



## No. 50 Infringement Notices: Time for Reform?

**Richard Fox**

*Australia's court system would break down if every offence or infringement resulted in a court appearance. Richard Fox points out that in Victoria 88 per cent of offences and infringements are dealt with by way of expiation or "on-the-spot" fines (which are not actually paid on-the-spot). While reducing the court burden, these alternative dispositions do raise questions about fairness.*

*Non-stigmatising offences are usually expiated as a matter of cost and convenience, and given the simplicity, become significant revenue sources for governments. New technologies make detection easier and there are continual demands for new infringements to come under the expiation system, thus widening the area of criminality.*

*Outlining arguments about the structure and process, professor Fox suggests the need for an Infringements Act and lists the features such an Act might contain.*

**Adam Graycar**  
Director

**M**otorists are familiar with "on-the-spot fines". In the course of their driving life, most will have received tickets from municipal by-law officers for breach of parking regulations, or traffic infringement notices from police for speeding, or other road safety offences. Transport authorities will have ticketed some drivers or vehicle owners for breach of licensing and registration requirements. Commercial vehicle operators will have had to contend with on-the-spot fines for offences relating to log books, excessive loads, or safety procedures. Cyclists caught riding dangerously, or not wearing an approved bicycle helmet, will also have been ticketed unless let off with a warning. Those who prefer to use public transport, but evade paying the fare, commonly find themselves the recipient of a penalty notice. Dog owners who fail to control their animals in public, or other citizens who litter the streets or pollute the environment have also been called to pay up under this procedure. A large group who are regularly invited to expiate their wrongdoing by paying a fixed monetary penalty instead of being prosecuted are those who neglect to vote at federal, State, or municipal elections.

In South Australia, since 1986, the police have had a discretion to decline to prosecute those found in possession of small amounts of cannabis in favour of issuing them with a Cannabis Expiation Notice. Business people, and those responsible for the running of companies, frequently find that a version of the on-the-spot ticket system has been applied to them when they receive penalty notices for failing to meet registration and reporting re-quirements in relation to their business entities.

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What started off as a measure confined to parking and motoring offences has expanded into many other areas of social regulation. Though popularly known as an "on-the-spot fine", a fine is never actually exacted on the spot. Legally speaking, what occurs is that the alleged offender is being invited to discharge his or her potential criminal liability in relation to the alleged offence by payment of an "infringement penalty". The allegation of the offence and the amount required to expiate it is notified by way of an infringement notice, or penalty notice. The exact terminology describing the procedure varies from State to State, but the underlying concept is the same. Not only are these arrangements becoming available for many more summary offences, but they are being coupled with additional sanctions such as the earning of "demerit points" by drivers, or the immediate loss or suspension of their licences (*see* Victoria Parliament 1994).

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### Features

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On-the-spot fines are administrative rather than judicial in nature. They are used as a means of preventing minor cases from reaching the courts. This serves the convenience of both the offender and the enforcement agency. The procedure has a number of features which enhance its utility from a criminal justice system perspective:

- Payment of on-the-spot fines may be demanded by many different enforcement authorities.
- The procedure provides a means for imposing punishment without the costs of prosecution or court resources.
- The main punishment is monetary. The returns may exceed the cost of enforcement, thus producing a profit for the enforcement agency.
- The procedure contains incentives designed to avoid a court hearing. These include a discount from the normal maximum penalty and the

promise of reduced stigma by avoiding conviction.

- The imposition and enforcement of the penalty is supported by high technology. This allows many of the most common offences (particularly motoring ones) to be detected automatically and increases administrative efficiency in issuing infringement notices and following them up.
- The pursuit of efficiency has resulted in greater reliance on concepts of vicarious and strict liability. This means that the person who receives the infringement or penalty notice might not be the actual offender (i.e. the owner rather than the driver of the car), or may not be particularly culpable.
- The automation of cases prevents individualisation of sanctions. The penalty is fixed in advance by the legislature at the same level for all manifestations of the offence. There is little scope for moderating the penalty on account of mitigating circumstances.

