

CHAIRMAN'S FOREWORD

In this report the Public Accounts Committee has addressed a difficult and complex area.

The process of collecting parking and traffic fines straddles four different Government departments, involving the policing of traffic laws, the administration of the Motor Traffic Act, normal judicial processes, the execution of warrants of commitment against fine defaulters and numerous ancillary administrative procedures.

The Committee had to distinguish between matters relating to administration as opposed to issues relating to the judicial process. Irrespective of this distinction, we formed the view that significant improvements to the system in all areas were desirable, if not essential.

When the Committee first resolved to investigate the issue, the value of outstanding warrants of commitment was \$34 million. Since then old warrants valued at \$7 million were culled from the index and yet at the end of 1985 the value of outstanding warrants had reached a staggering \$52 million.

The implications of the trend are clear. Current processes have to be streamlined and alternative methods adopted.

On the former issue the Committee has been pleased to report that work has already significantly progressed towards better administrative procedures. I note in particular, the substantial improvements achieved by the Police Traffic Branch under its former Director, Mr Colin Brown.

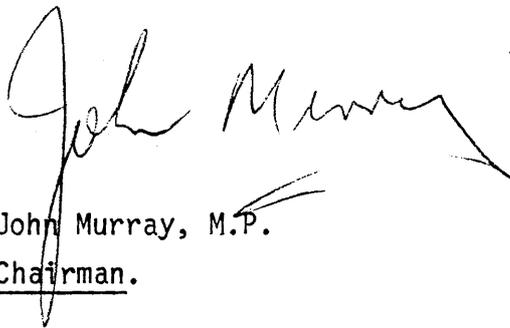
In the latter respect, the Committee has recommended that drivers' licenses be cancelled for appropriate categories of fine defaulters who have at least three warrants outstanding. It has also been suggested that commercial agents have a role to play in assisting

police to locate defaulters, provided very strict guidelines are applied.

The major issues still in need of resolution are the lack of accountability for the overall performance of the system, the lack of statistical data and the alarming error rate in the issuing and processing of infringement notices. Although 1985 was a year of many changes, it is still disturbing that at least 20,000 errors occurred in that year.

On behalf of the Committee, I express appreciation to the heads of the Police Department, the Department of Motor Transport, the Attorney-General's Department and the Department of Corrective Services for their co-operation during the course of the inquiry.

Lastly, I would like to compliment the Director of the Secretariat, Mr Frank Sartor, and the other members of staff for their very competent assistance with what was a difficult inquiry.

A handwritten signature in cursive script, reading "John Murray". The signature is written in dark ink and is positioned above the typed name and title.

John Murray, M.P.
Chairman.

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SECTION 1 SUMMARY AND RECOMMENDATIONS

- 1.1. In 1984 the Committee resolved to conduct an inquiry into the collection of parking and traffic fines. The inquiry resulted from comments by the former Auditor-General that outstanding warrants of commitment in respect of parking and traffic fines had risen to \$34.0 million as at 30.6.83. The aim of the inquiry was to examine the problems associated with the collection of fines, the effectiveness of measures being introduced by the Police Department, to identify potential improvements to the overall approach to the collection of parking and traffic fines and to identify cost savings in the operation to the system. (Refer Section 2.)
- 1.2. During the course of the inquiry two significant changes were made to the fine collection and enforcement system. The first change which took effect on 1 July, 1984 was the introduction of the Self Enforcement Infringement Notice System (SEINS). The major feature of this system was that uncollected parking and traffic fines did not go to Court unless the alleged offender elected to do so. Thus for most fine defaulters a warrant of commitment was issued automatically. The second major change involved changes to the Justices Act made in 1985, the main purpose of which was to give Magistrates more discretion with penalties so as to minimize the number of defaulters who were imprisoned. The Committee's inquiry period was consequently extended so as to gauge the effect of these changes. (Refer Section 2).
- 1.3. The Committee reviewed the old system of processing traffic and parking fines (pre 1 July 1984). It noted that statistics were not adequately kept and so it was not possible to make an assessment of the overall performance of the system of collection and enforcement. (Refer Section 3).
- 1.4. The introduction of the SEINS system has substantially simplified the fine collection process with a number of

attendant advantages. At this stage it remains unclear whether the overall satisfaction rate has significantly improved.

- 1.5. It is also unclear whether better resource utilisation has occurred. There have been significant savings in Local Courts' resources, but on the other hand, the work load of the Attorney-General's department has increased. Applications for remissions have increased dramatically from 4,000 p.a. to about 20,000 p.a. Police savings should have occurred in the area of issuing of summons - a process no longer required under the new system. However, no savings in Police resources have been indicated by the Police Department. Viewed alone the change did not significantly affect the level of Police Department resources involved in the collection and enforcement process. (Refer Section 4).
- 1.6. The Committee is pleased to report that the process of inquiry appears to have had the effect of stimulating an increased rate of change towards improved administrative procedures. Since the Committee first raised the matter with the Police Department in April 1983 substantial changes have been made. Improvements have been made in the areas of staffing, administrative process and the review process within the Police Department. The Department of Motor Transport, too, has commenced action to improve the accuracy of its records.
- 1.7. With regard to the size of the warrant index file, the Committee considers that warrants for parking and traffic fines outstanding for more than five years give a misleading picture as to the realistic levels of outstanding debts. The Committee strongly recommends that each year such warrants should be written off in financial terms and culled from the index unless they are of high value (say \$500 or variable according to category of offence) or there are a large number of warrants outstanding against the same person. (Refer Section 5.5).
- 1.8. The Committee considers that police attempts to heighten warrant enforcement activity have been unsuccessful. As Table 2.1

shows, the execution of warrants has fallen far behind the generation of fresh warrants. For example, in 1985, 399,346 new warrants were issued and yet only 22,926 were executed or satisfied - the lowest success rate for at least six years. Clearly, for whatever reason, the new procedures have not been effective. The Committee is critical of the Police Force for failing to honour its undertakings in this area and/or for not finding other solutions to the problem. (Refer Section 5.9).

- 1.9. Based on 1985 figures the error rate in the issuing of enforcement orders and warrants of commitment is about 20,000 per annum or 1.2% of all infringement notices issued. This is too high. Decisive and persistent action must be taken by both the Department of Motor Transport and the Police Department to reduce the error rate. (Refer Section 5.11).
- 1.10. The Committee attempted to assess the total cost of the fine collection and enforcement process but was unable to do so because this was not known. The Committee concluded that based on 1983 costs, three of the four affected Departments incur a total cost of at least \$56.4 million to which must be added the cost of services provided by the Magistrates Courts Section of the Attorney-General's Department. (Refer Section 6.3).
- 1.11. The total revenue earned from the traffic enforcement and fine collection system is also not accurately known. In 1983 it was somewhere in the range between \$60.0 and \$85.0 million p.a., including collections by M.C.A. and fees from local Councils. (Refer Section 6.4).
- 1.12. The Committee set out to assess the performance of the overall system. To achieve this it would be necessary to have accurate information regarding the value of infringement notices, the value of recoveries and the total cost of the collection and enforcement system. However, the Committee found great difficulty in achieving an overall view of the system for the following reasons:

- (a) There was a serious lack of statistics and information including performance data and cost and revenue data from all of the departments concerned.
- (b) There was a serious lack of coordination between departments to ensure the maximum overall performance of the fine collection and enforcement system.

1.13. The Committee recognises that attempts are being made to remedy these problems. However, it feels that there is a need for greater accountability and coordination and accordingly recommends that:

- (a) All departments take steps to monitor and report the costs of issuing, collecting and enforcing traffic and parking fines as it relates to their respective functions.
- (b) The Police Department be given clear overall responsibility for monitoring the efficiency and effectiveness of the system at all stages and be given appropriate performance information from other relevant departments.
- (c) The Public Accounts each year contain a summary of all costs and revenues for all departments arising from the issuing, collection and enforcement of parking and traffic fines.
- (d) The Police Department periodically prepare and publish in their Annual Report the following overall management information:
 - . Number and value of Parking Infringement Notices Issued
 - . Number and value of Traffic Infringement Notices Issued
 - . Percentage and value of fines paid prior to Enforcement Order
 - . Percentage and value of fines paid after Enforcement Order
 - . Percentage quashed by Review and Adjudication processes

- . Percentage of Infringement Notices successfully appealed against
 - . Percentage of Infringement Notices unsuccessfully appealed against
 - . Percentage and value of Infringement Notices paid up after Court process
 - . Percentage and value of Infringement Notices satisfied by detention in
 - (i) Police Lockups, and
 - (ii) Corrective Services institutions
 - . Volume, results and analysis of remissions applications
 - . Statistics on fine defaulters, e.g. numbers of persons with multiple warrants outstanding
 - . Average Time taken for each step of the process and the process overall
 - . Number of individual cases of error
 - . Number, and revenue equivalent, of fines not collected
 - . Other information necessary to keep a close watch on the efficiency and effectiveness of each step in the process
- (e) Cost benefit analyses of new initiatives be undertaken by each relevant Department and their effects on the overall cost of collection considered.
- (f) Any increases in judicial activity as a result of changed arrangements be monitored and evaluated.
- (g) Should a system of enforcement by way of cancellation of driver's licences be introduced, departmental responsibilities be reviewed six months after the introduction of the system having regard to the Committee's comments in Section 10.7. (Refer Section 6.8).

1.14. The Committee examined a number of proposals put forward by the Attorney-General's Department for reducing the level of usage of the detention option for satisfying outstanding fines. The Committee was hampered in its investigation of detainment of fine defaulters by inadequate and at times contradictory data

supplied by the various government agencies involved. The conclusions which follow are based on the data available and all figures are approximate.

1.15. The Committee is strongly of the view that there is a case for eliminating detainment as the primary means of deterring parking and traffic fine defaulters. The Committee's reasons are as follows:-

1. There would be substantial savings in the parking and traffic fine enforcement system if detainment were abolished for most offenders. The savings of the following order would be realised:
 - . \$1-2million annually in increased revenue due to the use of the prison option by defaulters who could otherwise pay or be made to pay.
 - . Savings of about $\$ \frac{1}{2}$ million in costs of detaining fine defaulters in prisons and police lockups and potential savings of \$5.0 million per annum if an additional facility is to be built at the Long Bay Complex to house fine defaulters.
 - . Saving of police resources in the order of \$5 million per annum.
2. The current system represents an inefficient use of police resources, that is, they would be more efficiently used on other duties.
3. The current system is open to abuse.
4. The current system is out of step with modern trends overseas where the use of imprisonment for minor debts is being phased out.

5. Statistics show that use of the police force to collect minor debts is an inefficient use of resources. (Refer Section 7.7).

- 1.16. The Committee is of the view that the involvement of Sheriff's officers to assist in the collection of parking and traffic fines either by way of "warning attendances" to defaulters or in the arrest of defaulters would be significantly more inefficient than current arrangements and hence is not a practical alternative. (Refer Section 8).

- 1.17. The Committee is of the view that commercial agencies have a role to play in the collection of outstanding parking and traffic fines. Should the use of private agencies be adopted, the Committee believes that their role initially should be confined to assisting the Police Department in the locating of defaulters and not in the physical collection of outstanding fines, and that the performance of such agencies be closely monitored. (Refer Section 9.5).

- 1.18. The Committee believes that any use of private agencies in the fine collection process should be restricted to repetitive defaulters. It recognises that there are social costs associated with such an approach and accordingly recommends that should private agencies be used strict guidelines such as the following be implemented:
 1. Any use of private debt collection agencies that utilise credit bureaux should only be allowed after fine defaulters that have at least three outstanding debts. This is considered necessary as a safeguard against accidental errors.

 2. Enforcement orders issued in respect of uncollected parking and traffic fines should clearly state that private debt collection agencies will be used in the event the fines are not paid and that the affected person may receive an adverse credit rating and that their default

may be listed with credit reference bureaux and the consequences of that.

3. Any record made by credit reference bureaux in respect of fine defaulters should be clearly identified to users of the credit reference information.
 4. Persons with debts as a result of fine defaults under \$200 should have such debts deleted from any credit reference record once the debts are paid.
 5. Private agencies using credit reference bureaux must be required to inform people who seek credit who are refused because of parking and traffic fine default that this has occurred. (Refer Section 9.5).
- 1.19. The Committee surveyed the enforcement systems of ten overseas jurisdictions. Eight of those jurisdictions are either using, or proposing to use, driver's licence or motor vehicles registration or cancellation or non-renewal as a means of forcing payment of unpaid parking and traffic fines. This is a distinct trend in overseas jurisdictions. (Refer Section 10.1).
- 1.20. The Committee is of the view that the use of licence cancellation, applied for certain classes of defaulters only, would significantly increase the rate of collection of outstanding parking and traffic fines. The improved collection would be from amongst those persons who are otherwise slow payers, choose imprisonment rather than pay fines or are unlocated by conventional means. (Refer Section 10.8).
- 1.21. In order to establish an efficient and effective system for enforcing the payment of outstanding parking and traffic fines it is considered that a number of concerns must be met. These concerns include:
1. That the overall system minimize and if possible eliminate the need for police officers to act as debt collectors.

2. That the overall system minimize and if necessary eliminate the need for imprisonment of fine defaulters.
3. That the possibility of errors is minimized.
4. That in the event of an error resulting in an enforcement order being issued to the wrong person the consequences of such an error be not too severe on the individual concerned.
5. That the overall collection rate be increased without a greater increase in collection costs and without the creation of substantial new bureaucracies to enforce debt collection.
6. That the system be sufficiently flexible to:
 - (a) deal severely with repetitive fine defaulters;
 - (b) allow for strategies to be varied by enforcement agencies on the basis of cost effectiveness.
7. That the potential for evasion of the payment of fines be minimised. (Refer Section 11.1).

1.22. From evidence received and submissions made by the affected government departments the Committee is aware that there are specific difficulties that make changes in the New South Wales system difficult to achieve without further cost. However, the Committee is convinced that substantial changes in the system of enforcing the collection of parking and traffic fines are needed and can be achieved.

1.23. The Committee recommends the following changes to the current system:

1. That as a necessary first step immediate action be taken to establish a comprehensive information system that adequately measures the performance of the parking and

traffic fine enforcement system, including quantification of known errors across all departments, and that this information be regularly published.

2. That the Police Department determine a rule whereby after the issue of three warrants or warrants issued to a value exceeding \$200, the Commissioner of Police request the Commissioner for Motor Transport to cancel the defaulter's licence. Similarly, where companies or businesses default on parking fines to the extent of say, \$200 or more, all vehicle registrations in that company's or business' name would be cancelled. Such changes should be effected, initially, on a trial basis.
3. That the restoration of such cancelled licences or registrations be contingent upon clearing of the defaults;
4. That mechanisms be provided through the Local Court to challenge or accommodate the defaults, as is generally the case at present.
5. That the Police Department be given discretion to engage the use of private debt collection agencies for appropriate classes of fine defaulters subject to the strict adherence to appropriate guidelines (Refer Section 9).
6. That with the exception of the above, the existing system remain intact until sufficient time has elapsed to evaluate the effect of the alternative sanctions proposed in 2 above. In this regard, it is noted that the Commissioner of Motor Transport currently has the power to cancel licences and that these changes could be effected without legislative amendment. (Refer Section 11.2).

SECTION 2 THE PROBLEM

In his 1982-83 Report to Parliament the then New South Wales Auditor-General, Mr O'Donnell reported that the level of uncollected parking and traffic fines had reached \$34m. In his subsequent report (1983-84) the Auditor-General reported that the level had reached \$38m as at 30 June 1984.

The failure of persons to pay parking and traffic fines, that are not defended in a Local Court (formerly Court of Petty Sessions), leads to a Warrant of Commitment being issued against the offender. The Police Department have the responsibility of locating offenders in respect of whom warrants are outstanding and once located each offender has the option of satisfying the warrant by payment of the outstanding amount (includes fine and court costs) or being imprisoned for a period of time depending on the amount of the judgement debt.

Statistics supplied in the Auditor-General's report and subsequently verified by the Committee showed that the clear up rate had been falling between 1979 and 1983. This is illustrated in Table 2.1.

It should be noted that the problem described by the Auditor-General made no distinction between defaults in respect to **traffic** fines as opposed to **parking** fines. The Department too do not keep separate statistics. For a number of reasons the default statistics are likely to differ substantially between the two classes of offenders. This was one of the major difficulties encountered in this inquiry.

It can be seen from the table that the value of unexecuted warrants of commitment had been growing steadily and at 1983 rates this added about \$7.0M each year to the level of uncollected parking and traffic fines. Further, the proportion of warrants not finalised was increasing (with the exception of a small improvement during 1982) indicating a diminishing level of performance by police in the execution of warrants.

TABLE 2:1 : RATES OF COLLECTION OF FINES AND EXECUTION OF WARRANTS (1979 - 1985)

Statistics Supplied By the Police Department

Calendar Year	Infringement Notices Issued No.	Notices Satisfied Before Issue of Warrant		Warrants Issued No.	Warrants Executed or Satisfied		Warrants Outstanding ^(a)				
		No.	%		No.	\$M	No.	%	Value (\$M)	Cumulative No.	Cumulative \$M
1979	1,439,489	1,009,194	70.1	175,826	147,911	11.30	27,915	15.9	3.04	310,947	17.4
1980	1,507,571	1,205,348	80.0	178,250	151,875	13.45	26,375	14.8	3.05	330,006	19.78
1981	1,628,816	1,265,512	77.7	234,974	177,455	16.73	57,514	24.5	5.70	338,691	25.66
1982	1,673,466	1,390,733	83.1	216,098	178,732	17.80	37,366	17.3	4.25	424,292	29.69
1983	1,757,977	1,312,466	74.7	259,501	206,437	22.61	53,064	20.4	6.98	475,445	36.65 ^(b)
1984	1,616,237	1,249,351 ^(c)	77.3 ^(c)	259,401	200,057	22.59	59,344	22.88	7.10	491,667	36.43 ^(b)
1985	1,624,223	1,265,351 ^(c)	77.9 ^(c)	399,346 ^(d)	222,926	23.9	116,320	29.0	16.90	611,684	52.16
1986 (Jan-Feb)	254,703	178,801 ^(c)	70.2 ^(c)	55,459	41,771	4.6	13,688	24.68	1.39	616,731	52.95

(a) There are inconsistencies between the number of warrants outstanding each year and the cumulative total. This is believed to be due to the inaccuracy of the Police Department's recording system. e.g. the estimate of number of warrants in circulation.

