

7 August 2018

Committee Secretary
Transport and Public Works Committee
Parliament House
George Street
BRISBANE QLD 4000

By email only: tpwc@parliament.qld.gov.au

Dear Secretary

Inquiry into the operation of toll roads in Queensland

We value the opportunity to make a submission to the Transport and Public Works Committee in response to the above inquiry.

About us

LawRight is a not-for-profit, community-based legal organisation, which coordinates the provision of pro bono legal services to disadvantaged Queenslanders.

The Homeless Persons' Legal Clinic (**HPLC**) was established in 2002 by LawRight to provide free legal assistance and representation to people experiencing or at risk of homelessness. Our outreach model has since expanded and we now also coordinate the Mental Health Civil Law Clinic and the Refugee Civil Law Clinic.

LawRight has twelve Outreach Legal Clinics in partnership with over 30 community organisations. The HPLC has addressed the multiple legal needs of over 6,000 marginalised people and, by partnering with 25 private law firms, provides over \$4 million worth of pro bono legal services each year.

Our clients

Many HPLC clients experience several forms of disadvantage, including severe financial hardship, mental illness, physical or intellectual disabilities, drug or alcohol dependency and complex family backgrounds, such as engagement in the child protection system.

A significant number have been the victims of violent crimes or domestic violence, have experienced significant personal trauma or have a diagnosed mental illness. Thirty percent of our clients identify as having a disability. A further proportion of our clients are unable to read or write.

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In combination, these circumstances increase the likelihood our clients will face enforcement for toll related fines, create barriers that prevent them from appropriately responding to enforcement action and increase the disproportionate impact of these fines.

Summary of our submissions

Toll charges can be prohibitively expensive for many vulnerable members of society. While of our clients will actively avoid toll roads, the nature of their lives and lived experience often means that these roads are unavoidable or that non-toll roads are not always a viable alternative.

When our clients do use toll roads, their circumstances often create barriers to the timely and effective resolution of toll charges, leading to increased costs and enforcement action. This has a significant and disproportionate impact on the most vulnerable members of our society.

We submit that this disproportionate impact would be reduced by:

1. ensuring that a registered owner's contact details are current and accurate before issuing a Penalty Infringement Notice (**Infringement Notice**);
2. providing accurate details about the offence, including the available defenses, when issuing an Infringement Notice;
3. providing greater guidance on what is considered a reasonable excuse for not responding to a Demand Notice; and
4. improving the engagement between relevant bodies and support organisations, such as LawRight.

We submit that these changes would reduce the disproportionate impact this system has on disadvantaged or marginalised people, while promoting the effective and timely resolution of debts connected to toll roads, reducing cost to the Government and producing fairer outcomes for Queenslanders.

We also note that we support the submission made by QCOSS, which we have had the benefit of reading.

Fines enforcement and hardship

The current framework for tolling and toll infringements has a disproportionate impact on those in hardship. The privatisation of roadways impacts more significantly on those who live below the poverty line, as they are less likely to be able to afford access to or regular use of toll roads. The use of monetary penalties and the fines enforcement system to enforce toll debts also unfairly impacts those in hardship.

Fines and fines enforcement 'can present significant access to justice issues for disadvantaged people'.¹ Those experiencing severe financial hardship may have no ability to pay a fine at the time it is incurred, even if payment is by installments. For many of our clients, an initial inability to pay can lead to an ongoing cycle of poverty and disadvantage, as increasing fees and enforcement compound the issue.

¹ Sophie Clark, Suzie Forell and Emily McCarron, 'Fine but not fair: Fines and disadvantage' (2008) *Justice Issues* 1

Professor Tamara Walsh has for many years studied the impact of Queensland's fines enforcement system on those in hardship. She finds that 'it is inherently inequitable to impose fines on people who are disadvantaged: the same fine amount will have very limited deterrent effect for affluent offenders while causing extreme hardship to indigent offenders'.² Recent research by the Law and Justice Foundation has also found that fines disproportionately affect disadvantaged people.³

Toll fines and our clients

Between July 2015 and June 2017 the HPLC assisted 194 people with State Penalties and Enforcement Registry (**SPER**) debts. Of these, 39 (or 20%) had debts for fines connected with the use of toll roads.

