

## Submission to Victorian Fines Reform Advisory Board

Financial Counselling Victoria (formerly Financial and Consumer Rights Council)

3 February 2020

### Executive Summary: Recommendations

In general terms, for WDPs to work as a system in Victoria there needs to be additional investment in financial counselling services, recognising the significant demand issues already being experienced by the financial counselling sector, and also its strategic role in enabling client access to the WDP scheme.

There also needs to be better recognition of client work and development, from accessing financial counselling through a more appropriate work off rate, and more breadth to and transparency in the system.

#### **Our recommendations:**

- 1. Additional resourcing for the FC sector to overcome administrative, demand and reporting obligation barriers to effective and widespread FC engagement with the fines reform system.**
- 2. The Financial Counselling work off rate for WDPs be raised to 6.6 penalty units per month (equivalent to the drug and alcohol counselling rate and other health care providers).**
- 3. Full transparency in accredited service providers (sponsors).**
- 4. Broaden the range of activities eligible for WDP application (for example, include homelessness casework).**

## **Introduction**

Financial Counselling Victoria (FCVic) welcomes the opportunity to make a submission to the Fines Reform Advisory Board (FRAB).

In order to meet the government's goals in progressive reforms to the fines system, the reforms must be implemented effectively and fairly. This includes appropriate resourcing for both government agencies and the parts of the community sector needed to support the access of vulnerable Victorians to a fairer fines system.

As the peak body for financial counsellors in Victoria, FCVic has had considerable feedback from its members raising concerns with the implementation of the new fines system, and pointing to risks that the new Work and Development Permits (WDPs) will be rendered effectively inaccessible for many of those they are designed to assist. These issues are the focus of this submission.

## **Financial Counsellors and Fines Reform**

Financial counsellors (FCs) provide a free, community based service advising and assisting/advocating for clients who experience debt and financial hardship issues, while also engaging collectively in systemic advocacy. These clients often have complex issues that interact with their poverty or financial stress (including issues related to gambling, substance use, mental health or family violence). Many clients have infringement debts along with other debts (utilities, telecommunications, councils, Centrelink, banks, pay day loans).

FCs, as partners in the Infringements Working Group, have played an integral role in the community sector advocacy in relation to Fines Reform, including through direct representation on the Attorney General's Infringements Standing Advisory Committee (ISAC). There is currently a lot of interaction between the Infringements Working Group and Fines Victoria, and this is important for addressing implementation issues that Community Legal Centre (CLC) solicitors and FCs generally encounter with the Fines Reform agenda.

When it comes to WDPs, neither CLCs nor Victoria Legal Aid are eligible to register as sponsors. The drive for implementation with clients generally needs to come from FCs and their agency employers, most of whom operate outside the justice/ infringement system. Some of the challenges Fines Victoria has encountered in implementing the new system stem from this sectoral gap, which requires bridging by FCs via their financial/legal expertise.

*As one FC put it last year, If the government wants to secure the operation of WDP's it requires financial counsellors to be funded to do this work. ... [Few] sectors ... have expertise in this area, as the work requires an understanding of the infringements framework. VLA and CLC's are ineligible and general welfare agencies don't have the skill set.*

This comment points to the important gatekeeping and system guidance roles FCs take with their clients, prior to their work with clients that attracts WDP credits. The fines reform system is complex, and clients with fines debt often need assistance deciding what parts of the system are relevant to their situation and for which fines.

### **WDPs in the Victorian context**

As noted in previous correspondence, the Work and Development Orders (WDOs) system in NSW informed the development of the WDP part of fine reform in Victoria.

Like WDOs, WDPs provide an important incentive and opportunity for clients to gain credit reducing fine debt by participating in various training and therapeutic services. Importantly for a social justice initiative, they empower clients through directly recognising their work in participating in service provision. However, it is important to note two significant differences between the Victorian and NSW fines systems, which have implications for implementing WDPs in Victoria:

- Fine debts in Victoria tend to be for much larger sums of money, reflecting the impact of unpaid tolls that end up in the criminal justice system. The figures we have seen indicate average levels of fine debt in Victoria (\$15,000) are five times higher than NSW (\$3,000).
- Fines reform in Victoria has created a more complex system than in NSW. In order to access the system, clients need to be in a position to make decisions about different pathways to deal with their fines, including applications for special circumstances relief, payment plans, family violence relief or accessing WDPs. These decisions are governed by tight time-frames, and often require specialist advice based on a full awareness of the clients' personal circumstances.

These differences mean there is a lot more at stake for people in the system, and there is considerable complexity in the systems to navigate. In turn, this means the role of FCs in Victoria is much more significant than in the NSW system<sup>1</sup>.

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<sup>1</sup> NSW does not have an equivalent of the Infringements Working Group and financial counselling engagement in advocacy in relation to the fines system is much less evident in that state, which is perhaps not surprising given the lower levels of fines debt in that state. Also the financial counselling sector in NSW involves only about 20 employing agencies, as compared to about 60 in Victoria.