(b) Statistics obtained from the Police Department appear to be inconsistent as an increase in value of outstanding warrants in 1984 would have been expected as the number outstanding increased by 16,222.

(c) These statistics are of uncertain reliability as they depend on proper matching of information from two departments.

(d) Refer to explanation in Section 4.7.6. It is not known if non-infringement related warrants are included in this total.

During 1984 increased enforcement activity together with the introduction of the new court process notification system appeared to reduce the rate of accumulation of uncollected fines. However, by the end of 1985 the value of outstanding warrants had leapt to \$52.16.

A further problem was the unsatisfactory level of payment of parking and traffic fines prior to summons being issued. As the Table shows, only about 70-80% of offenders paid fines before Court process. Clearly, the high usage of the Courts to resolve questions relating to minor parking and traffic offences suggested an inefficient use of the Court system and an undesirably high cost of administering the provisions of the Motor Traffic Act.

The Committee first raised the problem of uncollected parking and traffic fines by letter to the Commissioner of Police dated April, 1983. The then Commissioner, Mr Abbott, responded by informing the Committee that a number of measures had been introduced to improve the rate of warrant execution by Police.

Further correspondence with the Police Department during late 1983 and early 1984 showed that earlier efforts to overcome the problems were having only limited success. Accordingly, in June, 1984 the Committee resolved to conduct an inquiry into the collection of parking and traffic fines.

In its inquiry the Committee sought to achieve the following:

1. Examine the problems associated with the collection of parking and traffic fines.
2. Examine the effectiveness of measures being introduced by the Police Department to improve the collection of parking and traffic fines including the rate of warrant execution.
3. Identify potential improvements to the system of parking and traffic fine collection.

4. Identify cost savings in the operation of the system.

The Committee took evidence from the Police Department, the Department of the Attorney General and Justice, the Department of Motor Transport, the Corrective Services Commission, two debt collection agencies and the New South Wales Privacy Committee.

On 1 July, 1984 the Police Department introduced a new fine notification system known as the Self Enforcement Infringement Notice System (SEINS). As a result of this change the Committee resolved to defer finalisation of the report so as to assess the effect of the changes.

In June, 1985 the Government announced changes dealing with sanctions against fine defaulters. It was again deemed appropriate to wait and see the effects of these changes.

As Table 2.1 shows that the problem of fine default continues unabated. This report addresses past actions as well as possible future changes.

SECTION 3 COLLECTION PROCESS : OLD SYSTEM

3.1. Overview

The Committee's inquiry began against the background of a system which had evolved piecemeal over many years. In July 1984, during the course of the inquiry, the system was significantly modified.

The major difference between the new and the old system concerned the initial steps in Court process for persons who fail to pay. Since it is believed that without other changes the overall collection rates would not be significantly altered a brief description of the old system (pre July 1984) is given.

Figure 3.1 represents the sequence of procedures from the time of issue of the infringement notice to the warrant stage under the old system.

3.2. Issue of Infringement Notices

Infringement notices arise from "on the spot" traffic fines by police officers, "on the spot" parking fines by police officers, on the spot parking fines by parking officers and breach reports by police officers. From 1981 to 1985 approximately 1.65 million infringements were issued each year. See Table 3.1.

3.3. Processing of Infringements

Infringements were processed centrally by the Traffic Penalties Section of the Police Department. From September 1982 reminder letters were introduced for parking offences* and despatched 21 days after issue of infringement notices. The reminder gave a further 21 days to pay, bringing the time for payment to 6 weeks (42 days) beyond the date of issue. In practice, however, no action was taken on non payment before 10 weeks had lapsed from the date of issue. In

* Reminder notices for traffic offences were not introduced until the introduction of the SEINS system in July 1984.

Fig. 3.1 Sequence of Events in Collection Process (Old System 1983 Statistics)¹

<u>No. of Days Since Notice Issued</u>	<u>Step in Process</u>	<u>Number of Notices Dealt With</u>
0	I/N Issued	<u>1,757,977</u> (100%)
21 ²	Police H.Q.	--- Payment 1,243,079 (70.7%)
	Reminder by ² Police H.Q.	
70	Adjudication by Police H.Q.	--- Fine Deleted 33,910 (1.9%)
	Summons Issued by Police H.Q.	--- Not Served 55,943 (3.2%)
	Summons Transferred to Magistrates Court	
	Hearing by Magistrates Court	--- Paid Up or Quashed 69,387 (3.95%)
365	Warrant Issued by Magistrates Court	
	Warrant Processed by W.I.U. at Police H.Q.	
	Warrant Execution	--- Satisfied by Imprisonment 206,437 (11.74%) or Payment
	Warrant Returned to W.I.U. at H.Q.	--- Warrants Not Finalised 53,064 (3.02%)
		<u>1,661,820</u>

1 Statistics in this flowchart are taken from Table 3.1. The Committee is unable to explain the discrepancies in the figures provided.

2 Reminder notices for traffic offences were not introduced until July 1984. The 21 days reflects the time for parking offences, which are the bulk of the infringement notices.

TABLE 3.1 TRAFFIC AND PARKING FINES - OVERALL SATISFACTION RATE

	1979	- % over previous year	1980	- % over previous year	1981	- % over previous year	1982	- % over previous year	1983	- % over previous year
INFRINGEMENTS ISSUED	1,439,489	-	1,507,571	4.73	1,628,816	8.04	1,673,466	2.74	1,757,977	5.05
INFRINGEMENTS SATISFIED		(% total inf'ments)								
Finalised before summons issued	1,009,194	(70.11)	1,050,017	(69.65)	1,139,429	(69.95)	1,233,300	(73.70)	1,243,079	(70.72)
Finalised at court (b)	148,164	(10.29)	155,331	(10.30)	126,083	(7.74)	157,433	(9.41)	69,387	(3.95)
Warrants Finalised (c)	147,911	(10.28)	151,875	(10.07)	177,455	(10.89)	178,429	(10.66)	206,437	(11.74)
Total	1,305,269	(90.68)	1,357,223	(90.03)	1,442,967	(88.59)	1,569,062	(93.77)	1,518,903	(86.40)
INFRINGEMENTS NOT SATISFIED										
Summons not served	40,052	(2.78)	56,867	(3.77)	56,484	(3.47)	55,346	(3.31)	55,943	(3.19)
Completed through adjudication (d)	22,015	(1.53)	26,975	(1.79)	25,081	(1.54)	29,166	(1.74)	33,910	(1.93)
Warrants not finalised	27,915	(1.94)	26,375	(1.75)	57,519(a)	(3.53)	37,366	(2.23)	53,064	(3.02)
Total	89,982	(6.25)	110,217	(7.31)	139,084	(8.54)	121,878	(7.28)	142,917	(8.13)
INFRINGEMENTS ACCOUNTED FOR	1,395,251	(96.93)	1,467,440	(97.34)	1,582,051	(97.13)	1,691,040	(101.05)	1,661,820	(94.53)

- (a) Could be related to an accumulation of 30,000 warrants at MCA
(b) Traffic cases determined by court less new warrants issued (MCA)
(c) Warrants finalised - see Table 3.3.
Note : Warrants issued towards the end of one year may be
finalised at the beginning of the succeeding year
(d) Includes no action, caution, traffic lecture, see Table 3.2.

1983, 1,243,079 infringements, representing 70.7% of all infringements, were finalised in this initial period. See Table 3.1.

3.4. Administrative Review by Police Department

Reviews of individual cases were processed by the Traffic Review Section if requested by alleged offenders or their representatives, or if no response had been received to correspondence. The task of adjudication of individual cases was undertaken by the Adjudication Section which is a group of Police concerned with determining whether an offence has been disclosed.

In 1983 correspondence received in the Traffic Review Section rose from 68,476 (4.09% of total infringements) in 1982 to 107,697 (6.13%) in 1983. This change is attributed to public resistance to increases in fines in February 1983.

Of all cases reviewed, 68.5% were adjudicated, penalty to stand. No action was taken in 14.0% of cases. See Table 3.2.

TABLE 3.2: RESULTS OF ADJUDICATION PROCESS

	1981	1982	1983	1984	1985	1986
Penalty to Stand	40,626	39,087	73,787	78,563	71,642	18,524
No action	4,907	7,559	15,069	11,100	9,127	1,501
Caution	19,129	20,599	18,062	25,048	20,284	5,006
Traffic lecture	1,045	1,008	779	812	367	NIL
TOTAL	65,707	68,213	107,697	115,523	101,420	25,031

3.5. Issue of Summons

Where infringements were not satisfied a summons was issued by the Court Process Section of the Police Department with the assistance of an officer from the Magistrates Courts Administration. Summons not

able to be served in 1983 numbered 55,943 (3.18% of total infringements).

3.6. Court Hearing

The number of summons cases determined by Courts of Petty Sessions in relation to parking and traffic matters in 1983 was 339,563. Of these approximately 20 per cent resulted in appearances before the Court and of those only 4 per cent were defended. The remaining 80 per cent were dealt with in the absence of the defendant under Section 75B of the Justices Act, 1902.

3.7. Issue and Execution of Warrants

If payment as determined by the court is not made by the due date (usually 14 days) then the Magistrate Courts Administration issues a warrant which is forwarded to the Police Department for execution.

Police Department statistics show that 259,501 new warrants (14.78% of total infringements) were issued in 1983. Of these, some 80 per cent were finalised (executed by Police), recalled or returned to Court. From 1980 to 1983 the number of warrants issued rose by 81,251 p.a. See Table 3.3.

3.8. Resources Allocation to the Collection and Enforcement Process

The allocation of Police Department resources to the collection and enforcement of parking and traffic fines is described in Table 3.4.

In 1983, the overall number of personnel involved in the fine issuing, collection and enforcement process was 1891, comprising:

- . 1386 fine issuing staff
- . 375 fine processing staff
- . 130 warrant execution staff

Since 1979 the ratio of infringement notices issued to processing staff has not increased significantly.

TABLE 3.3 : POLICE DEPARTMENT : COMMITMENT WARRANT STATISTICS - 1979 - 1984

PERIOD ENDING	WARRANTS FINALISED				WARRANTS NOT FINALISED			
	NEW WARRANTS ISSUED BY COURTS AND VALUE	EXECUTED VALUE & % TOTAL ISSUE	RECALLED OR RETURNED AND VALUE	TOTAL	FILED ON HAND AT W.I.U.	IN CIRCULATION	TOTAL NUMBER	TOTAL VALUE
31.12.79	175,826 \$14,340,605	134,700 \$10,360,346 76.6%	13,211 \$938,907	147,911 (84.1%)	277,023	33,923	310,946	\$17,385,427
31.12.80	178,250 \$16,502,260	138,722 \$12,354,055 77.7%	13,722 \$1,096,006	152,444 (85.2%)	292,828	37,178	330,006	\$19,783,240
31.12.81	234,974 \$22,426,186	161,896 \$15,484,525 68.9%	15,559 \$1,243,590	177,455 (75.5%)	342,369	46,322	388,691	\$25,664,056
31.12.82	216,098 \$22,051,520	161,149 \$16,288,047 74.6%	17,280 \$1,508,657	178,429 (82.6%)	376,429	47,560	424,292	\$29,694,184
31.12.83	259,501 \$29,583,906	175,710 \$20,680,872 71.56%	207,727 \$1,925,251	383,437 (79.55%)	427,708	475,737	475,445	\$36,651,291
31.06.84 (½ year)	104,928 \$13,032,616	90,012 \$10,607,193 85.78%	10,792 \$1,059,447	100,804 (96.06%)	446,820	35,346	482,166	\$38,052,476

TABLE 3.4: Police Department Resources Allocated to Collection Process (a)

	1979	1980	1981	1982	1983	1984	1985	1986 (as at 30.4.86)
ISSUING STAFF								
Highway Patrol (b)	797	815	816	957	1,014	1,105	982	982
Parking Patrol	269	262	273	269	372	377	377	377
SUB-TOTAL	1,066	1,077	1,089	1,226	1,386	1,482	1,359	1,359
PROCESSING STAFF (c)								
Traffic Branch Operations	187	193	199	204	208	180	180	167
Traffic Review	28	30	30	32	32	31	31	35
Adjudication	24	24	24	24	26	28	27	12
Warrant Index:								
* Police	14	14	14	14	14	13	14	14
* Public Service	48	51	51	55	55	55	59	60
Temporary Assistants (d)	-	-	-	40	40	40	-	-
SUB-TOTAL	301	312	318	369	375	347	311	288
WARRANT EXECUTION (e)								
Specified Warrant Execution Police	(120)	(120)	(120)	(120)	(120)	120	120	120
Public Servants in Warrant Rooms	8	9	9	10	10	12	12	12
SUB-TOTAL	128	129	129	130	130	132	132	132
GRAND TOTAL	1495	1518	1536	1725	1891	1961	1802	1779
Total Departmental Establishment								
Police	9,281	9,296	9,327	9,797	9,947	10,432	10,708	10,743
Public Service	1,548	1,562	1,566	1,575	1,672	1,688	1,855	2,062

(a) Based on actual strength at June 30. No allowance for related duties by general police.

(b) It is noted that the role of Highway Patrol officers is not simply to issue infringement notices.

(c) Does not include staff at Magistrates Courts.

(d) The years 1982, 1983 and 1984 were supplemented by 40 temporary assistants and extensive overtime.

(e) The number of Police specifically allocated for warrant execution duties is not shown on the strength figures of the Department, except for 1984, 1985 and 1986, where they are identified. They are included in the total number of General Duty Police. It would be anticipated that the number of 120 has remained constant since 1979. Some of the warrants are not traffic or parking fine related.

3.9. Overall Satisfaction Rate

Table 3.1 shows that the overall satisfaction rate decreased from 93.77 per cent in 1982 to 86.40 per cent in 1983.

Infringements paid before a summons was issued decreased from 73.70% in 1982 to 70.72% in 1983 and matters finalised at court decreased from 9.41% to 3.95%. The improvement in initial satisfaction rate in 1982 to 73.70 per cent could be attributed at least in part to the introduction of reminder letters for parking infringements. The decrease in 1983 seems to be related to resistance to payment of increased fines.

Table 3.5 (based on 1983) demonstrates typical performance of the old system

TABLE 3.5: FINE COLLECTION STATISTICS FOR 1983 (old system)

	<u>Number</u>	<u>% of total</u>
Number of infringement notices issued	<u>1,757,977</u>	100
Infringements satisfied before summons	1,243,079	70.7
Infringements deleted through adjudication	<u>33,910</u>	<u>1.9</u>
Total finalised <u>before</u> Court process	1,276,989	72.6
Infringement finalised at Court	69,387	
Warrants finalised by Police	<u>206,437</u>	
Total satisfied <u>after</u> Court process	1,552,813	88.3
Total not satisfied incl. 55,943 summons not served and warrants not executed	<u>205,164</u>	<u>11.7</u>

The Committee noted that due to inadequacy of statistics recorded a more detailed analysis of overall performance has not been possible.

SECTION 4 COLLECTION PROCESS : NEW SYSTEM

From the evidence given, it is clear that both the Police Department and the Department of the Attorney General expected many of their problems to be overcome by introduction of a streamlined and fully computerised system for processing on the spot driving and parking infringement notices.

Legislation for the new system, known as the Self Enforcing Infringement Notice System (SEINS), was proclaimed on 1 July, 1984.

Figure 4.1 represents the new sequence of procedures from the time of issue of the infringement notice to the warrant stage. Copies of relevant notices are provided in Appendix 1.

4.1. Issue of Infringement Notices

Under this system offenders are issued with a new style infringement notice that clearly sets out the options of: paying the penalty; receiving an enforcement order; or having the matter determined at Court.