Of the 39 clients who have experienced issues with toll fines, the clear majority had multiple infringement notices. On average, each person we assisted with tolling infringements had approximately 19 infringements. Eight people had in excess of 40 infringements and one person had 91 infringements.

Of the 39 HPLC clients we assisted with tolling infringement debts between 2015 and 2017:

- all were experiencing severe financial hardship. Only two earned some type of wage and the remainder were reliant on social security payments;
- all were either homeless or at significant risk of homelessness;
- 19 out of 39 were male, 19 were female, and one person identified as transgender; and
- no person was under 25, and the average age was 39.

Our casework indicates that many of the Infringement Notices were issued in circumstances where our client's disadvantage created a barrier to them addressing the underlying toll debt or responding to the subsequent Demand Notice.

Janet* had faced a life of hardship. Over the course of a number of years, she had suffered severe mental and physical health conditions that impaired her decision-making ability and limited her capacity to make arrangements for her affairs. During this period Janet incurred a significant debt related to tolling fines. She sought our assistance as her circumstances meant she was unable to address this issue independently.

During prolonged negotiations, the Department refused to engage with us unless we held a Power of Attorney for Janet. The Department refused to acknowledge our authority as Janet's solicitors or allow us to advocate on her behalf.

Janet continued to face significant challenges and disengaged with our service without effectively resolving this matter, further entrenching her disadvantage.

Legal and administrative framework

Chapter 6, Part 7 of the *Transport Infrastructure Act 1994* (Qld) (**the Act**) outlines the

² Tamara Walsh, *Homelessness and the Law*, p179.

³ Zhigang Wid, Hugh M McDonald and Christine Coumarelos 'Fines: are disadvantaged people at a disadvantage?' Feb 2018.

compliance requirements for users of Queensland's toll roads. Under the Act a toll road user is required to pay a charge for the use of a road within a prescribed period. If a toll road user fails to pay this charge, the toll road operator can issue the registered owner of the vehicle with a Demand Notice.

Section 99 of the Act requires that the registered owner respond to a Demand Notice by either paying the amount requested or providing a statutory declaration nominating the person driving the vehicle at the relevant time. The registered owner is given 30 days to provide this response. It is an offence not to respond to a Demand Notice without a reasonable excuse.⁴

Where a registered owner fails to respond to a Demand Notice, the toll road operator refers the unanswered Demand Notice to either the Brisbane City Council or the Department of Transport and Main Roads (collectively, **the Issuing Body**) to consider issuing an Infringement Notice. Each failure to respond to a demand notice can result in the issuance of an Infringement Notice.

Each Infringement Notice fines a person 1 and 2/5 penalty units, or approximately \$182.00. This represents roughly 40% of the fortnightly income of someone living on Youth Allowance and roughly 35% for Newstart recipients. For most of our clients, their Centrelink payments are insufficient to cover even their basic living expenses and they are left with little or no disposable income. The financial impact of one infringement can therefore be significant.

Each Infringement Notice is required to include information about the alleged offence and the options available to the registered owner. If the registered owner does not respond to the Infringement Notice within 28 days, the fine is transferred to SPER for collection. This incurs additional fees.

Recommended improvements to the existing system

We submit that the current system for issuing Infringement Notices under s 99 (3) of the Act could be improved by:

1. confirming the registered owner's address before issuing an Infringement Notice to ensure that these details are current;
2. providing accurate details about the offence, including the available defenses, to a person issued with an Infringement Notice;
3. providing greater guidance to support a person to respond to an Infringement Notice, including the circumstances in which a person may be able to establish a *reasonable excuse*; and
4. improving the engagement between relevant bodies and support organisations, such as LawRight.

We discuss each of these in more detail below.

