. ISOU advised that it is aware that some agencies that issue a small number of infringement notices may not be reporting their information. In response, it is currently undertaking an audit of agencies that issue infringement notices, to check whether agencies are reliably reporting to the unit.

All complying agencies provided the information required.

Agencies are required to inform ISOU about their infringements systems within 28 days after 30 June and 31 December each year. Around 75 per cent of agencies met these timeframes in 2006–07. The remaining agencies submitted their information late.

In 2007–08, all agencies provided information in the required timeframes.

Accuracy of the information provided

The audit found ISOU's quality assurance mechanisms were inadequate as inaccuracies and apparent anomalies in the data supplied for 2006–07 and 2007–08 were evident to audit.

The audit also identified that, based on the information received, some agencies are unlikely to be complying with the Act. ISOU expected that recent amendments to the Act, designed to make the infringements system fairer, would result in:

- all agencies establishing internal review functions and offering payment plans
- an increase in the number of infringement notices withdrawn and warnings issued as agencies conduct internal reviews.

The audit review of agency returns, however, indicated that a number of agencies had not done any internal reviews, withdrawn infringement notices or provided payment plans. ISOU is currently following up these and other issues with the relevant agencies.

ISOU advised that errors in the 2006–07 agency data were corrected following discussions with the agencies involved. These did not, however, include those identified in this audit.

ISOU sees its role as assisting agencies to administer the Act and to collect and collate infringement information required. Therefore, it does not directly check the accuracy of the information with agencies or review the operation of their systems.

Discussions with agency staff revealed that in some cases, agencies were unclear on what information they had to provide. In other cases agencies considered they had supplied the information requested and ISOU had not queried its accuracy. This resulted in some agencies supplying some inaccurate information to ISOU. More information on agency information issues is provided in part 6.3.2.

ISOU has advised that it trained agencies in the use of the template and its counting rules in 2006 and 2007 and the counting rules have recently been clarified.

4.2.2 Agency policies and procedures

The *Attorney-General's 2006 Guidelines* state that agencies should develop procedures for the conduct of internal reviews and the operation of their infringements systems.

The audit's review of the selected agencies identified that they had not developed all the policies and procedures required for managing their infringements systems (refer Figure 5A). This situation should be addressed by ISOU identifying which agencies do not have policies and procedures and assisting these agencies develop them. At present ISOU does not do these reviews.

4.2.3 Managing non-compliance

ISOU sees its role as a 'gatekeeper' with the need to respect the notion of the 'separation of powers' by not prescriptively directing independent agencies in the execution of their statutory duties. The legislation does not set penalties for agency non-compliance. As a result, ISOU does not manage agency non-compliance with the Act.

Conclusion

ISOU quality assurance mechanisms, designed to achieve the accuracy and completeness of the information provided by agencies, were inadequate. As a result ISOU monitoring of infringements system initiatives and proposing effective system improvements is compromised because:

- ISOU decisions may be based on incorrect information.
- Apparent non-compliances with the Act and inconsistencies with the operation of agency infringements systems are not being identified and addressed.

ISOU has responded to the audit finding by enhancing its quality assurance processes to better assure the accuracy of agency data.

If the government's objective of a fairer, more equitable system is to be achieved, ISOU needs to have a more active role in facilitating and monitoring agency compliance with the Act.

Recommendation

4.1 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
- clarify its responsibility for detecting non-compliance with the Act by enforcement agencies, and any remedial action to be taken.

4.3 Assessing how well the infringements system is working

To date ISOU has not undertaken any assessment of whether the state's infringements system is operating as intended and the Act is being properly administered. DOJ conducts limited desktop reviews of agency data to check if individual agencies are applying and interpreting the legislation for internal review and the withdrawal of infringement notices. The unit also informally follows-up where agencies advise of issues.

DOJ intends to review the operation of the system at the end of three years. At that time, it considers the data would identify systemic issues and trends.

In the absence of an ISOU assessment, the audit analysed infringement information collected by ISOU between 2006–07 and 2007–08. This analysis showed an increase in infringements withdrawn, reviews undertaken and payments plans established as a percentage of total infringements issued. Warnings as a percentage of total offences identified also increased during this period. This is consistent with an infringements system that is becoming fairer.

It is difficult, however, to accurately determine whether the objectives of the Act have been met in the absence of benchmark data from other infringements systems and with only two years data from infringements systems operating under the amended legislation.

The audit analysis identified significant variations between agencies for all the indicators reviewed. This variation suggests that the requirements of the Act are not being uniformly applied across agencies. The very low use or absence of withdrawals, warnings, reviews and payment plans in a number of agencies is likely to indicate that these agencies are not using the discretionary powers provided by the Act to help ensure individuals issued with infringements are treated fairly and equitably.

Conclusion

ISOU has not assessed how the infringements system is working as required by the guidelines. The audit analysis indicated that while movements in key infringement indicators are consistent with the infringements system becoming fairer, there is still work to be done.

Recommendation

- 4.2 ISOU should 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.

4.4 Advice and guidance to agencies

DOJ supports agencies in the administration of the Act by providing guidelines, information and support.

4.4.1 Identifying guidance and support required

To effectively target its resources ISOU needs to establish mechanisms to identify and prioritise the guidance and support required by agencies.

The audit found ISOU had not:

- established mechanisms such as agency surveys to obtain feedback on the guidance and assistance it offers and to identify further needs
- developed indicators to measure its performance.

In response, in early 2009, ISOU developed and issued a survey to obtain feedback from agencies on its services. ISOU is currently analysing the survey results.

4.4.2 Attorney-General's 2006 Guidelines

In June 2006, the Attorney-General issued guidelines, in accordance with section 5 of the Act, to enforcement agencies to:

- assist them in issuing and enforcing infringement notices
- explain the appropriate use of infringements and how that policy should be applied by agencies seeking to make offences subject to infringements.

The guidelines provide a useful tool for agencies in managing their infringement systems. They outline the role of the department's oversight unit, identify offences suitable for enforcement by infringement notice and provide advice on internal reviews, the application of the special circumstances test and setting eligibility criteria for payment plans.

The guidelines provide the information required by the Act.

4.4.3 Information and support

ISOU supports agencies through the provision of the following services:

- **Information papers**—Papers on Internal Reviews and Financial Hardship were published in February 2008.
- **Community advice**—ISOU assisted Victorian Legal Aid develop its *Fines: Your Options for Dealing with Fines* booklet for distribution to people who are issued with infringement notices.
- **Information on websites**—There are two websites with information on the state's infringement systems, a section within the DOJ website on fines and penalties, and the Fairer Firmer Fines campaign website. The department is developing a new 'one stop shop' website, with links to the websites of enforcement agencies.
- **Agency newsletters**—Newsletters are sent to all enforcement agencies to advise of events and issues impacting on the operation of their infringement systems.
- **Road shows**—ISOU conducts road show visits to councils and other agencies to inform them about the Act, reporting requirements and to answer agency questions. These are considered by ISOU as key to improving relationships with agencies, however, the effectiveness of these road shows has not been assessed.
- **Responding to agency queries**—While there was evidence of inquiries being recorded, there was no collation or analysis of the service provided by the unit, such as the number and nature of enquires received, responses provided and timeliness of responses.

Agencies audited considered ISOU information was useful. However, they expressed a desire for more guidance such as operational policies, procedures and codes.

In 2006, the Municipal Association of Victoria provided template forms for use by councils and commenced work on the development of a code of conduct for councils issuing infringement notices. A range of complexities and issues were raised during consultation with councils and ISOU and as a result, finalisation of the code has stalled.

Conclusion

The guidance and assistance provided by ISOU to enforcement agencies has been timely, relevant and useful. Agencies have indicated they require further guidance material such as examples of operational policies and procedures. ISOU is in a unique position to provide this information.

ISOU needs, however, to take a more systematic and planned approach to identifying and prioritising agency needs. This would result in resources being more effectively targeted.

Recommendation

- 4.3 ISOU should better leverage its oversight and monitoring role by collating and disseminating examples of good practices to enforcement agencies.

4.5 Stakeholder engagement

ISOU's stakeholder engagement involves:

- quarterly meetings of the Infringements Standing Advisory Committee, which has members from key enforcement agencies, and industry and community stakeholders
- engaging with agencies at road shows and ISOU presentations
- circulation of written materials.

Aside from these contacts, ISOU's engagement with infringement agencies has generally been limited to responding to agencies that approach the unit for help.

In the absence of a more active engagement, ISOU is unlikely to be adequately aware of the issues facing agencies.

ISOU has not established a stakeholder engagement strategy. A stakeholder engagement manager was, however, engaged in December 2008 to develop a strategy by mid-2009.

4.5.1 Infringements Standing Advisory Committee (ISAC)

ISAC was established in early 2007. The committee's terms of reference say it was set up 'to provide input to assist ISOU discharge its responsibilities in relation to the monitoring of government initiatives under the Act.'

The committee meets each quarter and minutes are prepared. The minutes, however, do not include timeframes or assign responsibilities. It is also unclear whether all actions proposed have been completed. For example, in November 2007 committee members were asked to provide comments on the content and form of the Attorney-General's annual report and suggest improvements for future reports. There is no indication from the minutes of subsequent meetings that comments were received.

The committee is the key mechanism by which ISOU engages with stakeholders and discusses infringements system issues. Some councils considered it would be beneficial if ISOU arranged one-on-one meetings with the larger enforcement agencies to discuss relevant issues.

Conclusion

ISAC has assisted ISOU in discharging its duties; however, the actions are not well documented.