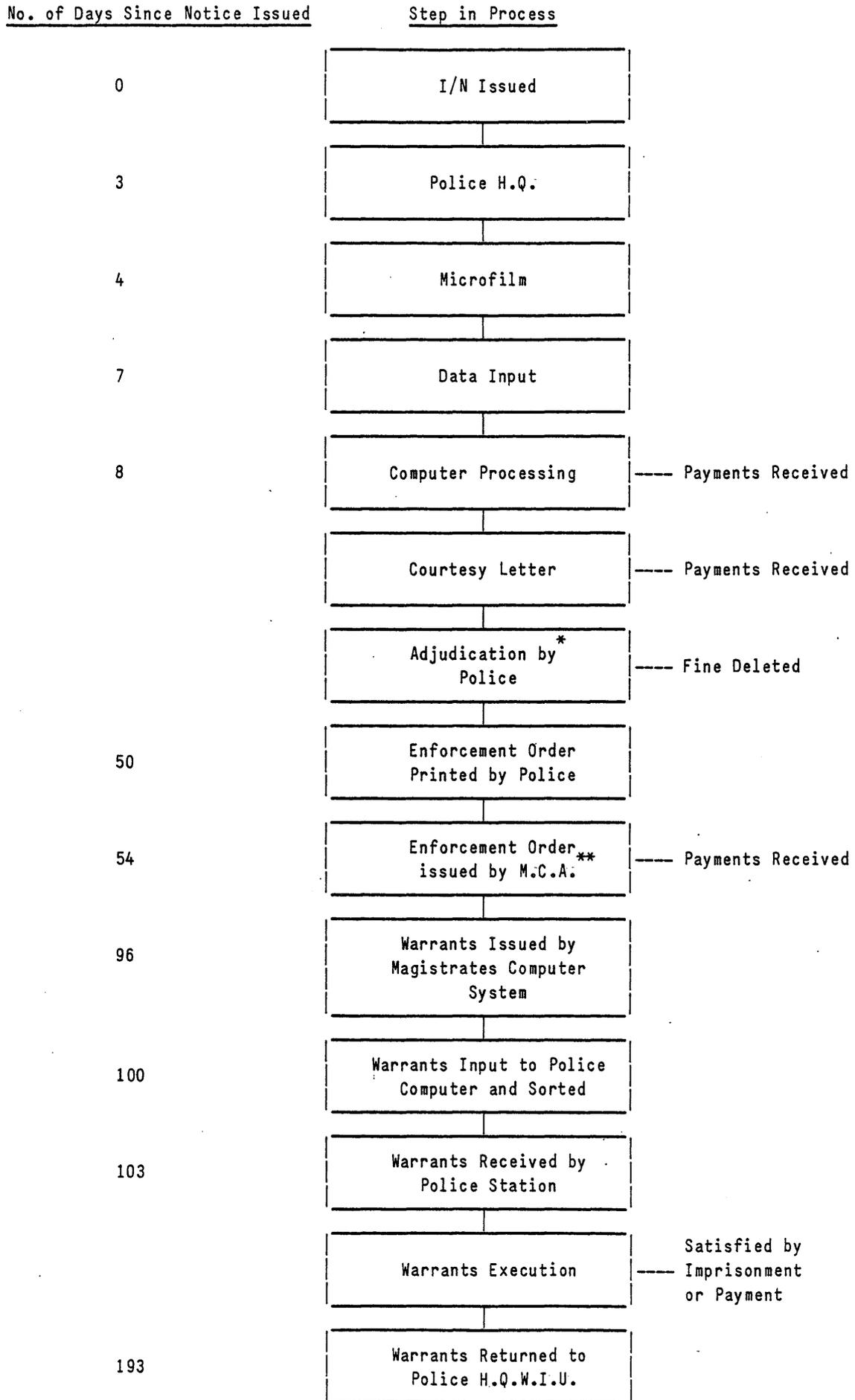
4.2. Processing of infringements

Infringements are still processed centrally by the Police Department. Courtesy/reminder letters are sent if payment has not been made in 21 days. Under the new system, reminder letters are sent for parking and traffic fines.

This letter :

- * reminds motorists of their obligations
- * in the case of parking infringements, offers the opportunity to submit a statutory declaration where another person was responsible
- * allows another 21 days for the original penalty to be paid
- * provides a further option to have the matter determined in court.

Fig. 4.1 Sequence of Events Under SEINS System (Current)



*Where administrative review is required

**Magistrates Courts Administration

4.3. Automatic Issue of Enforcement Order

If there is no response to the infringement notice or the reminder letter, an enforcement order is produced by the Police Department and issued by the Magistrates Court Administration (MCA). This order requires the payment of the penalty plus \$25.00 Court costs. Police also provide MCA with a computer tape of enforcement orders so that MCA can update its computer system.

A defendant is granted 28 days to pay the outstanding amount to court.

4.4. Court Hearing

Where the defendant elects a Court hearing cases are still heard by the Local Courts (formerly Courts of Petty Sessions).

4.5. Issue and Execution of Warrants

If fines are not paid, a Court hearing has not been sought, and no representations have been received, a warrant issues automatically 14 days after the final payment date. Warrants are forwarded to the police, on a daily basis, together with an electronic record of the hard copy document. Police then transfer the electronic record from the Magistrates Courts computer system to their own without the need for keyboard entry.

Where payment determined by the Court is not made by the due date then a warrant is issued by the Magistrates Courts Administration and forwarded to the Police Department for execution.

4.6. Administrative Review under the New System

Under the old system reviews of individual cases were effected after receipt of the infringement notice, or after issue of a summons, or after a Court hearing. In some cases successive reviews were sought in an attempt to overturn earlier decisions.

Under the new system the quashing of fines as a result of administrative review by the Police Department itself is not possible, once an enforcement order has been issued. Representations are received, under certain circumstances, and may lead to an annulment being issued by the Attorney-General's Department.

The Department of the Attorney General has no mechanism or administrative structure to handle representations. The Department relies on judicial review which involves

- * a person on whom the penalty has been imposed making an application before the Court within 12 months of the date of the penalty being imposed
- * a magistrate deciding whether there is a case for review and if so whether a rehearing should take place.

The changed procedure places much more responsibility on the individual than the administrative review through the Police Department. Further, if the individual chooses to be represented in Court by a solicitor in the process of judicial review, he may have to meet that cost plus loss of a day's wages for the time spent in court.

There is no form of free legal assistance to people wishing to contest parking and traffic infringement matters.

4.7. Effects of the New System

1. **Initial Payment Rate.** The Police Department had anticipated that many more payments would be made before Court process i.e. on receipt of either the courtesy letter or the enforcement order.

Comparison of collection rates (pre-court process) before and after the introduction of the SEINS system is difficult. Under the new system Magistrates Courts Administration collects payments resulting from Enforcement orders and there

has been difficulty in obtaining matching statistics from both sources.

The statistics shown in Table 2.1 are of uncertain reliability. These do not show any significant improvement. However, a special estimate was made by the Police Department for the first four months of 1985 and this showed the rate to be 82%.

It is likely that the initial collection rate has improved significantly but the Committee has been unable to quantify the extent of improvement. This lack of information is typical of the lack of co-ordination discussed in Section 6.

2. **Reduced Workload in Courts.** The new system ensures that minor traffic matters do not proceed to Court by default, except in cases where the alleged offender clearly elects for Court determination. For example, in 1983/84 approximately 10,000 summons were produced each week by the Police Department. The rate since has been about 1,000 per week.

Since the enforcement orders are made by an Authorised Justice the majority of traffic matters no longer go to the Local Courts, with the effect of freeing Stipendiary Magistrates of about 450,000 routine matters each year.

3. **More Cases Brought to Finality.** Prior to the changes about 55,000 fines were never brought to finality because summonses to appear in Court were not able to be served. Under the new system summons are no longer issued and offenders not responding to enforcement orders are automatically issued with a warrant of commitment. This has streamlined the system and is likely to have improved the overall satisfaction rate although initially it has resulted in a steep increase in the number of warrants issued as demonstrated in Table 2.1.

4. **Reduced Time Between Commission of Offence and Imposition of Sanction.** The new system shortens the time between the date of the offence and the date of issue of a warrant from 11 months to 4 months. This was expected to significantly increase the warrant execution rate. There is no clear evidence of this yet.

5. **Large Increase in Remissions Applications.** Statistical data obtained from the Attorney-General's Department discloses an approximate 400% increase in the annual rate of remissions applications as a consequence of SEINS. About 20,000 applications were received in 1985 compared to the previous annual average of 4,000.

According to the Attorney-General's Department applications are "annulled" or "remitted" by the exercise of the royal prerogative of mercy by the Governor on the recommendation of the Attorney-General for the purposes of:

- (i) correcting manifest injustice; and
- (ii) tempering the rigidity of the law with clemency.

During the first six months of 1985 the Attorney General received 9,250 such applications with the following results.

Annulled [*]	55%
Remitted ^{**}	20%
Refused	19%
Other	<u>6%</u>
	100%

It is clear that the streamlined administrative and judicial process has resulted in many offenders seeking redress after the Court process has been finalised.

* Conviction declared void.

**Penalty waived.

6. Overall Satisfaction Rate. In an ideal system all fines are either paid or quashed with no net accumulation of outstanding warrants against fine defaulters.

The figures provided in Table 2.1 show a marked increase in outstanding warrants of commitment in 1985 the first full year when the new system was operational. The value of outstanding warrants at the end of 1985 was \$52.16 million, an unusually high increase compared to those that occurred under the previous system.

There are a number of reasons for this large increase:

- i) Approximately 55,000 p.a. of previously unserved summons under the old system now automatically go to enforcement order and then to warrant stage unless payment is received or Court election is made. Given that these were offenders for which summonses were previously unable to be served it is expected that most of these would now become warrants, i.e., the number of warrants generated is now greater.
- ii) A program by M.C.A. to clear up its backlog of matters led to greater than the usual number of warrants being generated during 1985.
- iii) Bunching-up of warrants issued under the old and new systems. As the new process to the point of issuing of warrants only takes about 103 days compared to about 365 days under the old system, during the change over period, the rate of warrant generation was much greater. In this regard, it is noted that the SEINS system did not effectively commence until October 1984 (rather than July 1) and so it is reasonable to expect that until at least mid 1985 warrants would be issued under the provisions of both systems.

- iv) The allocation of Police resources. Warrant execution duty remained constant during 1985 even though the number of warrants issued increased dramatically for the reasons outlined in 1,2 & 3 above. This resulted in a lower rate of execution.

As a result of the unusual circumstances that prevailed during the period just after the inception of the new system the Committee is unable to form a view as to whether the overall collection rate has improved.

4.8. Conclusion

The Committee believes that the introduction of the SEINS system has substantially simplified the fine collection process with a number of attendant advantages. At this stage it remains unclear whether the overall satisfaction rate has significantly improved.

It is also unclear whether better resource utilisation has occurred. There have been significant savings in Local Courts' resources, but on the other hand, the work load of the Attorney-General's department has increased. Applications for remissions have increased dramatically from 4,000 p.a. to about 20,000 p.a. Police savings should have occurred in the area of issuing of summons - a process no longer required under the new system. However, no savings in Police resources have been indicated by the Police Department. Viewed alone the change did not significantly affect the level of Police Department resources involved in the collection and enforcement process, although it did assist other administrative changes that lead to resource reduction.

SECTION 5 CHANGES TO ADMINISTRATIVE PROCEDURES

5.1. Introduction

The Committee is pleased to report that the process of inquiry appears to have had the effect of stimulating an increased rate of change towards improved administrative procedures. Since it first raised the matter with the Police Department in April 1983 substantial changes have been made.

5.2. Staffing

From 1979 to February 1986 the infringement notice processing staff remained fairly constant at about 300 personnel. (See Table 3.4). In fact it rose to a peak of 375 (including temporaries) in 1983 and is currently down to 288, the lowest level in about ten years.

In July, 1984 the Police Department Traffic Branch was relocated to Parramatta and at the same time reorganized. The current staff level is 167 and the reorganized structure provides for much more efficient processing of infringement notices.

One feature of the new organization is that surges in work flow from Traffic Police or from Magistrates' Courts Administration no longer present a problem because contractors are used for short term periods to meet surges in work. This problem was one of the problems identified by the Police Department as seriously affecting the efficiency of its operation. Surges that occurred related to both the issuing of warrants by the Magistrates' Courts and the issuing of infringement notices which occur from time to time due to seasonal factors such as public holidays.

It was proposed to employ 50 additional public servants to assist with duties currently performed by Police officers in order to relieve Police and allow them to carry out other duties.

Unfortunately, the Police Association objected to the proposal and the dispute with the Association concerning the jobs to be performed by 50 additional public servants is still unresolved. However, it

should be noted that not all of these 50 additional public servants would be involved in the area of traffic and parking fine enforcement, hence the net effect of this on Police utilisation is not known. In any event this substitution would not have materially affected overall staff levels in this area, although it may have provided better utilization of Police Officers.

From 1979 to 1985 the number of issuing staff increased from 1066 to 1359 (27%) resulting in an increase of 12.8% in the number of infringement notices issued. Over the same period the number of processing staff decreased from 301 to 288. The number of fines issued has thus increased at a time when the level of processing staff has decreased.

Increased automation and more efficient clerical procedures have outstripped the increased number of fines. The Committee commends the Police Traffic Branch for the considerable achievements in the area of efficiency.

5.3. Encouraging Payment at the Earliest Stage of Processing

Initiatives taken which have improved the initial payment rate include:

- (i) extension of the reminder letter system to include parking and traffic offences
- (ii) clearer explanation of the penalty system. Introduction of the Self Enforcing Infringement Notice System was accompanied by an extensive advertising campaign which outlined opportunities to pay and sanctions in cases of non-payment;
- (iii) effective 1 October, 1984 Bankcard became available for persons who had to satisfy warrants of commitment. Following this, from November, 1984 all original infringements could also be paid by Bankcard. The Bankcard commission charged is 1.5%;

(iv) reorganisation of the Traffic Branch.

A number of other measures also in the pipeline to assist early payment include:

- (i) the decentralisation of payment facilities. Currently personal payment can only be made at Police headquarters in College Street, Sydney and at Parramatta. The feasibility of using agencies such as banks or building societies is currently being assessed by the Traffic Branch;
- (ii) a computerised cash receipting system is to be introduced. Installation costs of the system are expected to be \$360,000 plus annual maintenance costs of \$20,000. The system will result in annual savings of \$85,000 (after taking into account the amortised cost of the new equipment over five years) and will further improve the efficiency of the Traffic Branch.

5.4. Increased Automation

The Police Department has been increasing the automation of its processes for some time, however, only in 1984 with the introduction of the Self Enforcing Infringement Notice System did the Magistrates Courts Administration replace its manual card record system with computerised records.

Changes proposed as a result of increased automation include:

- (i) the transfer of warrant information from the Magistrates' Courts Administration to the Police Department by a computer tape;
- (ii) the installation of a computer network throughout police stations which would cover all police operations, budgeting and warrant execution activity. This would improve the information flow in respect to the execution of warrants between police headquarters and local police stations;

- (iii) the automatic despatch of facsimile warrants to police stations to eliminate the present transfer of original documents. This will allow police to destroy the facsimile of a warrant once it has been executed or once it has to be returned to the Central Warrant Index Unit. This avoids original warrants being transferred from station to station and will allow central control of the execution of warrants. This approach will also be adopted by the Department of Corrective Services;
- (iv) the introduction of the COURNET system providing computerised links between Local Courts will greatly assist data collection by Magistrates Courts Administration.

5.5. Reducing the Size of the Warrant Index File

In mid 1984, there were some 518,000 warrants on file of varying ages and values.

There is strong evidence to suggest that there is a significant fall off in the warrant execution rate as warrants become aged such that the execution rate beyond five years tends to be 2.4% or less. The major reason for non-execution of warrants is that the person on whom the warrant is to be served has left the address shown on the warrant. See Tables 5.1 and 5.2.

Although the new system will reduce the time to the Warrant Index from about 12 months to 4 months, and this should improve the execution rate for new warrants, the backlog of warrants accumulated under the old system remains.

Early in 1984, a group of Public Service Officers was assigned the task of researching the position in respect of warrants held for 6 and 7 years.

A sample of 1700 (6 and 7 year) warrants was extracted from the file. Checks from various sources provided 280 new addresses, representing 16.4% of the sample and with a value of \$15,000. The updated

TABLE 5-1: COMMITMENT WARRANTS EXECUTED RELATED TO PERIOD ON SYSTEM

Period on system	1982		1983		1984		1985	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
Total executed								
1 to 12 months	41,227	78.83	186,360	83.88	167,913	81.18	191,271	80.99
1 to 5 years	9,748	18.64	30,404	13.68	32,771	15.83	34,794	14.73
5 to 10 years	1,271	2.43	4,779	2.15	4,928	2.38	7,418	3.14
10 to 20 years	53	0.10	653	0.29	1,263	0.61	2,702	1.14
TOTAL	52,299	100.00	222,196	100.00	206,815	100.00	236,185	100.00

TABLE 5-2: COMMITMENT WARRANTS - REASONS FOR NON EXECUTION*

	<u>Warrants</u>	<u>%</u>
Left address, whereabouts unknown	365	89
Representations made	21	5
Now residing at interstate address	3	1
No such address/not known/extended holidays	<u>22</u>	<u>5</u>
TOTAL	411	100

TABLE 5-3: POLICE DEPARTMENT - NUMBER AND VALUE OF WARRANTS CULLED IN 1984 (BY AGE)

<u>Year</u>	<u>Number of Warrants</u>	<u>Value \$</u>
1972	10,189	421,646
1973	29,259	1,066,093
1974	24,090	938,052
1975	28,211	1,219,385
1976	27,509	1,276,506
1977	20,781	1,222,515
1978	<u>23,782</u>	<u>1,493,167</u>
TOTAL	163,821	7,637,364

* Source: Planning and Research Branch, Review of Warrant System, Interim Report, November 1983, Appendices 4 and 5.

addresses were supplied to Police enabling a major effort in enforcement to be undertaken.

Ninety-two of the warrants were satisfied and \$5,072 collected. Seven were executed by way of imprisonment, while inquiries in respect of the remaining 181 warrants proved fruitless.

An Inter-Departmental Steering Committee had recommended that, with the concurrence of the Minister for Police and Emergency Services, the Attorney General and the Auditor General, as a general rule, all commitment warrants held at the Warrant Index Unit in excess of 5 years be returned to the Court of issue.

The exceptions were to be those which relate to persons for whom a large number of warrants (6 years and older) are in existence. They were to remain on system and the warrants enforced if the whereabouts of such persons become known.

In September, 1984, the Police Department extracted all single warrants held prior to 1 July, 1979 with a value of less than \$50 for return of such warrants to the Courts. Table 5.3 shows the number and value of warrants withdrawn and returned to the Court of issue.

It is understood that no further substantial culling has taken place. However, it is believed that future action on the Steering Committee's recommendation is under consideration.

The Committee notes that there is a precedent in 'writing off' warrants by the State Crown Solicitor's Office in relation to parking penalties imposed on corporate bodies. In the financial years 1980/81, 1981/82, 1982/83 and 1983/84 the proportion recommended for writing off was 34%, 52%, 22% and 42% respectively.

In his 1984-85 Report the Auditor-General stated:

"In excess of 550,000 warrants with an estimated value exceeding \$44.3m were held as at 30 June 1985. The advantages of early satisfaction of warrants is obvious from the following statistics:

<u>Age of Warrant</u>	<u>Satisfaction Rate</u>
1 year	80.0%
2-4 years	14.5%
5-8 years	3.5%
over 8 years	2.5%

The cost of continuing to endeavour to obtain satisfaction on warrants over 5 years old is prohibitive and quickly exceeds the value of the warrant. The Police Department is seeking to have the retention period of warrants reduced from the existing 12 years and to have low value warrants removed from the system."