### **Issues beyond Departmental scope to directly address**

The complexity of client situations and lives means fine debt is seldom an issue in isolation from other hardships. This means it is unlikely that measures, such as a departmental hotline to guide client decision making, are appropriate ways to support people in navigating the system. A client would need to disclose sensitive personal circumstances such as health conditions, treatment, addiction, family violence, and housing status to enable an appropriate assessment of their infringement options. There are significant problems posed by departmental staff – presumably limited to providing information rather than advising – attempting to meaningfully assist people dealing with complex decision making in the context of personal vulnerability.

### **FCs and WDPs**

In Victoria FCs have three distinct roles in relation to WDPs:

1. *Standard FC casework* – engagement and establishing trust with vulnerable clients to facilitate meaningful exploration of their options; assisting clients to access the appropriate relief and assistance mechanisms related to fine debt in the reformed system (such as special circumstances, family violence, WDP or payment arrangements), along with addressing other debt and hardship issues.
2. *WDP Sponsors* – signing clients up to WDPs, referring to other WDP sponsors, and coordinating client access to the Fines reform system.
3. *Direct client service for WDP credit* – Working with clients and ensuring that the client's work receives appropriate WDP credit, (at an appropriate work-off rate).

The first of these roles draws on the specialist skills set of FCs that is not available to many others in the community sector; it is work undertaken in conjunction with advocacy work with other creditor organisations (such as banks, payday lenders, utilities, telecommunications, councils).

The second, WDP sponsor, role follows from the casework role and is crucial to successful implementation and operation of the WDP system, but it is not explicitly acknowledged by Fines Victoria or funding bodies as part of the FC role. This lack of acknowledgement has contributed to serious weaknesses in implementing the new system. There has so far only been a small number of services in which the FCs have had a dedicated focus on implementing WDPs. Indications are now coming from most of these agencies that FCs have been carrying a heavy WDPs workload which has diverted resources away from other important work.

The second role does feed into the third role – direct client service for WDP credit - but it has been constrained to a large degree by the extremely low work off rate that was assigned to financial counselling at the establishment of the WDP program.

### **Work demands and under resourcing of WDP work**

Heavy and increasing demand for FC services has been documented over the last 3 years, with many services unable to respond to any but the most urgent cases, and significant wait times even for those being seen. In the context of limited time to spend on cases, adding on resource intensive coordination of WDP sponsorships for clients is a big challenge.

In addition, we are aware that agency employers of financial counsellors are concerned about the administrative costs of registering as sponsors, and the diversion of financial counselling resources that are already stretched into working on WDPs. It is may also be unclear that undertaking WDP work is covered by existing funding agreements.

### **Recommendations**

#### **Increased resourcing (Rec 1)**

It follows from the analysis above that additional resourcing is needed to support financial counsellor and agency capacity, so that FCs can act as specialist navigators for vulnerable clients in what is a complex and stressful system, and to act as sponsors based on a more appropriate work off rate. Financial counsellors in their system guidance role for clients are also well placed to liaise with and create referral pathways to other services providing WDP-eligible work off opportunities, identify additional services that should be recognised for WDP use (see below), and support Fines Victoria in its work to increase the number of WDP sponsors.

#### **Work off Rate (Rec 2)**

The problem with the work off rate is evident in the guidelines that establish an *hourly work off rate* of 0.3 penalty points as applying to 'Financial and other types of counselling'.

This categorisation fundamentally misunderstands the nature of financial counselling which combines financial/legal expertise, support and advocacy with development and empowerment of clients. A key difference from other types of counselling is that financial counsellors do not operate by seeing a client for an hour at a time. They and their clients undertake considerable follow up work outside of formal in person client contact. This makes an hourly work off rate inappropriate for financial counselling.

The work of financial counsellors, like that of drug and alcohol counsellors, takes place over extended periods, and addresses multiple issues in the lives of their

clients who are co-producers of the work in their lives. The work off rate for financial counselling needs to be increased so that it is equivalent to drug and alcohol counsellors and other health professionals at 6.6 penalty units per month.

Increasing the work off rate is not only fairer to clients; it would also provide stronger incentives for sponsors, as it would increase the rate of client turnover, and reduce the time client files are open.

**Full Transparency in accredited service providers (sponsors) (rec 3).**

For FCs to be effective in assisting clients to access WDPs they need to know which accredited agencies are in a position to provide sponsorship. It has been a significant failing of the current arrangements that this information is inaccessible, and it is difficult to see a policy rationale for this that outweighs the benefits and accountability that would be provided with greater transparency.

**Broadening the range of Activities Eligible for WDP application (Rec 4)**

Financial Counsellors work in a wide range of service contexts, and alongside many other professionals assisting their clients. In working like this, while understanding the Fines reform system, FCs are well placed to identify additional services involving client work and development that would be appropriate to recognise in the WDP program; it will also ensure the relevance of the program to update the services that are recognised. For example, the expansion of the eligible WDP activities to include activities such as homelessness case management would also recognise the reality of vulnerable clients whose circumstances may not yet be stable enough to engage in other WDP activities, but are undertaking developmental work with their case manager.