Heavy reliance is placed on the committee to identify system issues and areas where the unit needs to provide assistance. Complementary direct engagement between ISOU and enforcement agencies is, however, necessary to comprehensively inform the unit to manage the infringements system and address agency needs on a priority basis.

Recommendation

- 4.4 ISOU should meet periodically with enforcement agencies (in addition to ISAC) to assist them to identify systemic and operational issues and to share knowledge about managing their infringements.

4.6 Attorney-General reports on the operation of the system

ISOU is responsible for reporting to the Attorney-General on the data collected from agencies. This data is used to prepare the Attorney-General's annual report on the infringements system.

4.6.1 2006–07 annual report

The first *Attorney-General's Annual Report on the Infringements System 2006–07* was produced on 25 October 2007. It included the state infringements system's goals and principles, recent improvements to the system, deterrence measures and statistical information on infringement notices, enforcement orders, agency reviews and use of payment options and special circumstance provisions.

As the information provided by agencies to ISOU included some incorrect information, the information included in the Attorney-General's annual report is also called into question.

The audit review also identified that only a small amount of the information collected by ISOU is included in the annual report.

While there is no legislative requirement to publish details of all the information collected, the following information collected by ISOU warrants reporting to inform stakeholders and encourage confidence a fairer system is being achieved:

- number of warnings served and number revoked
- number of infringement notices withdrawn by category of offence
- information on internal reviews broken down by the reason for requesting the review
- more details on the outcome of the reviews including the number of payment plans approved, infringement notices replaced with warnings, referrals to court, waiving of costs and changed conditions.

4.6.2 2007–08 annual report

ISOU's 2007–08 action plan indicated that the 2007–08 Attorney-General's annual report was to be completed by October 2008. At May 2009, the report had not been completed. ISOU is following up audit findings to check the information submitted by agencies is accurate, prior to preparing the report.

Conclusion

The usefulness of the Attorney-General's 2006–07 annual report should have been enhanced by the inclusion of more comprehensive information and analysis of the operation of the state's infringements systems.

Recommendation

- 4.5 ISOU should 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.

4.7 Advice to ministers

ISOU provides advice to the Attorney-General, ministers and the government on request. The unit is also asked to provide advice on government initiatives which may impact on the infringements system.

The audit review of a sample of the advice indicated that it was both comprehensive and timely.

5 Agencies — the withdrawals system in practice

At a glance

Background

An agency can withdraw a notice following an internal review of the decision or, it can exercise discretion to withdraw an issued infringement notice.

A key aim of the new infringements legislation is to provide a fairer system, particularly in addressing the needs of people with special circumstances.

Findings

- Except for the City of Ballarat, agencies had adequate procedures and guidelines, however, agency guidance could be further improved.
- All councils have some undocumented practices in reviewing appeals resulting in inconsistent decision-making leading to inappropriate and inequitable withdrawal of infringement notices.
- No agency reviewed had guidelines for assessing special circumstances appeals.
- Agency guidelines are being over-ridden by internal review staff without justification and with incorrect and inconsistent results for appellants.
- In many cases, the reasons for withdrawals in the field were inappropriate, not objectively based, or not recorded.
- Victoria Police officers infringed in certain areas are not complying with guidelines in seeking to have the notice withdrawn.
- At police station level, adequate records to justify withdrawals are not maintained.

Recommendations

- Enforcement agencies should:
 - periodically review their infringement policies, procedures and guidelines
 - ascertain whether multiple reviews are a cost-effective use of resources
 - consult with Department of Justice to develop special circumstance guidelines
 - strengthen their quality assurance processes.
- Victoria Police should consult with ISOU and clarify whether its practices for appeals claiming special circumstances, comply with the legislation.
- DOJ should review the provision of services to people with special circumstances in regional centres.

5.1 Introduction

5.1.1 Withdrawal of infringement notices

The *Infringements Act 2006* (the Act) allows two approaches to withdrawing infringement notices. An agency can withdraw a notice following an internal review of the decision. The internal review gives the agency a mechanism to check on the legitimacy and fairness of decisions and is central to the legislative intent of ensuring people in similar situations are treated consistently.

Agencies can also exercise discretion to withdraw an issued infringement notice. This provides agencies with a degree of freedom to deal with situations in a flexible and responsive manner and to remedy faults in the system that have been detected, for example, faulty meters and poor signage.

The audit assessed whether selected enforcement agencies are withdrawing infringement notices appropriately in compliance with the Act.

We assessed whether agencies:

- had established appropriate procedures and guidelines consistent with the legislation and the *Attorney-General's 2006 Guidelines* to inform the withdrawal of infringement notices
- complied with their procedures and guidelines
- adequately informed the public about the infringements system.

The audit findings are summarised in a scorecard at the start of each of the review areas.

5.1.2 Audit of selected enforcement agencies

There were several consistent findings arising from the audit. These were:

- lack of procedures or inadequate procedures to guide the withdrawal of infringement notices
- failure of agencies to comply with their own procedures or the Act in the withdrawal of notices including:
 - inappropriate internal review arrangements
 - multiple review of notices
 - issues with special circumstance appeals processing
 - failure to refer cases to council
 - inconsistent verification of appellant claims
 - failing to adhere to agency decision guidelines
- lack of quality assurance and management analysis for continuous improvement (refer to Part 6 of this report).

While the results relate specifically to the agencies examined, the issues are likely to be indicative of practices in other enforcement agencies. In this context, the identified issues should be considered by all enforcement agencies.

5.2 Procedures and guidelines

5.2.1 Background

As agencies can assess the decision to issue notices and to withdraw infringement notices, they can deal with situations in a proactive, flexible and responsive manner. They can also remedy faults in the infringements process such as defective meters, poor or inadequate signage, and misinterpretation of the rules or errors made by the issuing officer.

The *Attorney-General's 2006 Guidelines to the Infringements Act* outline how legislative responsibilities are to be exercised. Operational procedures are to be prepared by each agency to guide staff who issue infringements and who make decisions about infringement notices.

We examined whether agencies have established up-to-date and clear procedures to guide review officers in undertaking internal reviews, decision guidelines to inform the assessment of appeals, as well as matters considered in the case of discretionary withdrawals. For example, did agencies have:

- *management procedures*: outlining operational processes, documentary requirements for the conduct of internal reviews as required by Part 2 of the Act and withdrawals
- *decision guidelines*: outlining for each infringement offence and potential appeal explanation, the checks to be undertaken, the 'proof' required by agencies and the internal review decision to be imposed – 'withdraw', 'withdraw with warning' or 'uphold decision to issue notice'
- a *code of conduct* or operational manual defining:
 - the standards of behaviour expected of officers authorised to issue infringement notices in areas such as communicating with the public; dealing with aggressive and abusive behaviour; and occupational health and safety strategies
 - specific information on how to issue infringement notices
 - relevant grace periods, where applicable
 - routine situations in which discretion can be exercised
- *operational guidelines*: to assist agencies in understanding and considering applications for 'special circumstances'.

The performance of agencies was variable as Figure 5A shows.

Figure 5A
Procedures for internal review and withdrawal of
infringement notices—Scorecard ^a

Criterion/Agency	City of Ballarat ^b	City of Greater Geelong	City of Port Phillip	City of Stonnington	Victoria Police
Policies and guidelines:					
• Management procedures / operational processes for:					
• Internal review conduct	✘	✓	✘ ^d	✓	✘ ^d
• Withdrawals in the field	✘	✓	✘	✓	✓
• Decision guidelines	✘	✓	✓	✓	✓
• Code of conduct for issuing officers	✘	◊	✓	✓	✓
• Guidelines for considering special circumstance applications ^c	✘	✘	✘	✘	✘

Notes: (a) Legend: ✘—No (non-compliance); ✓—Yes (compliance); ◊—Being developed.

(b) Council has ‘established practices’ but these are not documented or approved by management.

(c) Refer comments on managing ‘Special Circumstance’ appeals in part 5.3.2 of this report.

(d) Agency has internal review processes but they are not documented.

Source: Victorian Auditor-General’s Office review of agency files.

5.2.2 Procedures

Our review highlighted several examples of better practice in agency procedures, which are outlined in Appendix D. Agency guidance material nevertheless, could be improved in the following areas.

Management procedures / operational processes

There was a lack of information about the procedures for internal reviews such as what happens from receipt of the appeal to the notification of decision to the appellant, as well as the checks required i.e. offender’s infringement history, parking officer notes and photos and the type of information required for substantiation of appellant’s claims.

The service agreements of two councils that outsourced the internal review function did not accurately reflect councils’ internal review processes and the requirements of the Act.

Recordkeeping requirements

Agencies are required under the *Public Records Act 1973* to make and keep full and accurate records of the business of the public office. Agency guidelines did not include specific information about the need to retain proper records of review decisions, the basis on which those decisions are made and the need to accurately record all stages of the processing of the appeal and withdrawal of the notice.

Records retention and disposal authorities covering Victoria Police (VicPol) and Local Government were last updated prior to the introduction of the Act and therefore do not identify the records that should be retained to adequately evidence the internal review process.¹

Decision guidelines

Councils' decision guidelines were not up-to-date and numerous 'established practices' outside the guidelines were noted. An example of such a practice included 'disabled persons are not required to purchase parking tickets in [a specific council area]'. Such practices can lead to conflict with written guidelines and inconsistent decision-making.

City of Ballarat (Ballarat) had an established practice of affording additional leniency to interstate drivers through the internal review process. This practice is not approved by management and raises equity issues.

Guidelines also needed to be more comprehensive and specific in relation to the evidence or nature of the proof required by appellants in certain circumstances. The inability to state what evidence is necessary results also in inconsistent decision-making.