1. Confirming the registered owner's current contact details

Many people experiencing significant disadvantage may never receive a Demand Notice or Infringement Notice. The toll road operator, the Issuing Body and SPER each

⁴ *The Transport Infrastructure Act 1994* (Qld), s 99 (3).

use the contact details in the Department of Transport and Main Road's (**the Department**) database when writing to the registered owner. If these details are inaccurate or incorrect, a person is unlikely to receive any notice that they have incurred a fine until after SPER has taken enforcement action.⁵ This reflects the experience of our clients.

The lived experience of our client base helps to explain why people experiencing significant personal and financial hardship may not receive these notices. Many of our clients are transient, have no fixed address, are illiterate or only able to read basic documents, and/or have significant mental health concerns. Due to their circumstances, our clients may be unaware that they are required to update their contact details with the Department or unable to do this. As a consequence, they often do not receive the Demand Notice or the subsequent Infringement Notice and may be unaware that they have incurred a significant debt to the State until enforcement action is taken.

Many vulnerable people are unlikely to have electronic toll tags because they are unaffordable. Our casework suggests that many of our clients actively avoid toll roads, but the specific circumstances connected to their vulnerability may prevent this. A person may be escaping a violent relationship or experiencing a mental health episode. A person may incur a toll charge but be unable to afford the cost due to extreme financial hardship. Additionally, toll charges are incurred by friends or family that borrow a car, sometimes without the registered owner being aware. This has led to circumstances where a Demand Notice is sent to an incorrect address for a toll charge incurred by a third party using the registered owner's vehicle. The registered owner is then fined for not responding to the Demand Notice, despite being unaware a toll charge was incurred or a Demand Notice issued.

We recommend that the Issuing Body implement a process where it confirms the registered owner's current contact details before issuing an Infringement Notice. This would ensure that a person does not unknowingly incur multiple Infringement Notices.

In 2016, John* visited the Department of Immigration and Border Protection to renew his visa. The Department refused to renew his visa and had him immediately transferred to a detention facility.

John spent almost two years in detention. During this time, he asked a colleague to sell his vehicle. The car was subsequently sold while John remained in detention. After being released, John secured accommodation in Brisbane. Several days later, he received a SPER notice claiming an unpaid debt to the State for multiple toll related infringements.

This was the first notice John received about the fine or the tolls. John questioned his friend about the toll infringement, and was told that it must have been incurred by the people test driving his car prior to its sale.

2. Provide accurate details about the offence

Our clients are often unaware that it is an offence not to respond to a Demand Notice.

⁵ Letter from the Queensland Treasury providing the departmental response to issues raised in submissions to the State Penalties Enforcement Amendment Bill 2017, Attachment 1, page 3.

When our clients do receive an Infringement Notice, many do not understand their options or the steps they are required to take, often due to their circumstances of disadvantage, including low literacy levels and mental health concerns.

The information currently provided to people issued with an Infringement Notice does not adequately explain the offence or the options available in response to this Notice. The Infringement Notice and supporting documents, as well as current practice of the Department, suggests that a person can complete and sign a statutory declaration that they were not the driver of the vehicle at the relevant time, which is a valid response to a Demand Notice but not an Infringement Notice.⁶ The Infringement Notice does not inform the registered owner that they may defend or challenge the Infringement Notice if they had a 'reasonable excuse'.

In our experience, many vulnerable people have a reasonable excuse for failing to comply with a Demand Notice but are unaware that this is a relevant consideration when issued with an Infringement Notice. As such, they are being pursued for fines associated to an offence in which they have a genuine legal defence.

We recommend that the Issuing Body amend the current Infringement Notice and supporting information to provide more accurate and detailed information, including details of circumstances in which a person may not be liable for the offence.

We first met Tara* while she resided in temporary accommodation having fled a violent and abusive relationship. As part of the controlling nature of the relationship, Tara was the registered owner of a vehicle often used by her partner. Over the course of the relationship, Tara received multiple Demand Notices for toll charges incurred by her partner. Tara was unable to respond to these notices for fear of retaliation from her partner.