The Committee agrees with the views expressed by the Auditor-General and recommends that the proposals put forward by the Steering Committee be implemented on a permanent basis.

Warrants for parking and traffic fines outstanding for more than five years give a misleading picture as to the realistic levels of outstanding debts. The Committee strongly recommends that each year such warrants should be written off in financial terms and culled from the index unless they are of high value (say \$500 or variable ascending to category of offence) or there are a large number of warrants outstanding against the same person.

5.6. Improvement in Recycling of Warrants

Under the old system, recycling of warrants took place at 18 months and 42 months beyond entry to the file.

Given the average processing time to the Warrant Index of about 12 months this meant that execution of warrants would have been attempted at -

- 12 - 14 and a half months after the offence,
- 30 - 32 and a half months after the offence,
- 54 - 56 and a half months after the offence.

The time for recycling was related to checking of Department of Motor Transport records for change of addresses, licences being renewed at one or three year intervals.

Although warrants would become available earlier for execution under the new system continuation of this system of recycling was still considered unsatisfactory.

The Police Department has now begun a programme of continuous recycling of warrants. Address checks with Department of Motor Transport records now take place before despatch to stations.

5.7. Improving Address Searching Procedures

The Police Department and the Department of the Attorney General rely heavily on addresses held by the Department of Motor Transport. Delays in the registration of the transfer of ownership of a vehicle have been the subject of comment in relation to execution of warrants by the Police Department and prosecutions by the State Crown Solicitor's Office. In evidence, the Police Department claimed that one of its greatest problems in executing warrants was inadequate address searching procedures. Some problems are caused because the Department of Motor Transport does not require evidence of the existence of companies at the time of registration.

The Department of Motor Transport in a response to the Committee questioned the significance of this factor. A survey was carried out by the Department in November 1984, to determine how many bogus companies or businesses were recorded as the registered owners of motor vehicles. The Department stated:

"This survey found that the incidence of company names not being registered with the Corporate Affairs Commission was 0.9%, the incidence of business names not being registered with the Commission and this Department having failed to obtain a nominee name was 0.8%, and the incidence of business names registered with the Commission purporting to be companies was 0.7%".

The Commissioner further commented:

"I don't believe the deficiencies found in the Department's records are of such a magnitude to explain any significant proportion of the current fine collection problem".

The Department has advised that the following changes have been made to improve the accuracy of addresses;

1. In 1985 procedures were introduced at motor registries to overcome, to some extent, the problem of fictitious addresses. The issue of registration labels and other registration documents over the counters at motor registries has been restricted to those of the public who produce computer prepared notices which indicate that they can be located at the addresses supplied. All others are issued with interim receipts and the documents are posted to the address which is furnished. Early checks of this scheme indicate that very few of these documents are returned unclaimed.
2. In May 1986 the Department introduced a new Notice of Disposal Card, postage paid and available at all motor dealerships and inspection stations, encouraging sellers of vehicles to promptly notify ownership changes as required by existing law.
3. In May 1986 the Department revamped its registration certificate backs to accommodate dual price declarations for stamp duty assessment purposes on transfer, at the request of the Department of Finance.
4. In May 1986 the Department revamped others of its forms to accommodate dual price declarations and to warn of the much-increased maximum penalties under the Stamp Duties Act for false or misleading declarations.
5. From mid-May 1986 the Department required a new-style declaration, incorporating a tax agent's certification, to be submitted by all claimants for primary producer concessional registration.
6. From 1 July, 1986, reduction of all non-public vehicle registration renewal certificates to just one version for cars, cycles and lorries.

Copies of the new forms are shown in Appendix 2.

In addition the Department has indicated that the following further changes are in the pipeline.

1. From 1 August, 1986, imposition of a late payment surcharge of \$50 on applications for vehicle ownership transfer lodged more than seven (7) days after a sale.
2. From 1 September, 1986, imposition of a late payment surcharge of \$15 on applications for registration renewal lodged after expiry date.

According to the Department, the latter two changes in particular, are expected to have a significant impact upon the way its customers deal with the Department, the timeliness of its revenue collection and the accuracy of its records.

5.8. Administrative Review by Police Department

The administrative review process of the Police Department is comprised of essentially two parts. The first part is a review conducted by clerical staff. It decides which applications for relief from penalties should be adjudicated upon and which are clear-cut cases and should remain in force. The second part is the adjudication section which comprises police officers. The adjudication section deals with appeals against infringement notices as well as breach reports filed by local police traffic officers.

Changes have been made such that adjudication no longer occurs for unpaid fines that are not challenged. Adjudication previously occurred for all fines that remained unpaid as a check prior to issuing summons. The section currently only deals with breach reports and appeals referred on from the review section.

Given that nearly 600,000 infringements were adjudicated upon each year, most of these needlessly, and given that an adjudicator can

review 200 infringements per day, this change results in an effective saving of 14 police on this function.

The Police Department has advised that it has taken action to reduce the authorised strength of the Police adjudication section by 18 by decentralising the adjudication process. Persons still have the option of making a Court election where they consider they had been issued with an infringement notice improperly. The Committee is not aware of the extent to which this change has effected the number of cases coming before the Local Courts.

5.9. Attempts to Heighten Warrant Enforcement Activity

The greatest single problem with non-execution of warrants prior to mid 1984 was the lack of specific overall management responsibility for warrant execution, the system being characterised by:

- . lack of emphasis on warrant execution from senior management
- . determination of work priorities at a local level
- . inadequate management returns.

The Committee acknowledges the general validity of the Police Department's claim, that given other demands on its resources, it had not been able to accord the execution of warrants a high priority at the local level.

The Police Department also claimed, however, that in general police regarded warrant execution as a 'debt collecting performance', something which brings them into contact with the community in an unfavourable way, and 'distasteful'.

After enquiries from the Public Accounts Committee began, the Police Commissioner formally directed on two occasions that steps be taken to improve warrant execution at the local level. Police were, however, unable to report the effect of the Commissioner's directives.

Prior to a Special Task Force on Warrants formed in late 1984, the Department twice formed local task forces at Maroubra to intensify their efforts in warrant execution. In the first case some task force officers were redeployed to cover an industrial dispute at the Long Bay Gaol complex. In the second case, it was decided to use a number of police from the Tactical Response Group, a proposal which was reconsidered after unfavourable media coverage, and the exercise was abandoned.

Inadequate work returns have made it difficult for the Department to monitor warrant enforcement activity. New returns were introduced in February, 1984. At the time of the inquiry, the Department believed that it was not in a position to discuss overall target rates for execution, however, as appropriate management information became available from the new returns, the Department expected that it would be able to establish performance levels for individual districts and divisions taking into account their particular circumstances.

The continuing unsatisfactory situation in respect of warrant enforcement activity was of such concern to the Police Department that it decided to assign a senior member of the Police Force full time responsibility to ensure that all possible action was done to improve warrant execution procedures. In verbal evidence, the Department agreed that duties would specifically include monitoring costs associated with the warrant system, and in particular, unit costs at particular stages of processing; "the overall cost to the Police Department of collection in relation to revenue collected; trends in the number of infringements deleted and revenue lost through the review/adjudication process; trends in the number and value of unexecuted warrants returned to the Warrant Index Unit and the reasons for non execution.

This initiative was implemented in September, 1984.

As Table 2.1 shows, the execution of warrants has fallen far behind the generation of fresh warrants. For example, in 1985 399,346 new warrants were issued and yet only 222,926 were executed or satisfied - the lowest success rate for at least six years. Clearly, for

whatever reason, the new procedures have not been effective. The Committee is critical of the Police Force for failing to honour its undertakings in this area and/or for not finding other solutions to the problem.

5.10. Error Rate

In its submissions the Department of Motor Transport has estimated that its error rate in address records is about 1.5% (based on the non-return of renewal registration certificates).

The Police Department, has been unable to estimate its contribution to the overall error rate. Nor has the Magistrates Courts Administration estimated its error rate.

While the overall error rate in percentage terms may be probably less than 1%, it is critical to the efficiency of the fine collection system.

In this regard, the statistics provided by the Attorney-General's Department (See Table 5.4) are somewhat enlightening.

Analysis of the Tables 3.2 and 5.4 leads to a number of interesting prima facie conclusions:

1. Based on 1985 figures about 20,000 errors occur each year in the issuing of enforcement orders and/or warrants of commitment. This represents 1.2% of all infringement notices issued. This is based on:
 - (a) the estimate that in 1985 there were 18,500 remissions applications of which 55% were annulled (ie 10,175) and, in approximate terms, an annulment occurs where a penalty has been wrongly imposed.
 - (b) Table 3.2 which shows that during 1986 9,127 fines were quashed by the police adjudication process. This error rate

for 1985 represents about 2.5% of all warrants of Commitment issued.

(c) There are also errors which would be dealt with by the Courts or which do not result in police adjudication or remissions applications.

It should be noted that the error rate in 1985 may have been aggravated by the changes to the system introduced during that year.

TABLE 5.4: QUANTITATIVE ANALYSIS OF REMISSIONS APPLICATIONS (APPROXIMATE FIGURES)

	<u>Jan-Jun 1985</u>	<u>Jan-Jun 1984</u>
	(Total 9,250)	(Total 2,000)
<u>(1) Offence</u>		
parking	70%	60%
driving	25%	30%
other	<u>5%</u>	<u>10%</u>
	100%	100%
<u>(2) Determination</u>		
annulled	55%	31%
remitted	20%	25%
refused	19%	39%
other	<u>6%</u>	<u>5%</u>
	100%	100%
<u>(3) Grounds</u>		
sold car	36%	30%
claim payment	37%	27%
non receipt of advice	5%	3%
other Police error	5%	5%
hardship	8%	12%
hardship (driving disq)	2%	5%
rehearing (doubt as to guilt)	2%	5%
not in possession of car	2%	2%
cut-out by gaol	1%	2%
other	<u>2%</u>	<u>9%</u>
	100%	100%

2. About 80-90% of all remissions applications are made on grounds which imply Departmental error. This is derived from the following categories in the Table 5.4, sold car prior to commission of offence (36%) (suggests the possibility of either Police or DMT error), claim payment of fine (37%) (suggests mainly Police error), other Police error (5%), and cut-out by gaol (suggests police error on warrant records). Some of those categorized as "non-receipt of advice" (5%) may also be due to Police Department error.

According to the Attorney-General's Department, 40% of remissions applications are initiated by the Police Department suggesting that the Police Department is itself aware of a considerable number of errors in the penalties imposed.

5.11. Conclusions and Recommendations

1. The Police Department has made considerable improvements in the initial processing of fines in the area of staffing levels, procedures automation, and the previous cumbersome review process and
2. The Department of Motor Transport has taken some action to improve the efficiency and accuracy of its address records.
3. The Police Department has failed to achieve any significant improvements in the warrant execution process (in respect of parking and traffic fines).
4. Warrants (in respect of Parking and Traffic fines) of age greater than five years should be culled, except in cases where individuals have a large number of warrants outstanding or of value greater than a specific amount (say \$500).
5. Based on 1985 figures the error rate in the issuing of enforcement orders and warrants of commitment is about 20,000 per annum or 1.2% of all infringement notices issued. This is too high.

Decisive and persistent action must be taken by both the Department of Motor Transport and the Police Department to reduce the error rate.

6. There is a lack of accurate performance measurement information.

SECTION 6 THE NEED FOR GREATER ACCOUNTABILITY AND COORDINATION

6.1. Current Arrangements

The Committee believes that the fundamental reason for the inefficiency and lack of effectiveness of the collection and enforcement system in the past has been the lack of overall responsibility and accountability for the whole process. Responsibility for the whole program is divided between four departments.

The **Police Department** issues infringement notices for parking and traffic offences, collects revenues prior to Court process, is responsible for the execution of warrants of commitment taken out against fine defaulters, and the collection of funds that derive therefrom. It is also responsible for the imprisonment of fine defaulters.

The **Attorney-General's Department** through **Magistrates Courts Administration** is responsible for the judicial aspects of the system including:

- (a) the hearing of cases arising from parking and traffic infringements;
- (b) sentencing; and
- (c) the collection of monies that are paid up once enforcement orders have been issued

The **Attorney-General's Department** is responsible for processing remissions applications.

The **Department of Motor Transport** is responsible through the Minister for the setting of fines and the levels of fines. It is part of its responsibility of administering the Motor Traffic Act which is the Act that prescribes the offences that are enforced by the Police Department. It is also responsible for providing the police with data concerning offenders.

The Department of Corrective Services is responsible for imprisonment of many fine defaulters.

6.2. The Allocation of Costs and Revenues Between Departments

Through correspondence with the Department of Motor Transport, the Police Department, the Attorney-General's Department, the Department of Corrective Services and Treasury, the Committee pursued the following questions:

- (a) How much does the collection and enforcement system cost each year and how is this cost shared between Departments?
- (b) How much is earned from fines each year and which Departments collect the revenue?

6.3. Costs

(a) Police Department

Table 6.1 shows costing information submitted by the Department in relation to its responsibilities for collection. This cost includes a number of estimates since, for example, the Department has not yet determined the actual costs of warrant execution. The estimated overall cost of collection in 1983 was \$55.88 million.

The 1985-6 budget papers* show a cost of \$52.29 million as being the cost of Police Supervision and Control of Traffic for 1984-5. This however includes some services not relevant to the fine enforcement and collection process and excludes other relevant activities such as executions of warrants.

By contrast, the Auditor-General reported that an interdepartmental committee assessed the costs of Police Supervision and Control of Traffic as \$63.52 million in 1983-4 and \$70.9 million 1984-5.

* Budget estimates classified by program, p. 413.

TABLE 6.1 : POLICE DEPARTMENT - OVERALL COST OF ENFORCEMENT AND COLLECTION PROCESS

Issuing of Infringement Notices*	1983 Basis \$M	1986 Basis** \$M
Parking	\$ 8.25	\$ 8.78
Highway Patrol	\$36.82	\$36.02
Total	\$45.07	\$44.80
 Processing to summons stage		
Traffic Penalties/Traffic Review	\$ 3.20	\$ 6.04
Adjudication Section	\$ 1.45	\$.45
Total	\$ 4.65	\$ 6.49
 Subsequent action within Police Department		
Warrant Index Unit	\$ 1.16	\$ 1.89
Warrant execution	\$ 5.00	\$ 5.00
Total	\$ 6.16	\$ 6.89
 <u>Cost Overall</u>	 <u>\$55.88</u>	 <u>\$55.18</u>

(b) Attorney General's Department

The Department reported that it was unable to assess costs or revenue collected in relation to the collection of fines because:

- . duties in connection with parking and traffic penalties are part of a wider range of duties;
- . details of revenue collected by the Department for parking and traffic penalties are not separated from general revenue collected by the Treasury. However, the Department noted that as from 1 July 1984 revenue returns from Clerks of Petty Sessions will be forwarded to the Department rather than to the Treasury.

* Police and public service operating, salary and material costs.

** Police estimates 1986 figures as at 30.4.86

When asked when the last quantitative assessment was undertaken, the Department replied:

"It would be fair to say there has never been one, in any formal sense. When the amount of \$20 was fixed as the cost of a warrant there was probably an ad hoc consideration of whether that amount would be reasonable, but certainly no detailed study of the amount of cost involved in terms of salary and all the other expenses to the Department in that figure."

There seemed to be some underlying implication on the part of the Attorney General's Department that cost benefit analysis would somehow reduce the effectiveness of the judicial process.

The Committee takes the view that whatever the cost of the judicial process there may be ways of reducing those costs (perhaps by improving administrative procedures) without necessarily lessening the quality of the service. Further, the lack of quantitative analysis in relation to costing has at least the potential to undermine efficient and effective forward planning of support services for the process. In as much as the collection of parking and traffic fines is in most cases a relatively routine matter, the Committee is of the view that cost benefit analysis is appropriate.

It is essential that the Department of the Attorney General be able to supply information as to costs of collection and revenue collected if the overall cost of collection of parking and traffic fines is to be related to the revenue collected.

(c) Department of Corrective Services

The Department estimated that savings to be achieved by diverting parking and traffic fine defaulters from prison would be only \$245,931 p.a. (savings on variable costs). Further information obtained from the Department is given in Section 7.3. Again the Department had great difficulty in producing accurate cost information.

(d) Department of Motor Transport

The cost to the Department of providing information to the Police Department and the Department of the Attorney General and Justice was estimated by the Department on the basis of, firstly, the Police Department's need for a 24 hour seven days per week use of the on-line computer link to the Department's records, which provides immediate response to inquiries about vehicles and drivers, and secondly, the cost of carrying out searches to provide addresses and issuing certified copies of records including Section 12 (of the Motor Traffic Act) and Section 36 (of the Motor Vehicle [Third Party Insurance] Act) certificates to both Departments.

Although the Department has estimated the total cost of its computer services to be about \$7 million per annum, no reliable estimate of the enquiry service alone is available. The cost attributable to Police usage of this service (estimated at 40 per cent of total enquiries) is, therefore, not available.

The total identifiable cost based on the cost of staff to operate the 24 hour inquiry service by Police, the cost of entering data from Police tapes and cost of providing Section 12 and Section 36 certificates, including overheads of 40 per cent, was estimated to be of the order of \$400,000 per annum. The full cost would be higher but a reliable estimate is not available.

In summary the total cost of the fine collection and enforcement process is not known. Based on 1983 costs, three of the four affected Departments incur a total cost of at least \$56.4 million to which must be added the cost of services provided by the Magistrates Courts Section of the Attorney-General's Department.

6.4. Revenue

Examination of the Public Accounts for 1984-5 reveals the following revenues to the Consolidated Fund for 1983-4 and 1984-5.

Fines and Forfeitures:	<u>1983-4</u>	<u>1984-5</u>
	\$000	\$000
Magistrates Courts	6,580	7,264
Transport and Motor Traffic Acts	76,208	80,145
Other Fines and Forfeitures	<u>1,268</u>	<u>1,109</u>
	84,056	88,518

It is not possible to separate amounts related to parking and traffic fines and penalties from other fines and penalties collected under the Transport and Motor Traffic Acts although most of the revenue would be expected to be related to the former.