Warnings policy

Ballarat did not, as a matter of policy, issue warnings as an outcome of the internal review process. An appellant's infringement notice was either withdrawn outright or the appeal was denied following internal review. Ballarat's use of this blanket policy is more likely to render infringement notices subject to legal challenge. The withdrawal of an infringement notice with a 'warning' is considered by other councils as a useful tool to deter offenders and further educate the community.

Codes of conduct

Codes did not always outline the situations in which parking or issuing officers can exercise discretion, for example:

- if an agency allows the withdrawal of an infringement notice for a vehicle breakdown, then the officer in the field should do the same.
- council policy on infringement notices issued to staff while driving agency vehicles, contractors performing work for the agency, agency volunteers and emergency vehicles (including unmarked police vehicles) should be specified in the code.

Issuing officers should apply discretion consistently as it improves the efficiency and fairness of the infringements system.

¹ A records retention and disposal authority identifies: records which are worth preserving permanently as part of Victoria's archival heritage; records which need to be retained for a specified period to satisfy legal, financial and other requirements of public administration, and those records that can be destroyed.

Special circumstance appeal guidelines

None of the five agencies reviewed had guidelines for assessing appeals by offenders with special circumstances, as required by the *Attorney-General's 2006 Guidelines*. Agencies advised that they referred to the guidelines which outline broad principles for managing offenders with special circumstances, in processing these appeals.

Conclusion

Agencies, with the exception of Ballarat, had adequate procedures and guidelines to assist in internal reviews and in exercising discretion. Ballarat had 'established practices' which were not documented or approved by management.

In all councils, procedural guidance could be improved to give more information about the appeals process, the nature of evidence to be provided and the nature and extent of records of the review and decision-making process.

All the councils reviewed had some undocumented practices which staff apply in reviewing appeals. This increases the range of potential decisions that can be made, and leads to a greater chance of inconsistent decision-making and inappropriate and inequitable withdrawal of infringement notices.

Those agencies with clearer more definitive guidance, such as City of Stonnington (Stonnington) and VicPol had lower withdrawal rates signifying more consistent application of the guidelines and a reasonable exercise of discretion.

A key aim of the new infringements legislation is to provide a fairer system, particularly in addressing the needs of people with special circumstances. It is of concern that no agency reviewed had these guidelines.

Recommendation

- 5.1 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.

5.3 Agency compliance

5.3.1 Background

The audit examined whether there was an objective and clear basis for the decision to uphold or deny an appeal or withdraw an infringement notice.

We reviewed appealed infringement notices as well as notices withdrawn in the field. The results, presented in Figure 5B indicate that all agencies performed poorly.

Figure 5B
Agency compliance—Scorecard^a

Criterion/Agency	City of Ballarat	City of Greater Geelong	City of Port Phillip	City of Stonnington	Victoria Police		
					VicPol ^c	TCO ^c	TEO ^c
Agency is compliant:							
1. In the conduct of internal reviews:							
• Key processes adhered to:							
• Referral of cases to council for review	N/A	N/A	✗12%	✗20%	N/A	N/A	N/A
• Verification of appellant claims	✗12%	✓	✗28%	✗14%	✓	✓	✗29%
• Adherence to agency decision guidelines and confirmation of agency compliance	✗52% ^b	✗28%	✗66%	✗34%	✗33%	✓	✗14%
2. In the withdrawal of issued infringement notices in the field:							
• Process adhered to	✗45% ^b	✗52%	N/A ^b	✗77%	✓	✓	✓
• Adherence to agency decision guidelines and confirmation of agency compliance with process	✗63% ^b	◆	✗52%	✗79%	✗50%	✗80% ^d	✗35%

Notes: (a) Legend: ✗—No; ✓—Yes; ◆—Guidelines not in place, being developed; N/A—Criterion does not apply. The percentages in the table refer to the level of non-compliance identified from file reviews. Non-compliances of 10 per cent or more, is recorded as an '✗'.

(b) The audit review was against council's 'established practices.' These practices are not documented or approved by management.

(c) 'Victoria Police' relates to on-the-spot fines; TCO refers to Traffic Camera Office photographic detection device offences; TEO refers to Toll Enforcement Office offences on toll roads.

(d) The high level of non-compliance relates to withdrawal notices that did not comply with the *Infringements Act 2006* or the failure to issue a 'withdrawal notice' once the infringement was withdrawn.

Source: Victorian Auditor-General's Office review of agency files.

5.3.2 Agency compliance in internal reviews

We generally found low levels of compliance with procedures and established practices in appeals processing. Key areas of non-compliance follow.

Internal review process

The principles for the conduct of internal reviews are outlined in the Act and the *Attorney-General's 2006 Guidelines*. Primarily the review must be conducted by someone other than the person issuing the notice. To avoid any perception of bias this should be an officer from a different business unit and not the direct supervisor of the issuing officer.

Internal review arrangements

All agencies except Ballarat had an independent and impartial internal review process. In Ballarat officers who issued the notice took part in each internal review conducted. For example:

- the parking officer who issued the infringement notice provided handwritten notes as an interpretation of his electronic notes, made at the time the infringement was issued
- the supervisor (in charge of council's parking officers) recommended whether or not the appeal was to be upheld or denied
- the Manager Regulatory Services who has corporate responsibility for council's parking services and the internal review of infringement notices countersigned the review decision.

The supervisor at Ballarat also signed the notifications to the appellant following the internal review. This gave the perception that the unit responsible for issuing the notices was responsible for the review decision.

The audit notes that council was relying on legal advice obtained that its process was compliant with the requirements of the Act.

Stonnington uses the same contractor for its parking officer services as well as the internal review function. However, the officers who review appeals and issue infringements work in different locations. The review staff request technical advice from parking officers to inform the review of specific cases but this is the exception. These arrangements accord with the guidelines.

Internal reviews for VicPol, Toll Enforcement and Traffic Camera Office (TCO) infringements are performed by a dedicated team of reviewers at the TCO. Issuing officers provide information when requested.

Appeals by police officers

In 2007–08, 2 545 infringement notices were issued to VicPol as owner of the vehicle and 2 417, or 95 per cent, were withdrawn on appeal. The appeals were generally on the grounds that the officers were performing police duties at the time and wanted an exemption from complying with the road rules. The officer must obtain their manager's approval to support the exemption and a senior officer determines whether there are valid grounds for the exemption. The decision is also quality reviewed by a senior officer of the TCO. Currently two senior TCO officers specifically process police officer appeals. They review the appeal documentation, source further information from the officer and make the decision to uphold or deny the appeal.

This process is to change to provide increased accountability at the station level. Regions will review all information including relevant case law and procedural documentation relating to staff claims. TCO will not quality assure the decision, instead, the divisional officer will need to arrange for appropriate auditing of the process. It will be important for VicPol to monitor the impact of these changes to demonstrate reviews of staff appeals remain objective and impartial.

Conclusion

Most agencies reviewed had internal review processes in place that complied with the legislation. Ballarat's review process, notwithstanding its legal advice, could give rise to a perception of a lack of independence or impartiality. VicPol's police officer appeals have been independently reviewed but this is to change. Officer appeals will be reviewed at station level. Even if this arrangement complies with the Act and the *Attorney-General's 2006 Guidelines*, the risk remains that a perception of bias may develop.

Multiple reviews of notices

The Act provides that an offender (or his/her representative) can only apply for one review of an infringement notice. Agencies can exercise discretion and do additional reviews, however, the resulting decision is not then considered an 'internal review'.

It is common practice for councils (not VicPol) to do several discretionary reviews of an infringement notice where an appellant is dissatisfied with the internal review decision and offers additional information. One council said the practice of multiple reviews was a direction from the elected council and consistent with the principles of providing a 'fairer and firmer system.'

In the case of the City of Port Phillip (Port Phillip) and Stonnington, contractor staff often finalised the internal review decisions without all relevant information from the appellant. This led to multiple reviews being done by council staff. The council service agreements did not include the right of a review officer to request further information from an appellant.

Examples of notification to appellants of internal review decisions as shown in Figure 5C indicate that:

- some internal review decisions may not be made on the full merits of the case
- appellants may be encouraged to challenge the decision
- review officers have no incentive to ensure all information is provided before a decision is made as they can 'fall back' on council's re-assessment process.

These factors do not operate in the spirit of achieving the fairness objective of the revised infringements system.

Figure 5C
Appellant notification of internal review decisions

<p>Case examples of communicating the review decision to an appellant:</p> <p>1. 'The matters raised in your letter have been examined and the infringement notice will not be cancelled.</p> <p>If you are able to supply supporting evidence in the form of a statutory declaration or a letter from your doctor/dentist/medical practitioner to demonstrate that you were stopped or delayed at the time of the infringement due to a medical condition, the infringement will be reconsidered.'—<i>Port Phillip</i></p> <p>2. '...it is considered that the infringement notice will not be withdrawn on this occasion.</p> <p>....Should you have additional, relevant information that you feel should be considered, you may request that the decision be assessed and additional information reviewed by a council officer.'—<i>Stonnington</i></p>

Source: Victorian Auditor-General's Office review of agency files.

Conclusion

Multiple reviews can offer a level of fairness in excess of the Act.

Councils that outsourced internal reviews were often required to further review cases because full information was not obtained in the first instance. This impacts on the efficiency of council operations and finalising appeals without all relevant information is inconsistent with the principles of the Attorney-General's guidelines and the infringements legislation. Efforts should be made to obtain all relevant information before making a decision so that all appellants are provided with a comprehensive review of their appeal.

Recommendation

5.2 Enforcement agencies should ascertain the extent to which they use multiple reviews and if significant, confirm that:

- these reviews comply with the Act
- they are a cost-effective use of resources.