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### Numbers

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The number of cases of minor wrongdoing settled out of court by way of the on-the-spot procedure in Australia is not known. However, as a result of a recent Criminology Research Council project (*see* Fox 1995) it is now known that in Victoria for every offence brought to trial in the Supreme Court or County Court of Victoria in 1991 (6945 counts), 45 were heard before a Magistrates' Court (312 900 counts) and a further 337 (2 342 913 infringements) were handled by way of an "on-the-spot ticket". Even if superior court numbers are put to one side, the ratio of "on-the-spot tickets" issued to the number of conventional summary charges laid in a Magistrates' Court exceeds 7:1. The procedure clearly outstrips all other means of dealing with offending.

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### The Underlying Model

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Although there are variations from one jurisdiction to the next, there is a recognisable sequence in the way in which the on-the-spot paradigm has developed in an effort to cope with the growing number of cases reaching the lower courts and the rising proportion which were disposed of on guilty pleas.

#### *Opting out and opting in*

Initially, the alleged offender was granted the right to opt out of a full summary hearing in open court. Because the response of defendants to the invitation to have the matter dealt with by the magistrate on written evidence alone was poor, the next stage saw the introduction of a presumption that certain classes of minor offence were to be disposed of in the absence of the defendant, unless the latter formally opted in.

#### *Expiation*

Next came the introduction of statutory power to issue notices, of an administrative character, ahead of any court summons which might issue. This notice invited the alleged offender to avoid any formal court proceedings by an act of expiation in the form of a money payment. This had its origins in measures taken in 1938 in South Australia to regulate the discretion exercised by municipalities to accept a sum of money in settlement of summary prosecutions. The legislation described the arrangements as an act of expiation and fixed the amount of the expiatory payment. It also ensured that only prescribed minor offences could be disposed of in this fashion. The right of the alleged offender to insist upon a court hearing remained intact.

If the offer of expiation was ignored the matter would normally have to be brought to court on summons. This was obviated at the next stage of development. The demand for expiation was allowed to

be treated as though it was already an unpaid fine imposed by a magistrate. This is the basis of Victoria's PERIN system (Penalty Enforcement by Registration of Infringement Notice) and New South Wales SEINS system (Self Enforcing Infringement Notice System) and similar ones in Western Australia, Queensland and the United Kingdom. Under these arrangements, once certain reminder or courtesy letters have been sent, the Sheriff or the police can be called upon to enforce payment of the unpaid on-the-spot fine by sale of the defendant's goods, or the person's imprisonment. Time to pay may be allowed. In some jurisdictions, community service is an alternative means of discharging an unpaid fine.

### *Conviction infringements*

Victoria took a novel step in 1989 when it created the concept of the "licence loss infringement" for moving vehicle offences of a more serious kind. Not only did this call for the usual expiatory payment, it added other sanctions such as immediate loss or suspension of driver's licences. But of even greater significance, the legislation deemed the person to have acquired a conviction despite the fact that no charge had been filed, no judicial determination of guilt had been made, and notwithstanding that the fixed sum demanded in the infringement notice had been paid.

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### **Local Expansion**

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The rapidity with which on-the-spot fines have been adopted as the preferred sanction for minor offences can be readily demonstrated by the Victorian experience. They first appeared in that State in 1959 in legislation which only applied to parking and minor traffic offences. By 1965, 11 traffic offences were subject to disposal in this way. The penalty was either £1 or £2. By 1985, this number had grown to 124. By 1992 the Victoria Police listing of on-the-spot offences, showed more than 200

traffic-related infringements out of a total of 387 offences with penalties ranging from \$15 to \$900. At least 45 also result in licence cancellation or demerit points for the person deemed to be the driver. Now there are some 18 Acts in Victoria which authorise the issue of such notices by police, municipal authorities, and other government and semi-government departments. There are now close to 1000 offences subject to this procedure and in the year 1990-91 over 2.3 million infringement notices were issued with a face value of over \$150 million.