The amount of fines and penalties collected by the Traffic Penalties Section of the Police Department is reported separately in the Auditor General's report as \$55.3 million in 1983-4 and \$56.7 million in 1984-5.

Some part of the Road Transport and Traffic Fund administered by the Department of Motor Transport, under Section 202(2)(a) of the Transport Act, is used to meet the cost of police supervision and control of traffic including some of the costs of collecting parking and traffic fines and penalties. The Road Transport and Traffic Fund derives revenue chiefly from drivers' licences and motor vehicle registration fees.

In 1982-83 the cost of Police services was assessed to be \$58.7 million (18% of total Police Department costs) but the contribution from the Road Transport and Traffic Fund was only \$43.3 million. The amount contributed in 1983-84 was \$52 million. For 1984-5 the amount assessed was \$70.07 million, while the amount contributed was \$76.38 million. This amount varies each year because the contribution towards Police services is the balancing item in the Road Transport and Traffic Fund when all other expenses have been met.

The total cost of Police services is assessed each year by an interdepartmental committee consisting of officers of the Department of Motor Transport, Police Department and the Treasury.

Section 270 (n) 1 of the Local Government Act provides that a council in an area in which parking meters are installed shall be responsible for meeting the cost of police supervision and enforcement. The amount to be paid is determined by the Commissioner for Motor Transport, the Commissioner of Police and the Council concerned. This amount is also paid into the Road Transport and Traffic Fund and theoretically subsidises the payment made from that Fund towards the cost of police supervision. During 1982-83 an amount of \$1,197,291 was received from Councils as their contribution towards the costs of police supervision of parking meters. Contributions from Councils in 1983-84 were \$74,288 and \$534,113 in 1984-5.

Although its purpose is not clear to the Committee the contributions by Councils are the only revenue derived through the Road Transport and Traffic Fund, that is directly related to the collection and enforcement system.

In summary total revenue earned from the traffic enforcement and fine collection system is also not known. In 1983 it was somewhere in the range of \$60.0 to \$85.0 million including collections by M.C.A. and fees from local Councils. (See Table 6.2)

6.5. Overall Responsibility for the Fine Collection and Enforcement Function

The Committee examined the possibility of some of the functions currently being carried out being consolidated with one or other of the departments concerned and/or one of the departments being given overall responsibility for the function. Options in this regard would include:

- (a) The Police Department having overall responsibility. This would be closest to the current arrangement since the Police Department currently carries out most of the activities embraced by the function. However, the role of the Attorney-General's Department, the Department of Motor Transport and the Department of Corrective Services would still have to continue as is currently the case.

TABLE 6.2: APPROXIMATE COSTS AND REVENUES - COLLECTION AND ENFORCEMENT SYSTEM

	Costs		Revenue	
	\$000	Estimated by	\$000	Estimated by
Police Department	55,880 (55,739) (63,520)	Police Dept - 1983 (Public Accts - 1983-84) (Inter-Dept'l Committee - 1983-84)	About 55,300	Auditor General's Report (1983-84)
Attorney Generals /Magistrate Courts	unknown		unknown	
Dept of Corrective Services	246	Dept of C.S.	Nil unknown but small	n.a.
Department of Motor Transport	400 + unknown amount	D.M.T.	* Nil	n.a.
Local Councils	Nil	Nil	500 p.a.	Auditor General's Report (1983-84)
Total	At least 56,400- 71,000		greater than 56,000	

* Revenue collected by DMT does not normally relate to parking and traffic fines as encompassed by this report.

- (b) The Department of Motor Transport being given overall responsibility for the system. This is logical given that all the offences that are being enforced arise from the provisions of the Motor Traffic Act. In the event that sanctions for non payment were to be associated with the denial of motor vehicle registrations and/or licences, such a system would appear appropriate. In this case the Police and the Attorney-General should be seen as Departments providing a service to the Department of Motor Transport.
- (c) The third option might involve another department, say the Department of Finance which is responsible for collecting the State's revenues, being responsible for the collection of all funds. This would presumably involve the Police, the Department of Motor Transport, and the Attorney-General's providing a service to the Department of Finance administered program. The Committee however, did not explore this possibility further as it seemed to be increasing rather than decreasing the number of Departments involved in the process.

Some serious consideration was given to Option (b). In response to this proposal the Department of Motor Transport identified the following implementation issues that would need to be addressed:

- . Additional functions would need to be carried out by the department's staff including source document checking, adjudication of appeals and process coordination. In this regard it was noted that the Traffic Branch of the Police Department in 1984 had a staff of 266.
- . Payment facilities would have to be expanded by 25%. This may involve extended hours at motor registries.
- . There would be a substantial increase in work load of the Department in order to deal with unpaid accounts. The Department presently experiences a bad debt rate of less than 1% which is much less than the expected bad debt rate if unpaid

finer were allied to licences and registrations. It is expected that 25% of the relevant files would have to be endorsed with outstanding amounts. A new customer identification number incorporating a new licence number would have to be introduced so as to provide a pro rata registration period for persons who fail to make the full payment of fines. An overall increase in the number of inquiries by staff of 7% would be expected to result.

The Department would require a separate computer file and computer system to deal with traffic penalties. In addition registry offices currently outside the network, (only 32 out of 97 registry offices currently have direct access to the main files) would have to be provided with a means of ascertaining outstanding amounts to be collected in respect of each person and in the event of non payment being able to attach such debts to vehicle registration and/or licences. In addition the collection of court fines generally and the recording of relevant court data would be necessary. This latter requirement would be difficult because of the intricate provisions associated with the Justices Act relating to the current Self Enforcing Infringement Notice System.

Such an arrangement would have merit for a number of reasons. Firstly, since the Department of Motor Transport is primarily responsible for the Motor Traffic Act it follows that the enforcement of its provisions be located within the Department. Secondly, with a new system of enforcement not requiring incarceration of offenders, but the cancellation or non renewal of licences and registration certificates, the onus would be on the Department to ensure that its address records are accurate and that the system performance is satisfactory. Thirdly, it would eliminate the involvement of the Police Department in all but the issuing of the infringement notices. This occurs with other Motor Traffic matters. Finally, the use of prisons would be all but eliminated hence the number of departments involved would be reduced from four to three.

However, the Committee hesitates to recommend such an approach at this stage. Notwithstanding the fact that the Committee has recommended that the cancellation of driver's licences be used as a sanction against fine defaulters (refer Section 10) **it believes that current steps being taken by the Police Department in the area of issuing infringement notices, collecting monies and processing payments, especially since the creation of the new Traffic Branch of the Department located at Parramatta, has improved the efficiency of the process. Whilst the Committee is attracted to the notion of giving one department overall responsibility for the system in the long term, at this stage it does not feel that a major change is justified which would require the Department of Motor Transport to take overall responsibility.**

Another possible alteration to existing responsibilities envisaged local councils taking the responsibility for the collection and enforcement of parking fines. Whilst this may sound appropriate in principle, the Committee did not pursue this option further on the assumption that local government bodies would be likely to be less efficient at recovering outstanding fines.

6.7. Attempts at Better Interdepartmental Working Relationships

In forming several interdepartmental committees to look at different aspects of the system, Departments have recognised the interlocking nature of their responsibilities and have sought to improve coordination of services between Departments.

The existing interdepartmental committee which has the broadest concerns is an Interdepartmental Steering Committee which includes in its membership

- . Deputy Commissioner, Administration, Police Department (Chairman)
- . Secretary, Police Department
- . Deputy Under Secretary, Department of the Attorney General

- . Assistant Commissioner, Traffic, Police Department
- . Assistant Secretary, Traffic, Police Department
- . Representative of the Department of Corrective Services.

The Steering Committee is concerned with a variety of matters, some examples being,

- * reactivation of the Interdepartmental Committee established in 1982 to examine the possibility of transferring some responsibilities for service of process from police to Sheriff's Officers
- * review of retention period for warrants
- * recommendations of review undertaken by Dr. M. Devin of the administration of warrants of commitment issued in relation to unpaid traffic and parking penalties (an independent review initiated by the Police Department)
- * further improvements in computerisation
- * banking procedures
- * recycling of warrants
- * introduction of the Self Enforcing Infringement System.

The Interdepartmental Committee commonly forms working parties to consider particular issues.

The Police Department and the Department of the Attorney General commented on benefits obtained from various meetings between their representatives and those of the Department of Corrective Services and Motor Transport.

6.8. Conclusions

The Committee set out to assess the performance of the overall system. To achieve this it would be necessary to have accurate information regarding the value of infringement notices, the value of recoveries and the total cost of the collection and enforcement system. However, the Committee found great difficulty in achieving an overall view of the system for the following reasons:

- (a) There was a serious lack of statistics and information including performance data and cost and revenue data from all of the departments concerned.
- (b) There was a serious lack of coordination between departments to ensure the maximum overall performance of the fine collection and enforcement system.

The Committee recognises that attempts are being made to remedy these problems. However, it feels that there is a need for greater accountability and coordination and accordingly recommends that:

- (a) All departments take steps to monitor and report the costs of issuing, collecting and enforcing traffic and parking fines as it relates to their respective functions.
- (b) The Police Department be given clear overall responsibility for monitoring the efficiency and effectiveness of the system at all stages and accordingly be given appropriate performance information from other relevant Departments eg Magistrates Courts Administration.
- (c) The Public Accounts each year contain a summary of all costs and revenues for all departments arising from the issuing, collection and enforcement of parking and traffic fines.
- (d) The Police Department periodically prepare and publish in their Annual Report the following overall management information:
 - . Number and value of Parking Infringement Notices Issued
 - . Number and value of Traffic Infringement Notices Issued
 - . Percentage and value of fines paid prior to Enforcement Order
 - . Percentage and value of fines paid after Enforcement Order
 - . Percentage quashed by Police Department Review and Adjudication processes
 - . Percentage of Infringement Notices successfully appealed against at Court

- . Percentage of Infringement Notices unsuccessfully appealed against at Court
 - . Percentage and value of Infringement Notices paid up after Court process
 - . Percentage and value of Infringement Notices by year of origin satisfied by detention in
 - (i) Police Lockups, and
 - (ii) Corrective Services institutions
 - . Volume, results and analysis of remissions applications
 - . Statistics on fine defaulters, e.g. numbers of persons with multiple warrants outstanding
 - . Average Time taken for each step of the process and the process overall
 - . Number of individual cases of error
 - . Number, and revenue equivalent, of fines not collected
 - . Other information necessary to keep a close watch on the efficiency and effectiveness of each step in the process
- (e) Cost benefit analyses of new initiatives be undertaken by each relevant Department and their effects on the overall cost of collection considered.
- (f) Any increases in judicial activity as a result of changed arrangements be monitored and evaluated.
- (g) Should a system of enforcement by way of cancellation of driver's licences be introduced, departmental responsibilities be reviewed six months after the introduction of the system having regard to the Committee's comments in Section 10.7.

SECTION 7 THE DETAINMENT OF FINE DEFAULTERS

7.1 Current Practice

If a person, who is guilty of a parking or traffic offence, fails to pay a fine (plus costs) following an enforcement order, a warrant is issued for the person's arrest.

At the point of arrest the person again has the option of paying the outstanding fine plus costs and so avoiding detention. If payment is not forthcoming the fine defaulter is detained either in a police lockup or in a custodial institution.

When detention for fine default occurs, the period of detention is calculated at the rate of \$50* of outstanding debt per day of detention. The calculation of the period of detention is as laid out in Paragraphs 68 and 69 of Police Instructions No. 32 relating to the Justices Act 1902 and the Prisons Act 1952 as amended.

The Police Department has summarised these rules as follows:

- . Where a sentence is stipulated in days, each day ends at midnight. However, when the sentence is 3 days, it will expire at 5.00 p.m. on the third day, with the days of admission and discharge each counting as one day served;
- . Any person serving a sentence exceeding 3 days may be discharged at 10.00 a.m. on the date of discharge;
- . In special circumstances, a prisoner may be discharged as early as 6.30 a.m.;
- . Where a person is serving a sentence exceeding 48 hours expiring on a Sunday, that person may be discharged at 5.00 p.m. on the Saturday immediately preceding the Sunday.

It follows from the Rules that a person reporting to a Police Station to exhaust a \$150 fine at 11.00 p.m. on a Thursday night can expect to be released at 5.00 p.m. on Saturday afternoon. Further, if the

*Amendments to Justices Act, 1985

same person presented at 11.00 p.m. on the Friday night to expiate the same fine then he or she would be released at 5.00 p.m. on Saturday, the next day. By contrast, persons serving sentences for fines of \$100 will have served 2 full days unless the sentence expires on a Sunday.

Whilst serving one warrant it is possible for the person detained to have all existing warrants for him or her recalled such that they are satisfied or 'cut out' concurrently. This allows a person with many warrants outstanding (and cumulatively worth thousands of dollars) to satisfy all warrants by serving a period of detention presently calculated at 1 day for each \$50 of the largest fine. Since most fines would be less than \$100 there is minimal inconvenience in exhausting a number of fines.

The Committee has been concerned about the abuse of the fine enforcement system by persons who flagrantly violate the traffic and parking laws, accumulate a large number of warrants and then cut them out concurrently.

The Attorney-General's Department has acknowledged this problem in correspondence with the Committee. In its letter of 15 September, 1985 it stated:

"There is reliable anecdotal information that some people abuse the system by accumulating a number of warrants and then arranging to cut them out concurrently in a small amount of time. It is said that a small number of repeat offenders engage in this practice frequently.

The only data on this phenomenon known to this Department is that gathered by the Bureau of Crime Statistics and Research. Fine defaulters were questioned about the reason for non-payment and according to this limited survey, (219 people) 7.3% refused to pay on a point of principle and a further 5% preferred gaol, presumably a deliberate choice on economic grounds as it was more attractive than payment. The Bureau also found (over a much larger sample) that 70% of imprisoned defaulters were cutting out one fine only.

Despite the obvious limitations of this survey, it does confirm there are some people who 'use' the system. It is also clear that these people are a small minority and if an attempt were to be made to identify and separate them from the 'genuine' non-payers it would be expensive to administer and uncertain of success. It should also be borne in mind

that conditions in gaol for fine defaulters are not pleasant and there have been a number of recent press articles describing the trauma of even very short periods of default imprisonment.

If the current practice of concurrent cutting out of warrants were to change to consecutive cutting out, the strain might be beyond the accommodation capacity of the prison system which is already severely stretched."

Some Members of the Committee are aware of individuals, often truck drivers whilst trucks are in for servicing, amassing a bundle of outstanding warrants and cutting them out concurrently in local police stations.

The Committee believes that the abuse is significant and calls on the Police Department to document the incident of "fines regulars" cutting-out fines and on the Attorney-General's Department to vary the rules to discourage the practice.

7.2 Revenue Forgone

Statistics on revenue foregone by use of detention as a method of satisfying warrants are not routinely collected by the Police Department. However, detention statistics obtained from Police Stations for six months during 1983 showed that the value of warrants "cut out" for that period was \$2,363,972*.

Since that time the "cut-out" rate has been increased from \$25 to \$50 per day of detention. Therefore it is likely that the current value of warrants satisfied by detention exceeds \$5,000,000 p.a. However, given that a substantial proportion of fine defaulters (could be as high as 71%**) default because they can't afford to pay, the revenue foregone is realistically expected to be much less than this. It is

* This contrasts to statistics contained in report of Bureau of Crime Statistics and Research, July 1984. It claims \$1.5 million p.a. is cut out. However, the report refers only to prison institutions and not police lockups.

** Based on survey quoted in Report by Bureau of Crime Statistics and Research, July 1984 of reasons given by defaulters for non-payment.

also noted that some imprisoned defaulters pay part of their fines and serve out the remainder.

The practice of cutting out large numbers of concurrent fines by a few days detention is costly to the taxpayer not only in relation to the cost of detainment but in relation to the revenue not collected. It is one of the major arguments against the use of detention to satisfy warrants for fine defaulters.

Although not rigorously determined, the Committee expects that the imprisonment option is costing the State in the order of \$1-2 million annually in forgone revenue.

7.3 Cost of Detention

The Department of Corrective Services has provided the statistics concerning the admission of fine defaulters to N.S.W. prisons. Refer Table 7.1. The Department also estimated that on average, fine defaulters spend 7.7 days in prison. On this basis it is estimated the average number of fine defaulters in N.S.W. prisons in 1984-5 (not including fine defaulters in police lockups) was 98 persons. Given an average prison population during 1984-5 of 3,551 this represents 2.76% of the total prison population.

Estimates supplied by the Department suggest that of all fine defaulters in prison, about 50% are there due to non-payment of parking and traffic fines. This represents about 1.5% of the total N.S.W. prison population.

The unit cost of detention per prisoner varies according to the type of institution in which the prisoner is detained, that is, maximum, medium or minimum security.

The Department of Corrective Services has estimated that it costs approximately \$110 per day for each prisoner held in N.S.W. institutions. The majority of this cost is fixed costs.

TABLE 7.1: ESTIMATED NUMBER OF PRISONERS COMMENCING SENTENCES EACH MONTH - AUGUST 1982 TO APRIL 1984

	<u>Fine Defaulters (1)</u>	<u>Other Sentences (2)</u>	<u>Rate Per Day</u>	
			(1)	(2)
August '82	366	390		
September	268	356		
October	326	437		
November	333	445		
December	<u>294</u>	<u>444</u>		
Total	1587	2072	<u>10.37</u>	<u>13.54</u>
January '83	310	229		
February	374	377		
March	456	548		
April	400	380		
May	392	408		
June	434	322		
July	431	331		
August	505	452		
September	553	430		
October	362	376		
November	383	386		
December	<u>339</u>	<u>340</u>		
Total	4939	4579	<u>13.53</u>	<u>12.54</u>
January '84	441	214		
February	114*	92		
March	324	463		
April	426	350		
May	401	**		
June	400	**		
July	412	300		
August	459	316		
September	364	416		
October	367	292		
November	366	414		
December	<u>315</u>	<u>328</u>		
Total	4389	3185 (Annualised)	<u>12.02</u>	<u>10.47</u>
January '85	483	386		
February	382	435		
March	413	596		
April	424	481		
May	353	535		
June	<u>306</u>	<u>373</u>		
Total	2361	2806	<u>12.9</u>	<u>15.37</u>

* Industrial Disputes during February, 1984

** Not available

The Department was asked to consider savings that might occur if fine defaulters were not imprisoned. The Department commented that to make any real impact on its cost structure it would be necessary to physically close down a gaol and it was doubted, given the average number of fine defaulters and their geographic distribution, that it would be possible to do this.