Special circumstances appeals processing

The Act seeks to divert persons without the ability to understand the consequences of their actions, or who are unable to control their offending, away from the infringements system. Agencies are to identify cases in which special circumstances may apply at an early stage in the infringements process, and to resolve the matter or refer it to court.

Diversion from the infringements system

There are a number of points in which people with special circumstances can be diverted out of the infringements system. These are outlined below together with the challenges faced by enforcement agencies:

- issuing officers may determine special circumstances exist and not issue an infringement notice. Where there is no physical contact with the offender at the point of issue, agencies cannot exercise this discretion. Councils advised audit that they consider their parking officers do not have the skills to assess whether a person has special circumstances such as a mental illness or addiction.
- appellants with special circumstances may appeal the infringement notice. If special circumstances apply, then the agency should withdraw the notice, or issue a warning. If the agency denies the appeal the matter must be referred to court. People with special circumstances do not readily appeal and therefore, agencies are not aware that special circumstances exist until enforcement action has begun. The five agencies reviewed indicated that the level of special circumstance appeals were generally low (1 122 or less than 1 per cent of the total appeals). There had, however, been a noticeable increase over the past two years.
- upon enforcement order. Revocation of an enforcement order can be sought by:
 - the agency
 - the person against whom the order has been made (the offender).

If the order is revoked, the matter is referred back to the agency and then to court.

Assessing special circumstance appeals

Our findings indicate that review officers are not sufficiently aware of what constitutes 'special circumstances' or what is required in assessing and processing such claims.

The audit found:

- agencies incorrectly classified appeal grounds as 'special circumstance' when they were not—*City of Greater Geelong (Geelong), Port Phillip, Stonnington, VicPol*
- over 76 per cent of special circumstance appeals (or 751 cases) were denied by VicPol. The significant level of appeals denied for this unique cohort warrants further review as it is at variance with the *Attorney-General's 2006 Guidelines* and the intent of the Act.

- special circumstance appeals that were denied were not always referred to court. A VicPol report indicated that 9.5 per cent of denied special circumstance appeals were referred to court. The audit review of a sample (67 cases) showed that on-the-spot and toll way infringements were referred to court, however, 19 per cent of traffic camera based denials (four cases of 21 reviewed) had not been referred to court as required by the legislation.

Special circumstance offender program

The objective in referring special circumstance matters to court is to give the offender access to individual consideration of their circumstances by a Magistrate. In addition, the Magistrates' Court's Enforcement Review Program is available for persons suffering from mental, addictive or accommodation problems and who have outstanding fines. It is only available if an enforcement matter is referred to the program by the Infringements Court. The program is a part of the Melbourne Magistrates' Court and assists in finding community resources to address individual's special needs.

We found that Ballarat often abandoned the prosecution of cases as they did not have the time and resources to travel to Melbourne, especially when there is little prospect of recovery of the penalty or costs. When the council does not attend, the matter is struck out by the court and the offender does not access the program. This situation may be indicative of other councils outside the metropolitan area.

Conclusion

The recognition in the Act of special circumstances as a ground for seeking a review is a critical change and aims to filter vulnerable people out of the infringements system. The high level of special circumstance appeals denied by VicPol indicates that it is not interpreting the legislation and the *Attorney-General's 2006 Guidelines* correctly.

People with special circumstances who receive infringements need to be made more aware about their rights and the options for internal review.

Several systemic and operational practices diminish the effectiveness of diverting offenders with special circumstances from the infringements system. For example, the lack of direct access for people with special circumstances in regional areas to the court assistance program is a disincentive and impedes the intended operation of the Act.

Recommendations

- 5.3 Enforcement agencies should develop, in consultation with the Department of Justice, guidelines that clearly articulate operational processes consistent with legislative requirements for appeals claiming special circumstances.
- 5.4 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.
- 5.5 The Department of Justice should review the provision of services to people with special circumstances in regional centres.

Referring cases to council for review

Both Port Phillip and Stonnington councils outsource their internal review functions. The contractor is required to refer certain appeals to council for review. Such cases include non-routine and complex appeals not catered for in council's decision matrix such as: appeals by staff, claims of special circumstances or compelling compassionate grounds, or where there is concern about an issuing officer's conduct. It is appropriate that councils have a greater degree of involvement in these cases.

The contractor did not routinely refer the specific cases to council as required. Figure 5D provides an example.

Figure 5D
Appeal not referred to council for review

An appellant with an intellectual disability was infringed for being 'stopped in a no-stopping zone' and appealed on the grounds that special circumstances existed. Medical reports confirmed that the appellant's disability made it difficult for them to properly assess situations when in distress.

The appeal was initially denied without referring the appeal to Council. The appellant contacted the review officer to request further consideration and the notice was withdrawn, without council consultation.

Source: Victorian Auditor-General's Office review of agency files.

The failure of the contractor to refer cases to council may impact on the objectivity, impartiality and consistency applied to the review of specific appeals. The results also indicate a lack of awareness by the contractor of council requirements and raises concerns about the effectiveness of council's quality assurance processes (refer part 6 of this report for more comment).

Verification of appellant claims

The *Attorney-General's 2006 Guidelines* state, 'to help ensure the integrity of the review process, applications must be determined with reference to the written application and wherever possible, to any statement provided by the applicant and any other evidence'.

We found that some councils and VicPol review staff did not accurately or sufficiently consider the facts of the appeal or information provided before making their decisions (refer Figure 5B for agency details). Figure 5E outlines examples of council practices in assessing information submitted by appellants and how outcomes for relatively similar circumstances differed.

Figure 5E
Verification of appellant claims

<p>1. An appellant stated the infringement notice had been issued in error as they were in a different street with a fully paid ticket at the time of the offence (3:43 pm). The parking ticket provided as evidence by the appellant showed it was purchased (for \$1) on the same day as the offence but at 3:52 pm and in a different but nearby street.</p> <p><i>Despite the fact that the evidence presented did not substantiate the appellant's claim, the infringement was withdrawn with warning.</i></p> <p>2. An appellant claiming exceptional circumstances due to the illness of a passenger provided contact details for a doctor for confirmation. Internal review records show that a phone call was made to the appellant for verification and not the doctor before the infringement was withdrawn.</p> <p><i>Council records do not justify the withdrawal of the infringement notice.</i></p>
<p>Case examples 3 and 4 are from the same council.</p> <p>3. A driver stopped in a loading zone to purchase personal items—infringement notice was withdrawn.</p> <p>4. A driver stopped in a loading zone to drop off work papers—infringement notice upheld.</p>
<p>Case examples 5 and 6 are from the same council.</p> <p>5. An appellant overcome by dizziness and nausea stopped in a 'no-stopping area' to use the facilities of a commercial premise. The review officer requested evidence to substantiate the appellant's claim of illness. A doctor's report was provided stating that the symptoms detailed in the appeal were consistent with the condition of the appellant. The infringement was subsequently withdrawn. <i>This decision complied with council guidelines.</i></p> <p>6. An appellant infringed for being 'stopped in a truck zone' called council two hours after the infringement to explain that due to severe morning sickness, she was incapable of controlling her car and needed to stop. She was advised she could appeal and to obtain medical documentation to substantiate the claim of illness. A medical certificate was provided and confirmed the appellant's condition. The infringement was upheld and the appellant notified that truck zones are strictly enforced by council so that heavy vehicles have access to parking when servicing local businesses.</p> <p><i>The appellant did not pay the fine and council sought to have the case prosecuted in the Magistrates' Court.</i></p>

Source: Victorian Auditor-General's Office review of agency files.

Incorrect decisions may result if an appellant's claims are not consistently and accurately assessed. Leniency is then provided to some appellants over others.

Appeals can only be accurately and consistently assessed if staff have guidelines that they know how to use.

Councils have indicated that attention will be paid to these areas in the future.

Adherence to agency decision guidelines

Agencies' decision guidelines help ensure consistency and equity in assessing appeals. The guidelines aim to ensure that like situations are treated in the same way and that there are fair outcomes for appellants.

We found that routinely, internal review decisions on appeals and withdrawals were not in accordance with council decision guidelines (and to a lesser extent, VicPol guidelines). There was also no record of the reason for the deviation from guidelines and some enforcement agencies were unable to demonstrate that its review staff had performed all relevant checks required, such as checking whether the offender has a prior infringement history or, that the meter was faulty, at the time the review was done.

Discussions with council staff indicated that this was likely due to:

- agency decision guidelines not being up-to-date
- review staff applying undocumented 'established local practices'
- online checks of information such as an offender's infringement history not being noted in the internal review file
- streamlining of agency processes which had reduced the recording of information gathered during the internal review process
- a failure to understand the importance of the need to make and keep full and accurate records of decisions taken as required by the *Public Records Act 1973*
- the high turnover of contractor review staff.

Figure 5F outlines some case examples of agency decisions that did not comply with decision guidelines or where the audit could not confirm review staff compliance with agency guidelines in the conduct of internal reviews.

Figure 5F
Compliance with decision guidelines

Case examples 1 and 2 are from the same council.

1. The appellant claimed to have been unaware that their disability permit had expired after receiving an infringement. They appealed and provided evidence of their new permit. The infringement notice was withdrawn and a warning issued in line with council guidelines.

Council guidelines state that to be eligible for a withdrawal of the notice, the appellant must have no infringement history. The internal review records did not indicate that council had reviewed the appellant's infringement history before withdrawing the infringement notice.

2. An appellant claimed he was unaware that his disability permit had expired after receiving an infringement. He provided evidence of his new permit to council and council withdrew the infringement notice outright. *This was not in compliance with council guidelines. A warning is required to be issued in these circumstances.*

The review records did not indicate why a warning was not issued in compliance with council guidelines.