The Infringement Notices Tara received explained that she could complete a Statutory Declaration stating that she was not the driver. It did not provide clear information about the offence or that her circumstances may be relevant to her liability to pay this fine.

As a result, Tara was unable to inform the Department of her circumstances and was being pursued by SPER for a debt of over \$11,000 related to unpaid tolling fines. This debt further exasperated Tara's circumstances of hardship at a time she was trying to recover from an abusive relationship.

3. Relevant considerations when accessing whether a person had a reasonable excuse

There are many reasons why our vulnerable clients are unable to respond to a Demand Notice, including lack of a fixed address or frequent changes in temporary accommodation. For those in severe hardship, they may not be in a position to respond to a Demand Notice in a timely manner, for example due to personal crises, illness, imprisonment or hospitalisation. Victims of controlling or violent relationships may be unable to respond for fear of retribution by their violent partner. Factors such as mental

⁶ Finalising unpaid fines, *Queensland Audit Office*, Report 10, 22 February 2018, page 38.

illness, disability or illiteracy can further inhibit a person's ability to respond to a Demand Notice.

However, there is no judicial or legislative guidance on the definition of 'reasonable excuse' in the context of the Act. In addition, outside of the Act, there are no resources that inform registered owners of the information the Issuing Body will consider when deciding to withdraw an Infringement Notice.

As a consequence, registered owners that have a reasonable excuse, but are unaware that this constitutes a defence to the offence, may assume they are obliged to pay a fine even though they have a valid defence. Similarly, even where a registered owner has some awareness of this exception, they are often unaware of the types of information that the Issuing Body will consider when making a determination to withdraw the Infringement Notices.

We recommend that the Department and the Brisbane City Council publish guidelines that can assist a person to respond to an Infringement Notice, including a non-exhaustive list of examples of the kinds of circumstances that the Issuing Body considers would constitute a reasonable excuse. This guideline would increase understanding and awareness within the community, increasing access to justice, and would promote consistency within the Issuing Body.

Maria* was a vulnerable single-mother that had experienced severe personal and financial hardship. She had been unemployed long-term and struggled with severe and ongoing mental health concerns, including depression, anxiety and major depressive episodes. She had also been in and out of hospital, or living without stable accommodation for extended periods.

While effectively homeless, Maria received multiple Infringement Notices for failing to respond to a Demand Notice. As a result, she was being pursued by SPER for a debt of over \$20,000. This debt was further entrenching her circumstances of disadvantage at a time where she is taking positive steps to improve her life.

Maria was unaware that her circumstances meant she had a reasonable excuse for not responding to the Demand Notice.

After almost two years of advocacy, the Department withdrew all of the Infringement Notices. Throughout this period, it remained unclear whether Maria's circumstances constituted a 'reasonable excuse' under the Act. It is unlikely that a person in Maria's position could or would invest significant time and resources to enforce their rights where there is no clarity as to whether these rights exist.

With greater guidance, applications could be made more concise and relevant, which would likely expedite the process.

4. Engage effectively with support organisations

The existing framework for enforcement of Infringement Notices disproportionately impacts people experiencing disadvantage, many who would struggle to engage effectively with organisations or government bodies.

Where a person is assisted to connect to the Issuing Body, we encourage the Issuing Body to work collaboratively with the person and their support organisation to resolve these issues in a fair and compassionate manner.

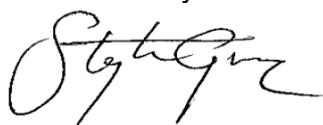
By engaging effectively with a support organisation, the Issuing Body can effectively resolve these issues, reducing Government cost and ensuring fairer outcomes for Queensland's most vulnerable residents.

Conclusion

We appreciate the opportunity to provide further context to the impact the current system of enforcement of toll fines is having on vulnerable people.

If you have any questions about this submission or require further information, please do not hesitate to contact me at [REDACTED]

Yours faithfully



Stephen Grace
Coordinator
Homeless Persons' Legal Clinic

*All names and some facts in these submissions have been changed to protect the identity of the individual.