The Department has also advised the Committee as follows:

"Now that the overcrowding problem is increasing the Department will need, as soon as a facility is available, to provide an estimated 100 beds in the Long Bay Complex specifically to cope with fine defaulters and short term offenders. Whereas it has been estimated that if all fine defaulters were removed from New South Wales Prisons and Police custody that cost savings in order of \$0.5m could be achieved, this estimate has now changed. The costs associated with providing a facility of the nature envisaged could be as high as \$5m per year. At the present time, additional escorts are being arranged day by day, simply to manage the overcrowding at Long Bay and to divert long term offenders to vacancies in country gaols. Fine defaulters continue to occupy space in gaols within the Long Bay Complex which could effectively be used to reduce the level of movement".

The Department estimated that the unit fixed cost of imprisonment lies between 70% and 90% of total unit cost. If the mean of 80% is accepted as representing the proportion of fixed cost, the estimated savings to be achieved by diverting all prison defaulters from prison would be :

$\$81,977,000 \times 1.5\% \times 20\% = \$245,931$ per annum, where;

- . \$81,977,000 represents the 1984-5 expenditure incurred under the program "custody of prisoners" (excluding revenue received from this sector; that is \$89,604,000 minus \$7,627,000);
- . 1.5% represents the percentage of parking and traffic fine defaulters to the total prison population;

- . 20% represents the variable unit cost of imprisonment expressed as a percentage of total unit cost.

The Committee estimates that the cost of keeping fine defaulters in police lockups would be of a similar magnitude. Unfortunately, due to the paucity of data available in the area, the Committee is unable to substantiate this figure.

It should be noted that, on preliminary figures, recent amendments to the Justices Act appear to be reducing the number of fine defaulters put in prison. This is illustrated by the following comparison of numbers of fine defaulters received into prison between 1986 and 1985:

	<u>1985</u>	<u>1986</u>
January	483	301
February	382	257
March	413	196
April	424	151

In summary, the Committee accepts that if all fine defaulters for parking and traffic offences were removed from N.S.W. prisons and police custody the cost saving that would result would be in the order of \$½million p.a. and could rise to \$5.5 million p.a. if a new institution is required.

7.4. Proposed Variations to Current Detention Arrangements

(a) Increasing the default rate

As a result of amendments to the Justices Act in 1985, the 'cut out' rate of \$25 per day was increased to \$50 a day. The Attorney General's Department regarded this as being more appropriate given present average weekly earnings.

The effect of this change on both the incidence of fine default-detention and on the level of fine revenue forgone is still not clear. Although the immediate effect would be to halve the time spent by fine defaulters in police or prison cells, it is likely to result in

an increased use of prison as an alternative to paying fines. For example, the Bureau of Crime Statistics and Research reported that when the default rate changed from \$5 to \$25 per day in June 1978 this resulted in a 14% increase in the number of persons imprisoned for fine default in the following three months.

The Department of the Attorney General was of the opinion that any increase in persons choosing detention would be short-lived. On the other hand, the Police Department noted that during a recent gaol strike when there was a 'one day for four' remission, police cells were flooded with people wanting to cut out their warrants.

Even though the proposal might reduce the gaol population, the Committee is concerned that it could markedly reduce the deterrent effect of imprisonment and significantly benefit those who are cutting out numbers of warrants simultaneously. Given the fixed cost infrastructure described above, actual savings per prisoner per day would not be high. (Refer comments in Sections 7.1 and 7.3.)

(b) Other Changes to the Justices Act

Other changes made to the Justices Act in 1985 which impinge on the sanctions against fine defaulters included:

- . The creation of a statutory presumption in favour of time to pay for which the minimum period is to be 21 days. Courts will be able to refuse time to pay but only in special circumstances.
- . Repeal of the provisions (sections 83(1)(c) and 83(4)) which allow courts to require the lodgement of security for the payment of fines, etc.
- . To require courts before imposing fines to take into account the means of defendants.
- . To restrict the power to issue commitment warrants to Justices of the Peace employed by the Department of the

Attorney General and to expand and clarify the powers of such Justices (Clerks of Courts) to grant additional time to pay in the event of hardship, and to withdraw warrants of commitment to permit further time to pay.

- To specifically confer a discretion on police officers executing commitment warrants to withhold execution temporarily in hardship cases to allow defendants time to apply to Clerks of Courts for withdrawal of the warrant and additional time to pay.

The purpose of these changes was to "promote greater equity and justice in the criminal justice system" and to cause a "significant reduction in the numbers imprisoned because they are unable to pay fines".

Statistical information was not available as to the effects of the changes on the prison population nor on the rate of execution of warrants by Police.

(c) Community Work Orders

A Community Service Orders scheme administered by the Department of Corrective Services is presently available in certain parts of New South Wales for certain classes of offenders. The consent of offenders is required and they have the option of choosing prison.

It is known that there are people who are little concerned about going to gaol. For example, there has been an existing alternative for fine defaulters arranged by negotiation between the Department of Corrective Services and the Salvation Army at St. Peters which could accommodate up to 18 people but the facility has never been fully utilised.

The Bureau of Crime Statistics and Research has estimated that one third of fine defaulters have been in prison previously for fine default and 30% have been in prison before for other reasons.

At present the Community Service Orders scheme covers the metropolitan area fairly well but is limited in the country, particularly in Western

areas, and its availability to Aborigines is accordingly very limited. It is used primarily for young male offenders for whom suitable tasks can be found and it disadvantages older offenders, sick or incapacitated offenders and women.

A work program for fine defaulters running parallel to this scheme has been under consideration, but to date has not been implemented due to lack of cost effectiveness.

The existing program results from intensive liaison between the courts and the Probation and Parole Service and involves a fairly thorough assessment of persons who go onto the program. Sessional supervisors are employed to provide minimal supervision. This system ensures that neither the community agency nor the reputation of Corrective Services is at risk. A concern of the Department of Corrective Services with a fine option community work program is that in the absence of this assessment the risk for the community agency might increase. If this option is pursued it is anticipated that supervision would be at a higher level than that for the existing program.

In evidence the Department of the Attorney General expressed the view that:

"Any major changes to the fine enforcement system which are designed to reduce the incidence of imprisonment will involve more complicated procedures and therefore be more expensive."

The Department of Corrective Services estimated that the cost of introducing the fine defaulters community service option was 'about \$300,000' (1984 basis).

Subsequent to the hearing, the Department responded to a request for further information in the following terms:

"It will be appreciated that the alternatives to imprisonment for fine defaulters are currently under review. Notwithstanding, from the cost data available, it would appear that the administrative costs associated with supervising an offender on Community Service Orders would be in the vicinity of \$1.90 per day. By applying this rate to the daily known number of fine defaulters in prison of

104, the annual cost to the Department by using this option for all fine defaulters would be approximately \$80,000.

However, it has been argued that the Community Service Orders Scheme would not be appropriate for all fine defaulters. In this connection, a proposal has been submitted advocating the establishment of a Community Work Order Programme to provide supervised work teams of approximately twelve fine defaulters working on large-scale, on-going community projects. A decision has not been made on the adoption of such a proposal. Preliminary estimates indicate that the funding necessary in the first year of the programme's operation would be in the vicinity of \$570,000, and \$450,000 per annum thereafter."

The Department further advised the Committee on 2 July, 1986 that due to problems of prison overcrowding (Refer Section 7.3), the option of community service orders' was looking more attractive. The Department wrote:

"These comments are submitted to alert the Committee to the fact that imprisonment of fine defaulters is likely to increase the real costs to this administration. It therefore seems that the Community Service Order Scheme may be a more economic option and an effective sanction against fine default".

The Committee considers that the cost-effectiveness of using Community Service Orders should be reassessed by the Department of Corrective Services.

7.5 Overseas Practices

Information was obtained from ten overseas jurisdictions as to the enforcement process for fine defaulters. Descriptions of each system are contained in Appendix 3.

The use of detainment against fine defaulters is summarised in the following table.

United States of America

Denver, Colorado

Detainment is not used as a primary means of enforcement

Houston, Texas	Use detainment as in N.S.W. but are looking for new means as they are dissatisfied with the current system.
Miami, Florida (Metropolitan Dade County)	A different system exists for traffic offences as against parking offences. Imprisonment of fine defaulters is allowed in legislation as a last resort but apparently is not used. This system was introduced in 1983.
Milwaukee, Wisconsin	The City introduced a new procedure for dealing with fine defaulters in 1983 which abolished detainment as a form of enforcement. Nine policemen who were previously employed to arrest fine defaulters were redeployed to other duties.
New York, N.Y.	The City has different systems for parking and traffic infringements. The authorities have an array of measures to use as appropriate against defaulters. The imprisonment of offenders is not used as a deterrent for parking violations.
Washington, D.C.	The process was recently changed and now warrants for parking tickets are not issued unless individuals owe over \$750 and refuse to respond.
<u>Canada</u>	
Alberta	For traffic fines, the system is identical to N.S.W. with detainment used to enforce unpaid traffic fines. However, for parking fines, enforcement is by civil process.
British Columbia	Imprisonment is not used against fine defaulters. Enforcement is by civil process but problems are experienced.
Ontario	Gao1 is only used as a last resort. Other processes are used for enforcement. Imprisonment is only used for "the most obstinate and wilful fine defaulters". Where imprisonment is used and the defendant is subject to more than one term of imprisonment at the same time, the terms are served consecutively unless the court specifically ordered them to be served concurrently.
<u>The United Kingdom</u>	
	The system there is similar to here with enforcement orders being issued and imprisonment as the last resort. Because of the volume, enforcement is not used against many fine defaulters.

It is clear that there has been a distinct trend in recent years in overseas jurisdictions away from the use of detainment as a deterrent against fine defaulters.

7.6 Cost of Resources used for Warrant Execution

As shown in Table 3.3, approximately 250,000 new warrants are issued each year of which about 75% are executed by police.

The resources involved in the warrant execution process in 1983 were as follows:

	<u>No. of Public Servants</u>	<u>No. of Police</u>	<u>Total Staff</u>	<u>Annual Cost 1983 Basis</u>
Warrant Index Unit	55	14	69	1.16 million
Warrant Execution	<u>10</u>	<u>120</u>	<u>130</u>	<u>5.00 million</u>
TOTAL	<u>65</u>	<u>134</u>	<u>169</u>	<u>6.16 million</u>

As can be seen from the above table, the annual cost of processing and executing warrants of commitment for fine defaulters is \$6.16 million. If the system were changed to avoid the use of detainment for fine defaulters, then it is probable (depending on the new system that replaces it) that **most** of the police resources currently used on warrant duties could be diverted to other duties. At the same time, some savings may also be made in the processing of warrants through the central warrant index unit. However, in the latter case, any enforcement system would require a monitoring process and therefore savings would not be expected to be great. In all probability, a new system which would involve enforcement by other than detainment by police could save police resources equivalent to over 100 officers or 4 to 5 million dollars per annum.

7.7 Conclusion

The Committee was hampered in its investigation of detainment of fine defaulters by inadequate and at times contradictory data supplied by the various government agencies involved. The conclusions which follow are based on the data available and all figures are approximate.

The Committee is strongly of the view that there is a case for eliminating detainment as the primary means of deterring parking and traffic fine defaulters. The Committee's reasons are as follows:-

1. There would be substantial savings in the parking and traffic fine enforcement system if detainment were abolished for most offenders. The savings of the following order would be realised:
 - . \$1-2million annually in increased revenue due to the use of the prison option by defaulters who could otherwise pay or be made to pay.
 - . Savings of about $\$ \frac{1}{2}$ million in costs of detaining fine defaulters in prisons and police lockups.
 - . Saving of police resources in the order of \$5 million per annum.
2. The current system represents an inefficient use of police resources, that is they would be more efficiently used on other duties.
3. The current system is open to abuse.
4. The current system is out of step with modern trends overseas where the use of imprisonment for minor debts is being phased out.
5. Statistics show that use of the police force to collect minor debts is an inefficient use of resources.

SECTION 8 COLLECTION OF FINES BY SHERIFF'S OFFICERS

One approach that would relieve police officers from the burden of executing warrants of commitment issued to fine defaulters is to transfer part or all of these duties to the staff of the Sheriff's Office attached to the Courts. It was originally suggested that Sheriff's officers could potentially be involved in two ways:

1. Assisting with the current system whereby warrants of commitment are issued either by assisting in the serving of process or in the arrest of fine defaulters.
2. Changing the penalty for fine defaulters from warrant of commitment to writ of execution which could be collected by normal civil process.

8.1. The Involvement of Sheriff's Officers

(a) Serving of Court Process

This issue was explored by an interdepartmental task force established in June, 1982. The task force was given the following brief :

"To consider and report to the Attorney General and the Minister for Police on the feasibility, desirability and cost effectiveness of:

- (i) relieving police of their present duties of serving process, and their prospective duty of making 'warning' attendances on warrants, by transferring those duties to Sheriff's officers - including estimation of Police time to be saved and the extent to which that time can be effectively utilised;
- (ii) having originating civil process of the Magistrates' Courts served by post, and ways in which this might best be done - including estimation of the Sheriff's officers' time to be saved and whether that time will meet any requirements if posed under (i)."

The Task Force was generally against involvement of Sheriff's Officers in this area. Their reasons are provided in Appendix 4.

With the advent of the SEINS system this proposal became no longer relevant.

(b) Warrant Execution Duty

The second aspect of the potential involvement of Sheriff's officers under the current arrangements involves the arrest of defaulters. This issue was dealt with directly by the then Commissioner, Mr. Abbott, when questioned by the Chairman of the Committee about the attitude of the Police Department to the execution of warrants by other than Police Department personnel. Mr. Abbott replied:

"I would have no objection providing there was no arrest made. That I would specify. I would not want any mistake in identification or in unlawful arrest. If the payment was there and they could collect on a commission basis, I have no objection. It should not go to the arrest procedure."

In evidence before the Committee, representatives of the Attorney General's Department stated that the question of Sheriff's officers exercising the power of arrest needed a great deal more exploration and discussion. The current powers of arrest by Sheriff's officers were subsequently clarified in writing by the Department:

"The powers of arrest of Sheriff's officers arise under the various rules of court and the acts which govern the procedures of the Supreme Court, Districts Court and Courts of Petty Sessions. The powers of arrest are only in respect of what might be termed 'contempt proceedings' where a debtor has previously refused to comply with less drastic procedures for the payment of the debt sought to be enforced. The arrest power is only to secure the arrest of a person so that they may be brought before a judge at the earliest possible opportunity. As the law currently stands that power of arrest could not be exercised in relation to warrants of commitment for parking and traffic penalties and supporting legislation would be necessary."

The Committee is of the view that the involvement of Sheriff's officers to assist in the collection of parking and traffic fines either by way of "warning attendances" to defaulters or in the arrest of defaulters would be significantly more inefficient than current arrangements and therefore not desirable.

8.2. The Use of Writs of Execution against Fine Defaulters

A significant consideration in having outstanding fines collected by means other than police is the cost in terms of police resources of executing warrants of commitment for parking and traffic fines. As outlined in Section 7 the execution of warrants for fines utilises 120 police officers and 12 public servants costing approximately \$5 million per annum. As has been described above, it is considered that the use of Sheriff's officers to enforce warrants of commitment would be inappropriate and ineffective. The Committee therefore explored the possibility of court penalties being enforced by writs of execution through normal civil process.

In response to the Committee's questioning, the Attorney General's Department stated

"... The view of our own department would be that on the face of it that it (the collection of penalties by civil process) is likely to be a less successful means of recovering penalties than that used at present."

In subsequent correspondence to the Committee, the Department stated:

"The sanction available for the enforcement of civil debts is a court ordered execution upon the property of the person owing the money. Where that person possesses no unencumbered property upon which a Sheriff's officer may levy himself in satisfaction of the judgement there is then no other effective means of enforcement available. In many cases, persons owing fines imposed for traffic offences will possess no such property and therefore an attempted civil enforcement will be unsuccessful. The Department cannot indicate figures to show what percentage of the total penalties imposed would be owed by persons in these circumstances but has reason to believe that the number would be substantial.

The provisions of the Civil Law which govern the enforcement of judgements are cumbersome in that notices must be given of the various processes authorised under the law compared with the comparative simplicity of a policeman executing a warrant. The civil process is both inefficient and ineffective."

It is known that a number of overseas jurisdictions are using writs of execution as an enforcement measure against fine defaulters. Examples include, New York City, U.S.A., Province of Alberta, Canada, Province of British Columbia, Canada and the Province of Ontario, Canada. It should be noted however that in all these jurisdictions the use of civil process is part of an array of measures to enforce payment. Complementary measures such as suspension of drivers' licences, registrations, use of private debt collection agencies and the immobilisation of vehicles are also available to support the writs of execution.

For reasons given above, the Committee is of the view that the use of the Sheriff's office and/or writs of execution to collect outstanding parking and traffic fines is not a practical alternative.

SECTION 9 POSSIBLE USE OF COMMERCIAL AGENCIES

9.1. Introduction

In examining the possible role of private debt collection agencies in the collection of unpaid parking and traffic fines it is useful to summarise the relevant fine collection statistics.