### *PERIN Court*

The figures on the use of the PERIN system to enforce unpaid infringement penalties show a similar spectacular expansion. A special PERIN Court was established in Victoria to process, by largely computerised means, the steps necessary for recovery of unpaid amounts fixed by the notices. From the end of 1987 (its first full year of operations) to the end of 1992, the number of infringement issuing agencies who opted to use the PERIN system grew fourfold from 36 to 154 and the number of infringements lodged for enforcement increased threefold from 135 000 to 422 000. The spurt in the number of lodgements coincided with the establishment of the Traffic Camera Office in June 1990 under a deliberate government policy of increasing the use of photographic devices, particularly speed cameras, in the detection of traffic infringements.

### *Local government's role*

The Victorian data show that local government authorities, rather than the police, are the principal issuers of infringement notices. They accounted for over 56 per cent of the 2.3 million infringements issued. They were mainly for parking offences. The police were the next heaviest users with almost 42 per cent. Efforts by local government authorities to obtain wider powers to write on-the-spot tickets for traffic offences committed

in their area, and gain access to speed camera and other detection technologies for local use have been stoutly resisted by police. This raises fundamental questions about the widening use of surveillance and automatic detection technology in our society.

### *Reduced court burden*

Before the infringement notice scheme was established, figures on offences brought before Australian lower courts supported United Kingdom estimates that up to 70 per cent of Magistrates' Court time was devoted to road traffic offences (UK 1983). In 1971 in Victoria, of 270 045 convictions recorded in the Magistrates' Courts, 69.4 per cent (187 328) were for driving offences. Twenty years later, in 1991, after on-the-spot tickets were well in place in the State, these offences amounted only to 28.8 per cent of all offences charged.

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### **Enforcement**

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Over 16 per cent of the 2.3 million infringements issued in Victoria in the period under study were not paid on time and were sent to the PERIN Court for enforcement. This amounted to 377 000 infringements with a face value of approximately \$25 million plus accrued costs. Eighteen months later, almost 10 per cent of the on-the-spot tickets originally issued still remained unpaid. Why this is so has attracted the attention of the Victorian Auditor-General. In part, it reflects inadequacies in driver licence and motor registration records, but also the costs of tracing persons who deliberately seek to avoid payment. There are real problems in undertaking an effective cost-benefit analysis of the infringement notice system.

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## Technological Advances

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Wrongdoing, however prolific, has to be detected. The emergence and expanded use of on-the-spot fines has been boosted by new technology which has significantly enhanced the ability of officials to detect offences. This technology, in the form of speed, red light, and transit lane cameras, has allowed for the wholly automatic detection and recording of moving vehicle violations in unprecedented numbers. For instance, in Victoria in 1993, over 25 million speed camera checks were performed. This led to 524 000 infringement notices being issued for speeding offences alone. Vehicle emissions and mass can also be monitored by unmanned sensors. The former are relevant to environment protection and anti-pollution legislation and the latter to offences involving overloading and safety. These are particularly significant in relation to commercial transport vehicle offences.

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## Fairness

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Changes to the infringement model from a non-conviction to a conviction one, and the manner in which infringement notices have been issued, have raised concerns about fairness. To what extent has it reduced the use of warnings and other less punitive, though possibly equally effective, alternatives to issuing tickets? There have been public complaints about inappropriate use of traffic cameras by police in circumstances which suggest entrapment and revenue raising. This has been countered by police figures on improved compliance with speed limits and consequential reductions in accidents, injuries, and fatalities as the result of increased surveillance by traffic cameras and the expeditious imposition of on-the-spot fines. The Victorian Parliamentary Public Accounts and Estimates Committee, in examining the 1992-93 budget estimates and outcomes, noted how the "revenue

generating productivity" of use of speed cameras had dropped from over \$2000 per hour of camera use to under \$1000 per hour within 18 months. It recommended that police review the number of traffic camera hours worked with a view to increasing the efficiency of their use. However, the police have repeatedly stressed that the generation of revenue is not one of their objectives, and that if revenue declines because of reduced offending, their enforcement activities should still be counted a success.