3. Appellant was booked for failing to 'pay and obey the parking signs'. The appellant did not deny the offence and indicated that he overstayed his time due to business reasons. The infringement was withdrawn with warning.

Council guidelines indicate the appeal should have been denied and the decision to issue the notice upheld.

4. Appellant was infringed for 'stopping in a loading zone'. The infringement was 'upheld'. The appellant provided documentation and photographs to support his claim that the infringement notice issued was in error (and should not have been issued). The offence committed was actually 'stayed too long in a loading zone.' The council's parking officer's notes also showed that the infringement notice was incorrect and therefore issued in error. The appeal was denied.

Council guidelines indicate that where notices are issued in error, appeals should be accepted and the infringement notice withdrawn.

Case examples 5, 6 and 7 are from the same agency. All appellants were booked for failing to obey traffic lights. These appeals are judged on their merits as multiple factors need to be considered. VicPol guidelines state that warnings are not to be issued for this 'major offence' as it has safety consequences.

5. Appellant A: claimed that they thought they heard an emergency vehicle siren, causing them to move forward and trigger the traffic camera. The appellant stated that as they did not fully enter the intersection technically they had not committed an offence. Photos indicated that this was the case and the infringement was withdrawn with warning. *This decision complies with VicPol guidelines.*
6. Appellant B: claimed they did not technically commit the offence as they did not fully enter the intersection. Photos indicated that this was not the case, but the infringement was withdrawn with warning. *This decision does not comply with VicPol guidelines and there was no reason recorded to explain the deviation from the guidelines.*
7. Appellant C: admitted the offence and requested leniency on the basis of a good driving history. The infringement was withdrawn with warning. *The decision does not comply with VicPol guidelines and there was no reason recorded to explain the deviation from the guidelines.*

Source: Victorian Auditor-General's Office review of agency files.

Conclusion

The level of non-compliance with decision guidelines in agencies reviewed is concerning. Agency guidelines are being over-ridden by internal review staff without justification. Checks by review staff that the assessment of appeals complied with agency requirements were also not being recorded by review staff.

This resulted in inconsistent decisions in like cases and outcomes that differed from decision guidelines sanctioned by agency management.

The integrity of the review process is questionable if the assessment is not adequately documented and, if decisions that do not align with agency guidelines are not justified.

Recommendations

5.6 Enforcement agencies should 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.

5.7 Enforcement agencies should 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.

Unknown drivers

During 2007–08 over 1 550 infringements were withdrawn because owners claimed they didn't know who was driving their vehicle at the time of the offence.

VicPol's Penalty Review Guidelines state that the vehicle's owner should provide documentation to demonstrate that all avenues of investigation have been exhausted prior to the submission of an 'unknown user statement' and withdrawal of the infringement notice.

In practice, VicPol advised the identity of the infringed driver is not able to be determined on many occasions. Consequently, the infringement notice must be withdrawn.

In some jurisdictions, strict liability is enforced and the owner of the vehicle is held responsible for the payment of the infringement notice. The audit was advised that this matter has been the subject of ongoing discussions between VicPol and the Department of Justice (DOJ) for the past 18 months with no definitive action to resolve this issue.

Conclusion

Infringement notices are being withdrawn as VicPol are not able to determine the identity of the infringed driver.

A more efficient and effective approach to these cases is required.

5.3.3 Withdrawing notices in the field

A significant level of withdrawals of infringement notices by both councils and VicPol are due to issuing errors. These included incorrect offences or vehicle details and drivers returning to the vehicle with a parking ticket or change. In these cases, the infringement notice is 'cancelled' rather than withdrawn. For example, the notice is not issued, it is not affixed to the windscreen or it is removed shortly after affixing it. Issuing errors or cancelled infringements represent a significant and increasing proportion of agency withdrawals, which are a waste of effort. Figure 5G shows the level of withdrawals by the five enforcement agencies due to issuing error or cancellation.

Figure 5G
Discretionary withdrawals due to issuing error or cancellation by enforcement agency, 2007–08

Enforcement agency	Discretionary withdrawals ^a (no.)	Issued in error or cancelled (%)
City of Ballarat	705	25.8
City of Greater Geelong	906	66.3
City of Port Phillip	1 481	72
City of Stonnington	1 663 ^b	99
Victoria Police	8 085	54 ^c

Notes: (a) Includes all infringement types but predominantly relate to parking infringements. These figures are current as at 1 December 2008.

(b) Council calls these withdrawals, 'voids' and in many cases inputting errors are detected by officers prior to the notice being served.

(c) Estimate based on the audit sample reviewed.

Source: Enforcement agencies and the Department of Justice.

This also was an area where there was considerable non-compliance with agency processes and guidelines. The withdrawal of notices in the field generally has less procedural rigour than internal review assessments. The decision to withdraw a notice is initially made by the issuing officer who is responsible for ascertaining:

- all relevant factors are taken into account
- the decision is not biased
- there is consideration of the merits of the case
- the discretion is reasonable and compliant with agency guidelines.

VicPol and some councils require senior staff to authorise the withdrawal of the notice.

For withdrawals in the field, the audit found:

- Infringement notices withdrawn were not appropriately authorised in accordance with agency procedures and practices prior to cancellation or voiding—*Ballarat, Port Phillip, Stonnington*.
- Withdrawals by parking officers were not consistent with council's internal review guidelines. In some cases, officers withdrew infringement notices or issued warnings for offences which would have been upheld if appealed.
- Infringement notices were withdrawn following a direct approach by the recipient of the notice requesting the notice be withdrawn. There was no recorded justification for the withdrawal. This included:
 - drivers of unmarked police vehicles claiming they were on duty at the time of the offence. Direct approaches by police officers is contrary to VicPol instructions—*Ballarat, Port Phillip*
 - appellants not satisfied with prior internal review decisions to deny the appeal—*Ballarat*.
- VicPol police officers withdrew notices but did not issue withdrawal notices as required by legislation.
- A significant number of infringement notices, around 5 548, issued to interstate registered vehicles were withdrawn by councils. Most councils followed-up outstanding infringement notices to 'reminder' stage then withdrew the notice (or allowed it to become statute barred²) on the basis that it was not cost-effective to pursue. Difficulties in obtaining registration details from particular interstate authorities contributed to some council decisions not to pursue outstanding infringements. These practices were not documented by councils and raise equity issues.
- There was a lack of supporting documentation to justify the withdrawal of notices. Often the reason for the withdrawal included a brief phrase about what had occurred, for example, 'system error', 'not to proceed' or 'no offence', yet did not explain why—*Ballarat, Geelong, Port Phillip, VicPol* (at station level). In other cases, withdrawals were not objectively based—*Ballarat, Port Phillip*. Figure 5H outlines examples of reasons for the withdrawal of notices without supporting evidence.

² Unpaid infringement not filed with the Magistrates' Court within 12 months of the offence date or, not registered with the Infringements Court for enforcement within six months become statute barred and cannot be pursued.

Figure 5H
Reasons for the withdrawal of infringement notices

- Person begged for mercy—*Port Phillip*
- Blood delivery vehicle—*Port Phillip*
- Council vehicles driven by staff—*Ballarat, Geelong, Port Phillip*^a
- Council contractors on council business—*Ballarat, Geelong, Port Phillip*
- Detained in doctors—*Ballarat*
- On advice from [Council manager]—*Ballarat, Geelong*
- Requests from a business not to infringe patrons—*Port Phillip*^b

Notes: (a) Some withdrawals occurred notwithstanding these councils having a policy outlining staff responsibility for fines while driving council vehicles.

(b) Council has a private parking agreement with the business. This is now subject to review by council.

Source: Victorian Auditor-General's Office review of agency files.

Conclusion

This area was problematic for all councils reviewed. Excessive discretion over and above council guidelines was exercised and withdrawal of notices occurred in situations that were not sanctioned by council and therefore, incorrect and inconsistent withdrawal decisions.

In numerous cases, the reason for withdrawal was inappropriate, not objectively based, or not recorded.

VicPol officers infringed in certain areas are not complying with guidelines in seeking to have their infringement notices withdrawn and at station level, adequate records to justify withdrawals of notices are not maintained.

In the absence of appropriate records and consistent guidelines, agencies could be criticised for inappropriately withdrawing notices.

Recommendation

- 5.8 Victoria Police should better educate staff of the procedural requirements in seeking an exemption from complying with the road rules, and proactively monitor their compliance.

5.4 Information provided to the public

A primary purpose of the new infringements system is to improve the community's rights and options and to better protect the vulnerable who get caught up in the system. The community should be informed about how the new system works, their rights, options and obligations and the agency's powers and obligations. Such awareness has the potential to improve the efficiency of agencies' internal review processes.

We examined the information provided by agencies to the community about the infringements system and a person's right to request an internal review.

The right to internal review is written on the back of infringement notices as required by the regulations. Other ways to raise awareness included:

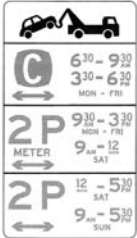



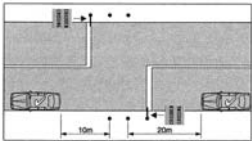
- agency websites. This information was of varying quality and could be improved by providing more information about how to appeal, the available eight outcomes of an appeal (the few common ones were noted by agencies only), the nature and potential consequences of an internal review, referring to relevant sections of the Act and removing references to outdated terms such as 'penalty notices' and 'cautions'.
- brochures such as the Victoria Legal Aid service's: *Fines—Your options for dealing with fines*.
- articles in community newsletters about local laws, parking issues, responsible pet ownership and fire prevention.