TABLE 9.1 FINE COLLECTION STATISTICS FOR 1983 (old system)

	<u>Number</u>	<u>% of total</u> [*]
Number of infringement notices issued	<u>1,757,977</u>	<u>100</u>
Infringements satisfied before summons	1,243,079	70.7
Infringements deleted through adjudication	<u>33,910</u>	<u>1.9</u>
Total finalised <u>before</u> Court process	1,276,989	72.6
Infringement finalised at Court	69,387	3.9
Warrants finalised by Police	<u>206,437</u>	<u>11.7</u>
Total satisfied <u>after</u> Court process	1,552,813	88.3
Total not satisfied incl. 55,943 summons not served and warrants not executed	<u>205,164</u>	<u>11.7</u>

During 1983 a total of 259,501 new warrants were issued by the Courts and 206,437 or 80% were satisfied. The average value of warrants issued during 1983 was \$114. As discussed in Section 4 there is no evidence that the overall statistics have changed substantially since 1983. From the statistics it was clear to the Committee that debt collection agencies may have a useful role in relation to debts outstanding after the court process, i.e. when warrants have been issued. The use of debt collection before this point in the process is not considered desirable especially since the introduction of the Self Enforcing Infringement System in July 1984. Under this system warrants automatically issue within three to six months of the

* Statistics are only approximate as some of the infringements satisfied during 1983 relate to notices issued in the previous year.

offence. It is clearly not economic to involve debt collection agencies in the early stages of the collection process given that over 70% of offenders pay their fines prior to court process and another 3.9% have their fines satisfied in Courts.

9.2. Alternative Roles of Debt Collection Agencies

From the statistics there are three possible ways in which private debt collection agencies could be involved in the process:

- (a) As soon as warrants are issued by the courts. The current satisfaction rate by police is about 80%, many of which are probably satisfied by imprisonment and not by the collection of money hence on a monetary basis the collection rate is probably much less than 80%.
- (b) After police have initially attempted to execute the warrants, i.e. for probably half the warrants issued.
- (c) In assisting in the location of fine defaulters.

The Committee received submissions from two debt collection agencies; Dun & Bradstreet Pty Limited, and Don Farnie & Associates Pty Limited. Both organisations gave evidence before the Committee and the latter subsequently made a detailed submission to the Committee on the possible role of its organisation in the collection of parking and traffic fines.

To assist in a preliminary cost benefit analysis of options (a) and (b) the Committee invited proposals from the debt collection agencies. For the purposes of the proposals it was assumed that there are 250,000 warrants issued each year in relation to parking and traffic offences and of these 30% remain unexecuted after three months from the time of issue. The agencies were asked to estimate a success rate as well as the cost of collection for both options.

The proposals submitted in relation to Option (a) claim that debt collection agencies can collect approximately 90% of outstanding debts and charge a fee of approximately 12.7% of receipts leaving a net revenue of \$22.725 million from the \$29 million of warrants

issued per year. By comparison the police department currently satisfies warrants to the value of \$20.7 million. After taking into account the fact that approximately \$2 million of these warrants are satisfied by detainment the net revenue under the current system would probably be about \$18.7 million per annum which on this basis again by using debt collection agencies (if the rates claimed are assumed to be correct) would be approximately \$4 million per annum. In addition police resources in the order of \$5 million could be reallocated.

In evaluating the above proposal it is not clear whether the debt collection agencies require a capacity to convert the warrants to writs of execution given that some litigation is envisaged.

One disadvantage of this option would be resistance by the Police Association. When questioned on this, the former Commissioner stated in evidence:

"...I'm a businessman, I have \$38 million there I could collect by using a private debt collection agency on a commission basis, as the lawyers and the doctors and other professional people do, and I would certainly entertain that. I have not gone into the percentages as to how it would be carried out, but to say the least it is not a function that police somersault to perform. It has a very low priority as far as police are concerned. For that reason I would be prepared to give it up tomorrow."

The Commissioner went on to say that the ordinary policeman regards warrant duty merely as a debt collection performance and is an area like traffic enforcement which brings the policeman into contact with the community in a very unfavourable way.

This option is only feasible if it is assumed that the success rate claimed by private debt collection agencies would be achieved.

With regard to Option (b), (the use of debt collection agencies after police had initially attempted to execute the warrants), the agencies claim a recovery rate of 66%, which would result in an increase of revenue to the State of approximately \$4 million per annum. Again

the viability of this option depends on the success rate claimed by the agencies.

The third approach Option (c) involved the use of agencies for address search. To assess the impact of this the Police Department carried out two pilot studies using the name of 1,000 fine defaulters. The agency concerned accessed the Credit Reference Association files as part of address searches. The results of the searches are shown in Table 9.2 below.

TABLE 9.2: Location of Fine Defaulters - Results of Pilot Studies

	(a) No Trace At All	(b) On Record but No Trace	(c) Traced to Same Address	(d) Traced to New Address
First Test Sample of 785 (1) This sample was only run through C.R.A.	18.35	<u>56.00</u>	32.11 <u>84.67</u>	<u>19.56</u>
2nd Test Sample of 99 (2) When only run through C.R.A.	<u>42</u>	33 <u>75%</u>	3 <u>57%</u>	<u>21</u> <u>24%</u>
2nd Test Sample of 99 (3) After inquiries by Accelerated Computer Collections Staff	<u>31</u>	7 <u>38%</u>	9 <u>68%</u>	<u>52</u> <u>61%</u>

A number of interesting statistics have emerged from the pilot study.

1. For the average warrant, that is the thousand selected at random, 82% of offenders were already on CRA records.

2. For the sample of 99 for the second pilot study with defaulters owing \$500 or more, initial CRA check showed that 57% were on CRA records and further tracing increased this number to 68%.
3. The number of persons that can be traced to new addresses using mercantile agencies and credit bureaux is substantial.

The relatively poor showing in the pilots studies may be due as much to the warrant execution process conducted by Police as to the quality of new address data supplied by the mercantile agent. Given the Police reluctance to execute warrants and the fact that 82% of fine defaulters were already on C.R.A. records, it is likely that private debt collection agencies are significantly more efficient at locating defaulters.

Details concerning all these options are elaborated upon in Appendix 5.

9.3. Debt Collection in Overseas Jurisdictions

Amongst the sample of ten overseas jurisdictions from which information was obtained only one of the jurisdictions uses private debt collection agencies to collect outstanding parking and traffic fines, namely New York. Many of the other jurisdictions however, do use civil process to satisfy parking and traffic fines.

Use of private debt collection agencies has become widespread since the U.S. Debt Collection Act of 1982 was passed. This act permitted U.S. federal agencies to employ private collection agencies. The program is extensive and contracts are awarded by each agency after bidding, the debt collector being paid from proceeds collected.

Increasing use is being made of private debt collection and mercantile agencies overseas. The Government Accounting Office of the U.S.A. has recently commenced using powers granted by Congress in 1982 to impair credit ratings of defaulters by filing adverse reports with credit bureaux and has vastly increased the number of cases turned over to private debt collection agencies. The Office is

pursuing some 44 billion dollars in outstanding receivables from delinquent debtors.

The U.S. Office of Management and Budget has set up a system to provide data on 1.7 million overdue accounts to a group of seven private credit bureaus. The U.S. Department of Education and Housing and Urban Development has let contracts to private debt collection agencies.

In New York use of eight private debt collection agencies for outstanding parking and traffic debts in 1979 resulted in a 91% increase in outstanding collections.

The U.S. Debt Collection Act provides federal agencies with clear statutory authority to hire private sector debt collection firms and to report loan and debt account information to credit bureaus. Guidelines were subsequently prepared for government agencies.

In addition, in recent years a number of U.S. States, namely Minnesota, Nebraska, Washington and Oregon, have passed laws allowing the use of private debt collection for State debts. Altogether about 17 U.S. states have such laws. The U.S. Government has also legislated that tax refunds be withheld from individuals who have defaulted on student loans.

It is clear that use of private debt collectors and debt collection practices is widespread in the U.S. at all levels of government. In Australia, use of private debt collection agencies appears limited to some local government bodies and to a small number of Federal bodies including Telecom. The Committee is of the view that experience overseas shows that private debt collection/mercantile agents have improved the collection of outstanding government debts substantially. The only direct evidence relating to outstanding parking and traffic fines is from New York where the same result has occurred.

9.4. Privacy Implications

The Committee sought the views of the Privacy Committee of New South Wales on the implications of the use of private debt collection/mercantile agencies for the collection of unpaid parking and traffic fines. Officers of the Privacy Committee gave formal evidence to the Committee. A number of concerns were expressed.

The first major area of concern involves the possible use of fine default information by private sector credit lenders. This would occur because any search of the records of a credit bureaux (e.g. the Credit Reference Association) carried out as part of the process of tracing fine defaulters was expected to result in new records being created in respect of fine defaulters. If this were to occur the Privacy Committee's concerns would be as follows:

1. The data bank available on members of the public would be vastly increased, hence increasing the potential for abuse and invasion of privacy.
2. There is a distinction between services provided by the public sector and services provided by the private sector and the public perception of the consequences of not paying private sector debts vis-a-vis public sector debts. Mr Nolan representing the Privacy Committee put the case in the following terms:

"...public is aware of an implied consent that the information will be used in the commercial world to retrieve outstanding debts and settle accounts. We do not see that implied consent exists in the public sector. We do not think you can draw an analogy between me giving information to a county council and me giving information to a credit organisation for a loan. We think the public believes that when they give information to a county council they are not giving information to a credit organisation for a loan ... Our view is that when information is given to the government for a certain reason it should be used for that purpose and no other reason."

3. Hardship could occur if errors are made in credit bureaux files as a result of inaccurate records of fine defaulters. To illustrate this Mr Nolan gave the following example:

"...you would get the situation we have mentioned, i.e. that CRA would have, in addition to its credit information, 'clearouts' for parking fines unpaid ... which stay on the file for five years. Say if you moved house and someone had ripped a parking ticket off your windscreen and you did not know anything about it, and say the following week or three months later you were going to rent a television set and you were told you had a bad credit rating. You could make inquiries through us or write to CRA, and you could get a credit report back from CRA and find to your horror that you had a parking fine about which you knew nothing at the time and as a result of which you had been listed for five years."

The Privacy Committee's other major concern is the use to which the information may be put by the Police Department. The view was expressed that Police Department records "leak like a sieve". Mr Spink, also representing the Privacy Committee, expressed a further concern:

"I have difficulty with the Police actually having access to that information. There will be a strong tendency for the Police to use it for other purposes and not bother to obtain a warrant. ... I must agree that it is an extremely good bureau for the purposes of locating people. One knows it is there, there will be a temptation to use it for purposes other than debt collection."

The Privacy Committee also expressed the view that there should be adequate safeguards if private credit bureaux are to be utilised in the collection of parking and traffic fines. Mr Nolan, representing the Committee, expressed the Committee's concern in the following terms:

"If the public sector is to consciously go into the system of commercial debt collection and use the commercial debt collection data systems and measures to recover monies, one must think hard and long about that as an issue of principle and enshrine the appropriate protective measures in legislation."

The Privacy Committee also supplied the Committee with information on Privacy Principles which it considered should be followed when using

such data. These principles have been reproduced and are presented in Appendix 6 to this Report.

9.5. Conclusion

The Committee is of the view that private debt collection/mercantile agencies may have a role to play in the collection of outstanding parking and traffic fines.

Should the use of private agencies be adopted, the Committee believes that their role initially should be confined to assisting the Police Department in the locating of defaulters and not in the physical collection of outstanding fines, and that the performance of such agencies be closely monitored.

The Committee believes that any use of private agencies in the fine collection process should be restricted to repetitive defaulters. The Committee recognises that there are social costs associated with such an approach and accordingly recommends that should private agencies be used strict guidelines such as the following be implemented:

1. Any use of private debt collection agencies that utilise credit bureaux should only be allowed after fine defaulters that have at least three outstanding debts. This is considered necessary as a safeguard against accidental errors.
2. Enforcement orders issued in respect of uncollected parking and traffic fines should clearly state that private debt collection agencies will be used in the event the fines are not paid and that the affected person may receive an adverse credit rating and that their default may be listed with credit reference bureaux and the consequences of that.
3. Any record made by credit reference bureaux in respect of fine defaulters should be clearly identified to users of the credit reference information.

4. Persons with debts as a result of fine defaults under \$200 should have such debts deleted from any credit reference record once the debts are paid.

5. Private agencies using credit reference bureaux must be required to inform people who seek credit who are refused because of parking and traffic fine default that this has occurred.

SECTION 10 THE ENFORCEMENT OF PARKING AND TRAFFIC FINES BY THE DENIAL OF DRIVER'S LICENCES AND/OR MOTOR VEHICLE REGISTRATION

The Committee was attracted to options involving the denial of individual driver's licences or motor vehicle registrations as a means of enforcing payment by would be fine defaulters. Prima facie this approach has a lot of merit. Firstly, parking and traffic fines occur as a result of breaches of the Motor Traffic Act. Therefore it makes sense to deny offenders who fail to pay their fines, rights provided under the Motor Traffic Act. Secondly the system is self enforcing, and would require minimal police effort. As explained in Section 7, current police effort in the execution of warrants for parking and traffic fines involves 120 officers and 12 public servants. These officers could clearly be better utilised doing other police work.

10.1 Enforcement by Denial of Motor Vehicle Registration and Driver's Licences in Overseas Jurisdictions

Table 10.1 summarises similar practices in a number of overseas jurisdictions.

It can be seen from the table that eight out of ten overseas jurisdictions from which information was obtained are either using, or proposing to use, driver's licence or motor vehicle registration cancellation or non-renewal as a means of forcing payment of unpaid parking and traffic fines. This is a distinct trend in overseas jurisdictions.

10.2 Options for New South Wales

There are four ways that motor vehicle licences or driver's licences can be used as a sanction against fine defaulters. These include:

- . Non-renewal of registration
- . Cancellation of registration
- . Non-renewal of licences
- . Cancellation of driver's licences.

TABLE 10.1: Overseas Practices

United States

Denver, Colorado	Driver's licences are not renewed or issued as a means of enforcing civil debt resulting from unpaid parking and traffic fines.
Houston, Texas	The City has requested the State legislature to make the payment of outstanding fines a condition of renewing driver's licences and/or motor vehicle registrations.
Miami, Florida	For traffic violations driver's licences cannot be renewed if there are warrants outstanding. The system for parking violations is different.
Milwaukee, Wisconsin	Persons failing to pay parking tickets have the registrations of their vehicles automatically suspended until the fine is paid. Renewal is also not allowed without paying outstanding fines. As regards traffic fines, traffic officers are authorised to take possession of offender's driver's licences when issuing infringement notice. The licence is held as bail and the offender is given a receipt for the licence. The offender is able to drive until he or she pays the fine or appears in court. If payment is not made a default judgement is entered against the person and the driver's licence may be suspended until the fine is paid. For serious offences a warrant is issued.
New York, N.Y.	For parking violations only a vehicle with three or more default judgements within an eighteen month period will have the registration of the vehicle denied. According to New York authorities non-renewal of registration is a major deterrent with over 14,000 registrations being deferred on a monthly basis. Less than half of these remain unsatisfied. Car rental firms have to pay parking and traffic fines at the time of registration renewals.

Canada

Province of Alberta	The province is currently examining the use of restricting driver's licences and/or motor vehicle registrations for unpaid fines.
Province of British Columbia	The province is currently reviewing the possibility of enforcement through the driver's licence renewal process and an integrated computer system has been devised to that end.
Province of Ontario	Justices in the local courts examine all circumstances in each case and may order a licence to be suspended or not renewed until a fine is paid. Alternatively they may order civil enforcement of the fine, which might include deductions from the defendant's wages or order property to be seized and sold.

10.3 Non-renewal of registration

This option has a considerable amount of appeal because it would be expected that if motor vehicles could not be re-registered until outstanding warrants had been satisfied it would be a great incentive for owners to meet outstanding commitments. In the opinion of the Committee, the system would result in greater collection rates as compared to the current system. New York authorities for example have stated that the non-renewal of vehicle registration has been an important deterrent against fine default.

The Department of Motor Transport raised a number of objections to such a scheme. These included:

- (a) In a great number of cases the driver at the time of the offence is not the owner and it might be seen as an unreasonable burden to place on an innocent owner the responsibility to meet the cost of fines incurred by the driver.
- (b) The vehicle may change hands during the lapse of time between the commission of the offence and the endorsement of departmental records that a warrant is outstanding. Under the current (SEINS) system it still takes about six months before a warrant is issued. Taking into account the fact that vehicles are registered annually this means that on average when a vehicle comes up for renewal, a warrant would only be shown to be outstanding against that vehicle if the offence was committed at least a year prior to registration date. The alternative approach of endorsing vehicle records with fines the moment they are committed would be unwieldy having regard to the fact that there are 1.7 million fines imposed each year. It would also be unnecessary since at least 70% of people fined satisfy their fines prior to court process.
- (c) Endorsing vehicle record with outstanding fines could cause delay in the registration process and this would reduce the availability of revenue to the government. In this regard, the

Department noted that as at 30 June, 1984 there were 3.4 million vehicles registered and revenue from renewals of registration per annum was as follows:

Registration fees	\$48.8 million
Motor vehicle tax	\$317 million
Third party insurance	\$414 million

If people were to delay or avoid re-registering vehicles because of having to pay up unpaid fines the receipt of this revenue could be delayed and to some extent lost. Moreover, if transfers of registration were refused until outstanding warrants were satisfied there could be further delays since one million transfers occur per year. This would mean that stamp duty revenue collections of \$84.7 million and transfer fee collections of \$9.6 million would be delayed. In summary even if the overall effect of this imposition meant that 10% of the \$875 million dollars collected from registration renewals and transfers were delayed by one month on average interest foregone alone would be over \$1 million. Such costs would have to be compared with the estimated extra collections arising from the new system.

- (d) There are substantial administrative problems involved. Different problems arise depending on the approach taken:
- i) Department of Motor Transport records are endorsed with amounts of outstanding commitment warrants to be supplied by the Police Department by way of computer tape. This would mean that to be able to renew registration applicants must either pay the Department of Motor Transport the amount of outstanding warrants and an administrative system must be established to cater for this or alternatively they must obtain a police certificate that they have paid the outstanding fines. Either approach would involve increased administrative work load.