### *Disadvantages*

Some of the disadvantages of infringement notices are:

- The real risk of the system being driven by fiscal rather than correctional objectives.
- The likelihood of proceedings being initiated by way of an infringement notice when the case is weak because the authorities know it is rare for anyone served with such a notice to insist on a full hearing in open court.
- The risk that persons who believe themselves innocent will nevertheless settle allegations by paying up because of the pressure of convenience, discounted penalties, threat of costs and the limited availability of legal aid for defended summary matters.
- The undesirability of enforcement authorities imposing penalties without independent scrutiny of the facts by a court.

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## A Permanent Feature of Criminal Justice

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The infringement notice system is here to stay. From seeds planted forty years ago, it has matured into the main arrangement for keeping offenders out of court. It provides relief from the high number of prosecutions that would otherwise have to be conducted to enforce the law relating to summary offences and it reduces the costs of criminal justice. The growth in Victoria in the use of on-the-spot fines

for minor offences is not unique. The public policy issues raised by that State's experience have significance beyond its boundaries. The emergence of the on-the-spot fine is a response to the incapacity of normal prosecution arrangements to handle the myriad of summary offences which the regulation of a modern society casts up for prosecution.

### *A different class of offence*

Though these offences amount to a widening of the area of criminality, high levels of moral or social stigma do not accompany most of them. They are often less concerned with harm as an actual and immediate result of wrong-doing, than with conduct that carries with it the potential for harm or inconvenience to many others. It is characterised by a move away from individualism towards control of groups through manipulation of their behaviour and attitudes with the aim of increasing their compliance with the particular regulatory regime which applies to them. The future will bring more offences of this kind. It is inevitable that administrators will continue to demand that criminal procedure be simplified to accommodate this growing dimension of the criminal law.

### *Substantive changes*

The changes represented by the infringement notice system are more than merely procedural. They have also affected the substantive law and blurred the relationship between the two. Problems of identifying the actual person responsible for committing the *actus reus* (the factual element constituting the guilty act) of certain motor vehicle offences, resulted in owner-onus provisions first making their appearance in relation to infringement offences. And an unwillingness to devote time to an inquiry into *mens rea* (criminal intent, i.e. guilty mind), resulted in the mental state of the accused being treated as irrelevant to guilt. These have produced an attitude that summary offences are to be drafted and

interpreted as if they inevitably involve vicarious and strict liability. This mind-set brings with it all the attendant risks of injustice in individual cases. The fact that the courts cannot handle large numbers of offenders, does not exempt policy makers from their obligation to judge the appropriateness of the elements of each particular prohibition and the aptness of the particular legal procedures selected for its enforcement.

A clear distinction needs to be drawn between the circumstances in which monetary penalties may be demanded under legislative arrangements for the issue of infringement notices and when fines should be imposed by a court. The difference in the procedures must be reflected in well understood differences in the type of offence for which each is appropriate. This is particularly so in relation to those offences in which liability requires that a distinction be drawn between different mental states, or when the behaviour in question has to be tested against some standard of reasonableness.

## Model Legislation

### *Australian Law Reform Commission*

The idea of converting existing minor criminal offences into "administrative illegalities" was explored by the Australian Law Reform Commission in its 1989 reference on multiculturalism. The Commission toyed with the idea that these could be dealt with by some form of infringement notice procedure leading to a monetary penalty recoverable only by civil methods of enforcement. Imprisonment would not be an option. The Commission saw the establishment of a new class of "contravention" as avoiding the "trauma, stigma and adverse consequences of a prosecution for a criminal offence" (ALRC 1992). It also thought it would reduce the

workload of local courts and the costs of the criminal justice system. On the other hand, the Commission foresaw difficulties in establishing the basis upon which the distinction between crimes and contraventions should be made and noted that the proposal might reduce the authority of the criminal law and weaken the safeguards it provided to accused persons. Ultimately the Commission recommended that the infringement scheme be applied to particular offences on an ad hoc basis, without formally recognising a distinction between crimes and contraventions.