Stonnington's website provides practical advice on how to appeal an infringement in certain recurrent situations and includes information on the interpretation of the road rules and signs, to avoid infringement. DOJ also has a comprehensive website. Councils generally considered that a consumer guide for the infringements system would be useful to display at agency service centres, and that DOJ was in the best position to develop and publish such a guide.

Geelong has been active in educating the community about offenders' rights to internal review. Council credits the 28 per cent reduction in appeals in 2007–08 to enhancements in the internal review process and improved community awareness activities. The council has:

- developed an internal review appeal template for the public in making appeals with reply-paid envelopes
- an on-line internal review application form on its website
- developed a brochure, *Parking, the Road Rules and You*, refer to Figure 5I. It gives detailed information that should be considered before requesting an internal review. Such a brochure could be further developed and issued across the sector as better practice information.

Figure 5l
Extracts from Geelong’s brochure: *Parking, the Road Rules and You*

Common situations	Examples of appeals that would not be considered valid reasons for withdrawal of parking infringements
	<p>Signage</p> <ul style="list-style-type: none"> • Poor visibility due to weather. • Not noticing a sign. • Reading only part of a multi-panel sign. • Forgetting to read the sign because you were concentrating on other things. • Being new to the area and unfamiliar with the restrictions. This applies regardless of whether the driver is from Victoria, interstate or overseas.
	<p>Permit parking</p> <ul style="list-style-type: none"> • Parked in a permit zone by mistake. • Failing to display a permit.
	<p>No Stopping</p> <ul style="list-style-type: none"> • I only stopped to let my passenger out. • I only stopped for 2 minutes. <p>No Parking</p> <ul style="list-style-type: none"> • I only left my vehicle to get my passengers or retrieve the goods.
	<p>Disabled parking</p> <p>I hold a green-on-white permit, but there were only blue-on-white parks available.</p>
	<p>Childrens’ crossing</p> <p>I wanted to drop my children as close as possible to the gate.</p>

Source: Extracts from the Geelong brochure: *Parking, The Road Rules and You*.

Conclusion

Agencies have a responsibility to provide accurate and accessible information to the community about local laws, council requirements and the rights to internal review. More could be done by all enforcement agencies to inform the public of their rights and obligations and the internal review process. Such information provision will make the internal review process more efficient and effective for both agencies and the community and is key to a fairer infringements system.

Recommendation

- 5.9 Enforcement agencies should 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.



6 Quality assurance and analysis by agencies

At a glance

Background

A rigorous quality assurance (QA) program is required to avoid inappropriate and inconsistent appeal decisions.

Information from agencies' infringements systems should be accurate and used to evaluate and improve the quality of practices and services.

Findings

- The overall effectiveness and adequacy of agencies' QA processes are variable. The high level of deviation from established agency requirements and the extent of discretion exercised to withdraw notices means infringement notices are being inappropriately withdrawn. Existing QA measures are failing to detect and address this.
- Councils that have contracted out key aspects of the administration of their infringements systems need to constantly monitor that value is being obtained.
- The Victoria Police audit function is a valuable element of its QA program but needs development to achieve greater focus on high risk and core compliance areas.
- Establishing indicators and periodically measuring performance is needed to enable more reliable monitoring and assessment of agency performance.
- The incidence of error in agency data is unsatisfactory and leads to mis-statement of overall infringement details and distorts any analysis undertaken.

Recommendations

- Enforcement agencies should:
 - in consultation with the Department of Justice, develop a framework for measuring the performance of their infringements systems
 - confirm performance information reported to ISOU is accurate and reliable
 - analyse infringements information with a view to achieving potential improvements in appeals and withdrawals processing.
- Victoria Police should assess the accuracy of its 2007–08 internal review statistics and, if necessary re-submit the data to the department for analysis.

6.1 Quality assurance and analysis

6.1.1 Background

Ongoing monitoring and analysis enables an agency to assess success in meeting its stated objectives, drives performance improvement and provides accountability to management and the community for its activities.

We examined whether agencies:

- had established quality assurance processes (QA) to monitor the extent to which internal review and infringement withdrawal practices complied with the *Infringements Act 2006* (the Act) and agency guidelines
- analysed information from the appeals process and withdrawals to inform continuous improvement.

The results are presented in Figure 6A.

Figure 6A
QA and analysis—Scorecard ^a

Criterion/Agency	City of Ballarat	City of Greater Geelong	City of Port Phillip	City of Stonnington	Victoria Police
Quality assurance processes in place	✘	✓	✓	✓	✓
Management analysis of data to inform continuous improvement	✓	✓	✓	✓	✓

Note: (a) Legend: ✘—No; ✓—Yes.

Source: Victorian Auditor-General's Office.

6.2 QA processes

6.2.1 Background

All agencies but one had QA processes.

A rigorous QA program is critical to avoid inappropriate and inconsistent appeal decisions. Agencies' QA processes are shown in Figure 6B.

Figure 6B
QA processes

<p>Internal review/appeals processing:</p> <p><i>City of Greater Geelong</i></p> <ul style="list-style-type: none"> • progress of appeals received but not finalised is tracked on a weekly basis • quarterly reporting to the audit committee on infringement and appeal statistics/trends. <p><i>City of Port Phillip, City of Stonnington</i></p> <ul style="list-style-type: none"> • daily review of contractor’s internal review decision recommendations to council • re-assessments or secondary reviews by council (where the appellant is not satisfied) • monthly audits by council of internal review processing • monthly reporting against predetermined indicators such as time taken to process appeals and manage correspondence • monthly contractor meetings • annual and quarterly quality and compliance audits. <p><i>Victoria Police</i></p> <ul style="list-style-type: none"> • timeliness of appeals processing, including specific review of cases approaching statutory time limit • specific audit function that reviews appeals processing and compliance with VicPol guidelines • review officers identify spikes in appeal numbers at specific locations. This may potentially be an issue with the placement or functionality of a speed camera. <p>Withdrawals in the field (outside the internal review process):</p> <p><i>City of Greater Geelong, City of Ballarat</i></p> <ul style="list-style-type: none"> • periodic review of the productivity of parking officers and the level of ‘officer errors’ in issuing notices. <p><i>City of Port Phillip</i></p> <ul style="list-style-type: none"> • monthly reporting of the type and number of errors made by parking officers and discussion with relevant parking officers. <p><i>City of Stonnington</i></p> <ul style="list-style-type: none"> • details of voided infringements are used for officer performance review and training.

Source: Enforcement agencies.

Notwithstanding the QA undertaken by agencies, especially for contracted arrangements as outlined above, the overall effectiveness and adequacy of agencies’ QA processes were variable. The following issues were noted:

- Evidence of council monitoring was not maintained. For example, each day council selectively reviews the contractor assessments and approves the internal review decisions for notification to the appellant. Evidence of the cases reviewed is not recorded—*Port Phillip, Stonnington*. The results of secondary reviews were also not recorded—*Port Phillip*.

- Performance indicators largely focused on quantity of notices or appeals processing turnaround with only limited measures to assess quality—*Port Phillip, Stonnington*.
- Although performance issues are raised at monthly contract meetings and provided to the contractor to inform training programs, there has been little or no improvement in appeals processing such as a reduction in the level of reassessments required to be undertaken by council staff. For example, council re-assess around 10 per cent of appeals given appellants' dissatisfaction with the internal review. Council overturns the contractor's decision in around a third of the cases. This is an increase from 21 per cent three years ago. A key factor is a failure by the contractor to obtain all relevant information from the appellant before making a decision—*Stonnington*.
- A lack of rigorous contractor monitoring and feedback by council—*Port Phillip*.
- Little, if any, quality assurance of infringement notices withdrawn in the field by its parking officers—*Port Phillip*. Where parking officers are provided by a contractor, council does not pay for 'voided' or withdrawn infringements hence little attention is paid to this area by council—*Stonnington*
- The VicPol auditor reviews 100-110 appeals daily and reports individual results to management and the relevant review officer. There is no overall summary of the audit results to draw out systemic issues for attention.

For other councils, QA practices were informal and unstructured.

Most councils monitored the extent to which appeals were processed within 90 days, the statutory period beyond which an infringement notice is deemed withdrawn. While data indicates internal reviews are processed in a timely manner, the audit found that timely processing has been at the expense of rigour, accuracy and overall quality.

Councils advised that performance issues in appeals and withdrawals processing were related to high administrative staff and parking officer turnover, the difficulty in recruiting trained staff and the need to train new staff.

Port Phillip is developing a training framework to identify core competencies for its parking officers. Assessment of staff against this framework is planned to identify skills gaps and training and development options to better assure staff are appropriately qualified. This task was planned for August 2008 but at the date of the audit, development of the framework by council had not commenced.

6.2.2 Performance indicators

Councils with outsourced infringements administration had performance indicators for activities or outputs. There were very few indicators to assess the quality of council's appeals process. Other councils and VicPol had no performance indicators.

Potential performance indicators include:

- appellant satisfaction with agency appeals processing
- average time taken to process appeals

- appeals not processed within the statutory time limit of 90 days
- level of notices that have become statute barred
- withdrawals due to officer error
- appeals referred to council for further review
- appeals where council confirms/overturns contractor decision
- level of cases where agency decision/withdrawal guidelines complied with
- level of cases correctly classified.

Council files

The audit specifically requested all documentation for specific cases for review. Two councils provided substantial additional file-specific documentation (259 and 80 documents) following completion of the audit which they stated they 'had not known about' (*Port Phillip*) or had not initially provided (*Stonnington*). This evidenced a lack of understanding of their systems and a failure to coordinate within the agency.