### *The need for an Infringements Act*

There is a need for model infringement legislation, preferably to operate nationally on a cooperative basis between the States and Territories. An Infringements Act is needed to define the group of offences designated as infringements and the procedural arrangements for issuing and enforcing on-the-spot fines. The statute should include both the procedure for expiating infringements by payment of the fixed amount, and for prosecuting this class of summary offences before a Magistrates' Court in the event of the defendant requesting a full hearing. The legislation should restrain the degree of punishment and the collateral consequences which can be attached to these particular offences. The penalties which apply to infringements should be both proportionate to the wrongdoing and take their proper place in the lower echelons of the hierarchy of penalty levels available in the sentencing system. A model infringement scheme should include the following features:

- It should apply only to offences triable summarily.
- The infringement must be completely expiated by payment of a legislatively fixed sum of money, but the issue of the notice may also lead to the suspension or withdrawal of a right or licence to

undertake an activity to which the alleged offence relates.

- The maximum amount of any single infringement penalty should not exceed \$500 (or the equivalent in penalty units), or one-quarter of the maximum statutory penalty that applies if the offence is dealt with summarily by a court.
- Any right or licence withdrawn because of the infringement should be suspended rather than cancelled and, ordinarily, for a period of no longer than six months. Longer suspension, or outright cancellation, should be only upon a court order.
- The scheme should be administered by the police or officers of the public authority ordinarily responsible for enforcing the particular legislation creating the offence.
- The officials empowered to enforce the legislation and to issue infringement notices must also retain and exercise a discretion to issue a warning or a caution in less serious cases, or a summons to court in more serious ones, instead of automatically issuing an infringement notice. Guidelines for exercising that prosecutorial discretion should be drawn up and disseminated to those making the enforcement decisions.
- Each infringement notice should be in plain English with foreign language warnings of its significance.
- The infringement notice must make it clear that the alleged offender has the right to elect to go to court to contest the accusation, but that the matter may be disposed of in court by way of a "hand-up brief" procedure whereby both the informant and the defendant are compelled to state their case in writing prior to the hearing.
- A person against whom an infringement notice has been issued should not be treated as having been convicted of the

alleged offence, except upon a court order. Expiation of the offence by payment should not lead to a conviction. Even if the matter is defended in court, and the grounds on which the notice was issued are established beyond reasonable doubt, the court should still have the right not to record a conviction. An alleged offender who contests the accusation instead of expiating it by payment should not be penalised, other than in costs, for exercising that right.

- The infringement notice should give the alleged offender a formal opportunity in writing to advise the agency which issued the notice of any factual matters which the person considers ought to be taken to account in relation to the alleged offence. These matters should be taken into account in exercising the discretion to withdraw the notice either absolutely, or with a warning.

The on-the-spot fine is a useful administrative adaptation of the criminal process. It is defensible in terms of expediency and cost-saving in the administration of justice when dealing with minor offences. In many cases it offers a more appropriate response to minor wrongdoing than a hearing in open court. However, the concept is in need of legislative redefinition and restraint.

*Evaluation of the Effects of the Motor Car (Photographic Detection Devices) Act 1986 on Police Costs and Efficiency and Road Safety*, Road Traffic Authority, Melbourne.

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

Victoria Parliament, Road Safety Committee 1994, *Inquiry Into the Demerit Points Scheme*, Government Printer, Melbourne.

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## References

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

Cameron, M.H., Cavallo, A. & Gilbert, A. 1992, *Crash-based Evaluation of the Speed Camera Program in Victoria 1990-1991, Phase 1: General Effects; Phase 2: Effects of Program Mechanisms*, Monash University Accident Research Centre, Report No. 42, Dec.

Fox, R.G. 1995, *Criminal Justice on the Spot: Infringement Penalties in Victoria*, Australian Studies in Law, Crime and Justice, Australian Institute of Criminology, Canberra.

Harrison, W., South, D., Portans, I., Armour, M., Lau, H. & Haque, O. 1987, *An*



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