Conclusion

Proper discretionary withdrawals, assured by a robust QA program is core to avoiding inappropriate withdrawals and demonstrating decisions are fair and appropriate. With high staff turnover, comprehensive guidance and a strong QA program are even more critical.

The overall effectiveness and adequacy of agencies' quality assurance processes are variable. The high level of deviation from established agency requirements and the extent of discretion exercised by council parking officers to withdraw notices for reasons outside of the guidelines, means infringement notices are being inappropriately withdrawn. Existing quality assurance measures are failing to detect and address this.

Councils that have contracted out key aspects of the administration of their infringements systems need to constantly monitor that value is being obtained and that information flows do not become fragmented.

VicPol's audit function is a valuable element of its quality assurance program but needs development to achieve greater focus on high risk and core compliance areas.

Establishing indicators and periodically measuring performance is needed to enable more reliable monitoring and assessment of agency performance in administering infringements systems.

Agencies should establish reliable records management systems so complete information is available to facilitate reliable decision-making and to enable effective monitoring and review activities.

Recommendation

- 6.1 Enforcement agencies, in consultation with the Department of Justice, should 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 Act.

6.3 Management analysis

6.3.1 Background

Information from agencies' infringements systems should be accurate and used to evaluate and improve the quality of agency practices and services.

6.3.2 Accuracy of information

In the five agencies audited, deficiencies with the integrity and accuracy of infringement and appeal data were noted:

- information on non-internal review withdrawals were not included in data provided to DOJ
- inconsistencies between detailed reports and summary reports
- incorrect information for 2007–08 was initially reported to DOJ
- other specific errors and issues in agency data included:
 - VicPol have overstated their internal review statistics, overstated review withdrawals and understated discretionary withdrawals as items were incorrectly classified as internal reviews, for example correspondence in relation to the nomination of drivers. The audit of selected internal review files showed 34 per cent of files had been categorised incorrectly.
 - secondary reviews were counted as primary internal reviews instead of 'discretionary reviews'—*Port Phillip, Stonnington*.
 - there was 'double counting' of individual appeals, up to four entries for one appeal, recorded in activity reports where councils outsourced. Although the full extent of the double counting was not determined, the audit identified 440–500 multiple entries—*Port Phillip, Stonnington*.
 - appeal statistics included 3 600 items which had already been counted elsewhere—*Stonnington*.

Stonnington advised that when the Act commenced, there was close liaison between its contractor and DOJ so that report parameters complied with the regulations. DOJ advised the audit that notwithstanding the early consultation with agencies, the contractor's report program has not captured the required information. DOJ is working with the contractor, which provides similar services to nine other councils, to correctly re-program reporting requirements.

VicPol issues more than 2.2 million infringement notices each year or around 55 per cent of all infringements. The Victorian Infringement Management System (VIMS) interfaced with some smaller systems, records the infringement details for VicPol and a further six enforcement agencies. VIMS was developed around 10 years ago and although enhanced in the lead up to the commencement of the Act, it does not have the functionality to effectively manage infringements as required under the new infringements legislation. VIMS is currently being re-built by DOJ and should be completed in 2010.

6.3.3 Classification of appeal decisions

Agencies are required by legislation to record the internal review ground on which the appeal decision was made. The categories include: 'contrary to law', 'mistaken identity', 'exceptional circumstances' or 'special circumstances'. Classification of appeals is important as it affects who does the internal review. This information is provided to DOJ and should be used to assess how well the system is performing and to identify systemic issues requiring attention. Agencies should also use this information to inform continuous improvement in areas such as training of review officers and issuing officers.

All agencies reviewed had incorrectly classified appeal decisions in a significant number of cases as shown in Figure 6C. This indicates agency review officers do not understand the review categories and that the appeals data provided to DOJ is inaccurate.

All agencies indicated that additional training in this area will be provided.

Figure 6C
Misclassification of appeal decisions—Scorecard

Criterion/Agency	City of Ballarat	City of Greater Geelong	City of Port Phillip	City of Stonnington	Victoria Police		
					VicPol ^a	TCO ^a	TEO ^a
Extent to which appeal decisions were misclassified	60%	46%	48%	36%	46%	35%	71%

Note: (a) 'VicPol' relates to on-the-spot fines; TCO refers to Traffic Camera Office photographic detection device offences; TEO refers to Toll Enforcement Office offences on toll roads.

Source: Victorian Auditor-General's Office review of agency files.

6.3.4 Management analysis

All councils indicated that operational information arising from the internal review informed infrastructure programs such as meter maintenance and upgrades, signage replacement and staff training and development.

VicPol does not routinely analyse infringement withdrawal or internal review data to identify issues requiring attention or to inform continuous improvement. VicPol said that the number of applications for internal review are not necessarily symptomatic of an issue but can be influenced by the media and other factors such as a 'group-think' attitude. When considering fixed camera placement or re-location however, offending rates are analysed and considered.

Analysis of internal review data to improve the standard of agencies' internal review practice should be performed in the following areas:

- the reasons appeals processing timelines are not achieved
- trends in the level of withdrawals on certain grounds, i.e., contrary to law or exceptional circumstances
- the reasons why notices must be withdrawn because they 'effectively run out of time' and become statute barred
- the extent to which the agency withdrew infringement notices upon the infringement court's revocation of enforcement action and why such action was not taken earlier by the agency, when an internal review was undertaken.

This information should inform the allocation of agency resources, review of issuing officer practices, production of community awareness material, changes to agency decision guidelines, training of review staff and identification of industry issues requiring consideration by DOJ and other enforcement agencies.

Conclusion

Effective monitoring of the state's infringements systems requires accurate information about whether agencies are complying with the law and the *Attorney-General's 2006 Guidelines*.

The incidence of error in agency data is unsatisfactory and leads to mis-statement of overall infringement details. This distorts analysis undertaken by the individual agency and DOJ.

Continuous improvement opportunities to improve processes, operational efficiency and processing quality would result if agencies did more analysis to inform their monitoring and decision-making.

Recommendations

6.2 Enforcement agencies should:

- strengthen their quality assurance processes to confirm that performance information reported to ISOU is accurate and reliable
- analyse infringements information with a view to achieving potential improvements in issuing infringements and appeals and withdrawals processing.

6.3 Victoria Police should assess the accuracy of its 2007–08 internal review statistics and, if necessary, re-submit the data to the Department of Justice for analysis.

Appendix A.

Enforcement agencies issuing infringement notices in 2007–08

Enforcement agencies issuing infringement notices in 2007–08

Victoria Police (3 agencies):

Victoria Police
Toll Enforcement Office
Traffic Camera Office

Local councils (79):

Alpine Shire Council	Mansfield Shire Council
Ararat Rural City Council	Maribyrnong City Council
Ballarat City Council	Maroondah City Council
Banyule City Council	Melbourne City Council
Bass Coast Shire Council	Melton Shire Council
Baw Baw Shire Council	Mildura Rural City Council
Bayside City Council	Mitchell Shire Council
Benalla Rural City Council	Moira Shire Council
Boroondara City Council	Monash City Council
Brimbank City Council	Moonee Valley City Council
Buloke Shire Council	Moorabool Shire Council
Campaspe Shire Council	Moreland City Council
Cardinia Shire Council	Mornington Peninsula Shire Council
Casey City Council	Mount Alexander Shire Council
Central Goldfields Shire Council	Moyne Shire Council
Colac-Otway Shire Council	Murrindindi Shire Council
Corangamite Shire Council	Nillumbik Shire Council
Darebin City Council	Northern Grampians Shire Council
East Gippsland Shire Council	Port Phillip City Council
Frankston City Council	Pyrenees Shire Council
Gannawarra Shire Council	Queenscliffe Borough Council
Glen Eira City Council	Southern Grampians Shire Council
Glenelg Shire Council	South Gippsland Shire Council
Golden Plains Shire Council	Stonnington City Council
Greater Bendigo City Council	Strathbogie Shire Council
Greater Dandenong City Council	Surf Coast Shire Council

Enforcement agencies issuing infringement notices in 2007–08	
Greater Geelong City Council	Swan Hill Rural City Council
Greater Shepparton City Council	Towong Shire Council
Hepburn Shire Council	Wangaratta Rural City Council
Hindmarsh Shire Council	Warrnambool City Council
Hobsons Bay City Council	Wellington Shire Council
Horsham Rural City Council	West Wimmera Shire Council
Hume City Council	Whitehorse City Council
Indigo Shire Council	Whittlesea City Council
Kingston City Council	Wodonga City Council
Knox City Council	Wyndham City Council
Latrobe City Council	Yarra City Council
Loddon Shire Council	Yarra Ranges Shire Council
Macedon Ranges Shire Council	Yarriambiack Shire Council
Manningham City Council	
Government agencies (9)	
Department of Transport	Melbourne Airport
Department of Primary Industries	Melbourne Market Authority
Department of Sustainability and Environment	Mt Buller & Mt Stirling Resort Management Board
Falls Creek Alpine Resort Management Board	Mt Hotham Alpine Resort Management Board
	Victorian Electoral Commission
Education (11 agencies)	
Box Hill Institute of TAFE	North Melbourne Institute of TAFE
Chisholm Institute of TAFE	R.M.I.T University
Deakin University	Swinburne University of Technology
La Trobe University (Bendigo)	University of Ballarat
Monash University (Berwick, Caulfield, Clayton, Frankston campuses)	Victoria University of Technology
	Wodonga Institute of TAFE
Other	
Industry regulation agencies (7):	Health (5 agencies):
Consumer Affairs	Bayside Health
Energy Safe Victoria	Geelong Hospital
Environment Protection Authority	Mornington Peninsula Health
Marine Safety Victoria	Southern Health Network
Plumbing Industry Commission	St Vincent's Hospital
Vic Roads	
Victorian Taxi & Tow Truck Directorate	

Source: Department of Justice, Infringements System Oversight Unit.

Appendix B.

Number and type of infringement notices and internal reviews, 2007–08

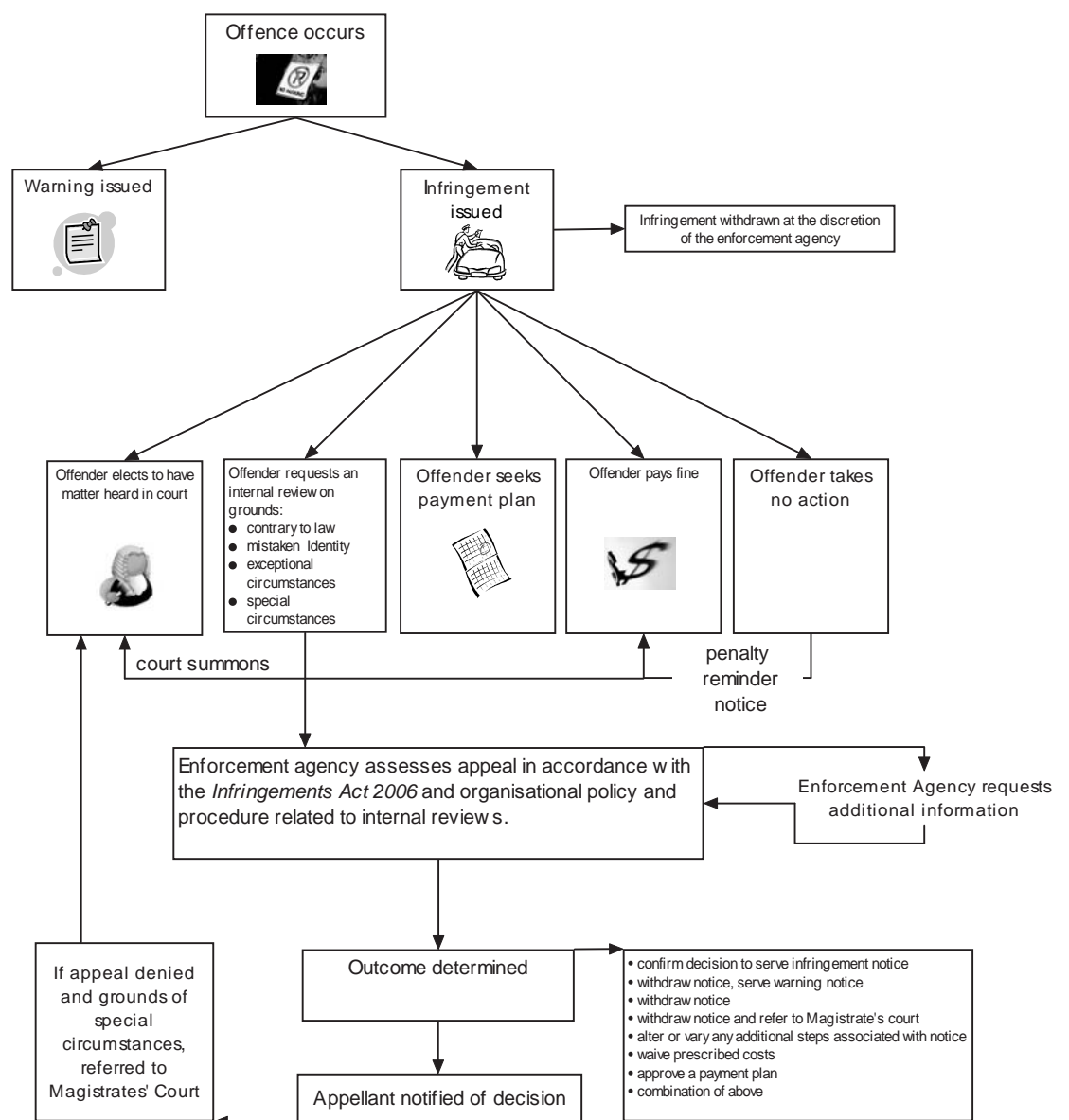
Enforcement agency	Offence category	Infringement notice issued (No.)	Internal reviews undertaken (No.)
City of Ballarat	Motor vehicle parking	14 268	
	Animals	367	
	Local laws	102	
	Other	644	
Ballarat Total		15 381	1 095
City of Greater Geelong	Motor vehicle parking	51 998	
	Animals	1 897	
	Other	489	
Geelong Total		54 384	6 147
City of Port Phillip	Motor vehicle parking	169 306	
	Animals	400	
	Environment and pollution	17	
	Local laws	668	
	Other	44	
Port Phillip Total		170 435	19 066
City of Stonnington	Motor vehicle parking	167 087	
	Animals	103	
	Local laws	133	
	Other	22	
Stonnington Total		167 345	12 663

Enforcement agency	Offence category	Infringement notice issued (No.)	Internal reviews undertaken (No.)
Victoria Police			
General policing	Consumer safety/Industry regulation	4 359	
	Environment/Pollution	1 952	
	Excessive speed	28 481	
	Marine	2 423	
	Parking	27 060	
	Public Transport	7 872	
	Traffic	394 687	
	Other	176	
	Total General policing	467 010	21 291
Traffic Camera Office	Excessive speed	8 921	
	Traffic	1 275 441	
	Total TCO	1 284 362	81 817
Toll Enforcement Office	Traffic offences	508 112	38 434
Victoria Police Total		2 259 484	141 542

Source: Department of Justice, Infringements System Oversight Unit.

Appendix C.

Infringement and internal review process



Source: Victorian Auditor-General's Office.

Appendix D.

Better practices—agencies' procedures

The following examples of better practices in procedural guidance were noted.

Examples of better practices in procedural guidance

- Standard form letters for use in rejecting applications for internal review. The letters cover 50 recurrent situations, for example, stopping in a no-standing zone and parking longer than the metered time—*City of Greater Geelong*.
- Proforma medical certificates to assist health services provide appropriate and adequate supporting evidence for appellants claiming medical emergency—*City of Greater Geelong*.
- Templates for applications for internal review—*City of Greater Geelong, Victoria Police*.
- Specially designed plastic envelopes issued with permits that attach to the dashboard—*City of Greater Geelong*.
- *City of Stonnington's* comprehensive code of conduct provides useful guidance in:
 - the need to consider whether or not a prosecution is likely to be successful
 - when and how warnings are to be issued
 - the issue of infringement notices in routine situations including:
 - **where a driver is in the vehicle**, caution and give the opportunity to move the vehicle, if cooperative, no infringement issued.
 - **where a person is asleep in a vehicle**, make reasonable efforts to arouse the person so as not to cause a confrontation. If the person cannot be aroused, contact a supervisor for the police to be called. Do not issue an infringement.
 - in the interests of public safety, **armed security vehicles** are not booked while engaged in security related business.
 - **meals on wheels delivery vehicles**: Vehicles parked in a position deemed a hazard or danger to pedestrians or road users are to be issued an infringement notice. Officers may exercise some discretion and not issue an infringement notice if the duration of an offence is short and it is not safety related.
 - if **approached by a driver** to withdraw the infringement notice, politely indicate that you do not have the authority to do so.
 - allow x minutes **grace period** for time restricted parking periods of greater than one hour parking.
- The *Victoria Police* Penalty Review Guidelines are comprehensive and indicative of their lengthy experience in infringements management.

Source: Victorian Auditor-General's Office review of agency files.

Auditor-General's reports

Reports tabled during 2008–09

Report title	Date tabled
Managing Complaints Against Ticket Inspectors (2008–09:1)	July 2008
Records Management Checklist: A Tool to Improve Records Management (2008–09:2)	July 2008
Investing Smarter in Public Sector ICT: Turning Principles into Practice (2008–09:3)	July 2008
Private Practice Arrangements in Health Services (2008–09:4)	October 2008
Working with Children Check (2008–09:5)	October 2008
CASES21 (2008–09:6)	October 2008
School Buildings: Planning, Maintenance and Renewal (2008–09:7)	November 2008
Managing Acute Patient Flows (2008–09:8)	November 2008
Biosecurity Incidents: Planning and Risk Management for Livestock Diseases (2008–09:9)	November 2008
Enforcement of Planning Permits (2008-09:10)	November 2008
Auditor-General's Report on the Annual Financial Report of the State of Victoria, 2007–08 (2008–09:11)	November 2008
Local Government: Results of the 2007–08 Audits (2008–09:12)	November 2008
Management of the Multi-Purpose Taxi Program (2008–09:13)	December 2008
Results of Audits for Entities with 30 June 2008 Balance Dates (2008–09:14)	December 2008
Preparedness to Respond to Terrorism Incidents: Essential services and critical infrastructure (2008–09:15)	January 2009
Literacy and Numeracy Achievement (2008–09:16)	February 2009
Administration of the <i>Flora and Fauna Guarantee Act 1988</i> (2008–09:17)	April 2009
Access to Public Hospitals: Measuring Performance (2008–09:18)	April 2009
Management of School Funds (2008–09:19)	May 2009
The New Royal Children's Hospital—a public private partnership (2008–09:20)	May 2009
The Channel Deepening Project (2008–09:21)	May 2009
Results of Audits for Entities with other than 30 June 2008 Balance Dates (2008-09:22)	May 2009
Governance and Fraud Control in Selected Adult Educational Agencies (2008-09:23)	June 2009

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