- ii) No details to be included in the Department of Motor Transport records but motorists would have to obtain a certificate from the Police Department before renewal was effected, certifying that there were no outstanding warrants. In this case the number of vehicles effected would be 3.4 million vehicles renewed, plus one million vehicles transferred, plus 285,000 original registrations of second-hand vehicles: Total about 4.7 million p.a. The Department estimates that a fee of \$5 per search would need to be charged by the Police Department (assumed to equal the costs of the search). On this basis it estimates a cost to the public of \$25 million.

The latter problem would be aggravated by the fact that all prospective purchasers of second-hand motor vehicles would be obliged to obtain certificates that there were no outstanding debts against the vehicle. This would involve considerably more cost to the public. Although there are one million transfers per annum the number of prospective transfers may be much greater.

- (e) There would be higher incidents of non-registered vehicles on the road with attendant legal implications in respect of insurance and so on.

10.4 Cancellation of Registration

This option clearly overcomes some of the disadvantages of not renewing registration. For example, delays that occur between incurring the fine and acting against the registration would be substantially reduced from about one year to about six months. The other advantage of this is that the Department initiates the action and then only those owners of vehicles with warrants outstanding would have to obtain certificates that they have paid their outstanding debts.

This option however has a couple of disadvantages as compared with the option of not allowing renewal of registrations:

- (a) The cancellation of motor vehicle registration is quite a severe penalty especially for one-off fine defaulters. Given errors that occur in the volume of fines (1.7 million) processed each year, it is quite likely that some individuals will find their motor vehicle registration cancelled purely because they never received a parking ticket or notices to pay up or enforcement orders were not received by them.
- (b) It would be a major task for the Department to have to arrange for the collection of cancelled registration certificates and number plates. Until these were collected an offender could represent to a prospective purchaser that the vehicle is registered.
- (c) The cancellation of registration is more likely to lead to more unregistered vehicles on the road as compared to withholding renewal until outstanding fines are paid.

10.5 Non-Renewal of Licences

A scheme to endorse the driver's licence records with details of outstanding commitment warrants would not involve most of the problems referred to above in connection with motor vehicles. It has the added advantage of relating to the offender as opposed to the owner of the vehicle for parking and traffic fines. In this regard it is noted that owners of vehicles who receive infringement notices are able to fill in a statutory declaration as to who was in possession of the vehicle at the time the offence occurred and hence avoid liability for actions for which they were not responsible. Also the question of withholding large amounts of revenue to government is not as important here. The annual revenue from the issue of driver's licences and learner's permits is \$51.3 million as compared to \$875 million involved in the annual registration and re-registration of motor vehicles.

The question of whether to endorse driver's licence renewal notices with details of outstanding warrants or whether applicants should obtain a police certificate for each application for renewal is

similar to that discussed above in relation to registration renewals. Clearly the most efficient approach would be to endorse driver's licences with details of outstanding warrants and for persons wanting to renew their licence to produce a certificate from the Police certifying that outstanding amounts have been paid. Such certificates would probably have to be produced by Police because only 32 of the 97 motor registries have computer facilities. It should be noted that each year there are approximately 3.5 million licences issued including 2.0 million annual licences, 550,000 three year licences and 170,000 learner's permits.

However, a fundamental problem with withholding renewal of driver's licences is that there are a substantial number of three year driver's licences issued. Further, the Government is considering a Staysafe Committee proposal for long term or lifetime driver's licences. If such a scheme were adopted the licence records would not be suitable for recording outstanding warrants because of the time delay between commission of offence and when the licence came to be renewed. This is a major obstacle to this option.

Another obstacle is that for parking offences the owner is prima facie liable unless he/she nominates the driver. For vehicles registered in the name of a partnership or an incorporated association, a person is nominated who is primarily liable for the parking offences as if he/she were the owner. In the case of vehicles registered in a corporate name the only entity that can be prosecuted is the company. For the system to work, the law would need to be changed to provide for an individual nominee as with unincorporated organisations.

Finally, such a system could be expected to lead to an increase in persons driving while unlicensed for two reasons:

- i) because of delays in obtaining evidence that there is no outstanding warrants
- ii) drivers with outstanding charges deliberately choose to remain unlicensed.

10.6 Cancellation of Licences

This option overcomes many of the problems associated with withholding or cancelling motor vehicle registration. It also overcomes some of the problems with the scheme whereby driver's licence renewals were withheld until outstanding fines were paid.

The principal concern about this system however is that there would be expected to be an increase in the number of unlicensed drivers. The Committee has noted evidence that through the random breath testing operations police have found many unlicensed drivers. There would also be considerable difficulty in the department arranging for the collection of cancelled licences and if these were not collected an offender could present evidence to Police that he or she was the holder of a current driver's licence. For Police to check this out would require substantial increase in the number of direct on-line inquiries by police officers.

10.7 Overview

In evidence to the Committee the Department of Motor Transport expressed concern about the introduction of a system involving the cancellation or withholding of driver's licences and/or registration certificates. The then Commissioner, Mr Davies, expressed concern that the first issue to be addressed is not whether it was feasible to endorse driver's licences and/or registration certificates, but rather whether the endorsement of records is likely to achieve the aim, i.e. that it will collect significantly greater amounts of outstanding fines and at the same time not cost more money to administer. He expressed scepticism in the following terms:

"We are being asked to accept that by endorsing our records with details of warrants that we should be able to succeed where the police have failed... we have great reservations for once we endorse our records there is nothing additional on them: the police have been out there."

The Department of Motor Transport subsequently changed its mind on the question of using such options as a sanction for fine enforcement. During 1985 it put forward a proposal to the effect that immediate

licence cancellation replace the issue of a warrant of commitment for persons currently licenced. For corporate entities, it proposes the immediate cancellation of registrations for all vehicles held in the name of the offending company.

A recent discussion paper* on the subject listed the following advantages of this approach:

- it provides a more effective deterrent to continuing default through the threat of up to six months imprisonment for driving while cancelled;
- it provides an appropriate penalty for vehicle-related fine defaults;
- it relieves police of what is essentially a clerical task at present;
- it is simple and decisive, and can be presented to the public as such;
- it is sufficiently different from existing arrangements to command public attention;
- it makes effective use of the technology, systems and resources currently available;
- it would require few, if any, additional staff or computing resources, and no capital outlay;
- it directly addresses the problem of reducing the number of fine defaulters in prison;
- it would greatly reduce the number of warrants outstanding yet expedite the receipt of fine revenue due;
- it could be implemented quickly, in fact immediately, for the majority of the 520,000 warrants and \$41 million currently outstanding;

One of the main points of contention about such a system is what proportion of fine defaulters it would be effective with.

* Discussion Paper titled "Linking Outstanding Driver Fines to Driver Licenses and Vehicle Registrations" 1985.

** This figure is now closer to \$52 million.

Overall traffic and parking offenders fall into one of the following four categories:

The Payers (payment before enforcement order)	70-85% (of fines)
The Slow payers (payment on enforcement order or warrant)	5-15%
The Imprisoned Defaulters (satisfaction of warrant by imprisonment)	0.5%
The Unlocatable Defaulters (non-payment and non-imprisonment)	2-5%

Conceivably, such a new system would be aimed at eliminating most of the third category and reduce the proportion in the second and fourth categories.

However, the Attorney-General's Department disputes the magnitude of the number of persons who could be induced to pay by cancellation of drivers license. The Department cited the results of a study of fine defaulters in custody (excluding Police lockups) conducted by the Bureau of Crime Statistics and Research which are given in Table 10.2.

Table 10.2 suggests that -

- (a) only 67% of fine defaulters in prisons relate to parking and driving offences;
- (b) of persons imprisoned for parking and traffic offences about 58% (or 39% of fine defaulters in prison) would have either lost their licence as a result of the offence or not had one at the time of the offence. This suggests that licence cancellation would be a realistic sanction for 42% (i.e. about 27% of all defaulters) of imprisoned traffic and parking fine defaulters.

It must be noted however that there are approximately equal numbers of fine defaulters taken into custody in Police lockups. A breakdown of

TABLE 10-2: Breakdown of Fine Defaulters in Custody*

<u>DRIVING OFFENCES</u>	<u>% of Defaulters Gaoled</u>
Drink/drive (P.C.A., D.U.I., refuse breath test etc.) 93% of drink drive offenders are disqualified	17.8
under 6 months disqualification	- 30%
6 months - 1 year	- 24%
1 year - 2 years	- 24%
over 2 years	- 22%
Serious driving (fail stop after accident, culpable driving, drive manner/speed dangerous. Disq. statistics for this category not kept - disqualification likely in nearly every case.)	5.9
Other driving (disobey lights, neg. drive etc.)	14.0
Mostly minor offences for which disqualification not likely but known to occur	
License (drive whilst disq; drive whilst unlicensed; driven whilst cancelled; drive contrary to provisions of license. Disqualification statistics not kept - however, over 93% of offenders in this category were unlicensed or disqualified prior to conviction.)	15.0
Reg./Insurance, parking; other traffic	11.2
	<u>Sub Total</u> 66.9
 <u>PROPERTY OFFENCES</u>	
Fraud	2.3
Stealing	9.8
Injury to property	2.8
	<u>Sub Total</u> 14.9
 <u>OTHER OFFENCES</u>	
Drugs	6.6
Against the person	4.0
Against order	2.4
Offensive behaviour	2.5
Other	2.7
	<u>Sub Total</u> 18.2
TOTAL	100.0**

* Based on survey conducted by Bureau of Crime Statistics and Research.

** Percentages supplied in Table do not total 100%.

these is not available although it would be expected that these offences, on average, would be of a more minor nature. Given that approximately 9,000 fine defaulters are taken into custody each year (i.e. both prisons and police lockups) the population of fine defaulters that might be susceptible to the licence cancellation sanction is at least 2,500 persons per year.

The Attorney-General's Department has given a number of other arguments against the use of licence cancellation as a sanction against fine defaulters. These can be summarized as:

1. It does not necessarily follow that persons who currently choose imprisonment to satisfy these warrants can be induced to pay so the effectiveness of the new system is uncertain.
2. Innocent persons may have their licences cancelled in error (refer Section 5.)
3. Uniform cancellation of licences for non-payment of fines is inequitable because first offenders suffer identical penalty to chronic offenders.
4. There will be an increase in unlicensed drivers which will increase the number of more serious offences and will void third party property insurance.

The Committee believes that all of the above objections have some validity with the exception of the claim that comprehensive insurance policies will be voided. The Committee has received advice that such will not occur just because a driver is unlicensed. Notwithstanding the exclusion clauses contained in most comprehensive motor vehicle insurance policies, the Committee believes that most of these objections either are not sufficient reason to stop the alternative approach suggested or can be overcome. (Refer Appendix 8.)

10.8 Conclusion

The Committee is of the view that the use of licence cancellation, applied for certain classes of defaulters only, would significantly increase the rate of collection of outstanding parking and traffic fines. The improved collection would be from amongst those persons who are otherwise slow payers, choose imprisonment rather than pay fines or are unlocated by conventional means.

SECTION 11 THE NEED FOR AN INTEGRATED SYSTEM OF ENFORCEMENT MEASURES

In the course of the inquiry the Committee considered the major forms of enforcement that might be available. These have already been discussed in earlier sections and include: the issuing of warrants of commitment (current system), the issuing of writs of execution, the use of private debt collection agencies, and the denial of driver's licences and/or motor vehicle registration. Apart from these measures there are other measures available for the enforcement of civil debts that might be applied. These include garnishees against wages and bank accounts and writs on property, and writs of execution.

A further device used in overseas jurisdictions involves the use of vehicle immobilisation devices. Such devices referred to in Denver, Colorado as the 'Denver Boot', and in New York as the 'French Boot', are in use in Denver, Colorado, Miami, Florida, New York and the District of Columbia, Washington D.C.

11.1 Essential Features of an Efficient and Effective Fine Enforcement System

In order to establish an efficient and effective system for enforcing the payment of outstanding parking and traffic fines it was considered that a number of concerns must be met. These concerns include:

1. That the overall system minimize and if possible eliminate the need for police officers to act as debt collectors.
2. That the overall system minimize and if necessary eliminate the need for imprisonment of fine defaulters.
3. That the possibility of errors be minimized.
4. That in the event of an error resulting in an enforcement order being issued to the wrong person that the consequences of such an error be not too severe on the individual concerned.

5. That the overall collection rate be increased without a greater increase in collection costs and without the creation of substantial new bureaucracies to enforce debt collection.
6. That the system be sufficiently flexible to:
 - a) deal severely with repetitive fine defaulters;
 - b) allow for strategies to be varied by enforcement agencies on the basis of cost effectiveness.
7. That the potential for evasion of the payment of fines be minimised.

The Committee was impressed by the enforcement schemes in place in the province of Ontario, Canada, and New York city, U.S.A. as having most of the above attributes.

In the former case the following attributes impressed the Committee:

- . The system of penalties was flexible. For example, imprisonment was only used in the most extreme cases at the discretion of the Justice in the local courts.
- . There were appropriate safeguards in that a person convicted of an offence was able to reopen the case, secondly Justices were required to ask defendants whether they required time to pay and special arrangements were made for those offenders who had difficulty paying the outstanding debts. Further a Justice of the Court in exceptional circumstances is able to impose a fine which is less than the minimum fine prescribed in the Statute. In addition to this sentencing provisions also provide for the creation of programs by which defendants could pay their fines by means of credit for work performed.
- . The system provided mostly for civil remedies, the courts had flexibility to authorise deductions from the defendant's wages or

order that property be seized and sold. Before a Justice can commit someone to prison he/she must be satisfied that all other means of collecting the fine which are reasonable under the circumstances have been tried and have failed or would not be likely to result in payment. One remedy available to a Justice is the suspension of driver's licences.

- . The system comes down very hard on persons who are repetitive offenders. For example, where imprisonment is used as a last resort and the defendant is subject to more than one term of imprisonment at the same time, the terms are to be served consecutively unless the court specifically orders them to be served concurrently. This reversed the previous law in Ontario which permitted irresponsible offenders to erase hundreds of dollars of traffic fines by staying overnight in a gaol cell. The State believes that this change encourages payment instead of allowing those persons to avoid payment and at the same time incurring substantial costs in imprisoning the offenders.

In the latter case New York has also a great array of options and a flexible system for the enforcement of parking and traffic fines. The New York system relies on the court passing default judgements against defendants. Those offenders that have more than three outstanding default judgements are subjected to any of the following actions (see final notice served to this category of offenders in Appendix 7):

- a) assignment of the case to a debt collection agency for collection;
- b) seizing of non exempt personal property including motor vehicles;
- c) restraining of bank account;
- d) deducting money from non-exempt wages;
- e) preventing the renewal of the registration of a person's motor vehicle;
- f) the use of the 'french boot' immobilisation device.

The commendable features of the New York system are:

- . Flexibility, in that there are adequate appeal mechanisms and different enforcement means can be applied to suit different offenders.
- . It comes down very hard on delinquent fine defaulters and those persons with a series of default judgements.
- . It works on a cost benefit basis where decisions are made to write off debts that aren't collectible.
- . It makes extensive use of computer facilities and cross checking to prevent evasion of fines including the pursuing of interstate offenders.
- . The productivity of different approaches and different collection agencies is constantly monitored.

11.2 Conclusion

From evidence received and submissions made by the affected government departments the Committee is aware that there are specific difficulties that make changes in the New South Wales system difficult to achieve without further cost. However, the Committee is convinced that substantial changes in the system of enforcing the collection of parking and traffic fines are needed and can be achieved.

Accordingly, the Committee recommends the following:

1. That as a necessary first step immediate action be taken to establish a comprehensive information system that adequately measures the performance of the parking and traffic fine enforcement system, including quantification of known errors across all departments, and that this information be regularly published.

2. That the Police Department determine a rule whereby after the issue of three warrants or warrants issued to a value exceeding \$200, the Commissioner of Police request the Commissioner for Motor Transport to cancel the defaulter's licence. Similarly, where companies or businesses default on parking fines to the extent of say, \$200 or more, all vehicle registrations in that company's or business' name would be cancelled. Such changes should be effected initially on a trial basis.
3. That the restoration of such cancelled licences or registrations be contingent upon clearing of the defaults.
4. That mechanisms be provided through the Local Court to challenge or accommodate the defaults, as is generally the case at present.
5. That the Police Department be given discretion to engage the use of private debt collection agencies for appropriate classes of fine defaulters subject to the strict adherence to appropriate guidelines (refer Section 9).
6. That, with the exception of the above, the existing system remain intact until sufficient time has elapsed to evaluate the effect of the alternative sanctions proposed in 2 above. In this regard, it is noted that although the Commissioner of Motor Transport currently has the power to cancel licences a regulation to the Motor Traffic Act may be required to clarify the position with regard to cancellation for fine default.

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NEW SOUTH WALES POLICE DEPARTMENT

130 GEORGE STREET
PARRAMATTA NSW

PO BOX 4444
PARRAMATTA 2150
TELEPHONE 633 9500

SAMPLE FROM TEST TAPE

VEHICLE:

OFFENCE DATE:

OFFENCE:

INFRINGEMENT No:

PENALTY: \$

DUE DATE:

REFERENCE No:

If you have already PAID this penalty, or WRITTEN to the Police Department, please DISREGARD this courtesy letter. However, if the infringement notice is UNPAID your options are:

- (1) PAYMENT, ACCOMPANIED BY BUTT PORTION BELOW, BEFORE THE DUE DATE,
OR
- (2) Completion of the election on reverse side of this letter and return prior to the due date if you wish to have a Court hearing,
OR
- (3) Completion of the statutory declaration on the reverse of this letter, and return prior to the due date, if the vehicle was sold to another person prior to the date of the PARKING offence, or another person was in charge of the vehicle at the time of this offence,
OR
- (4) Take no action and an Enforcement Order will be issued. THIS WILL INVOLVE YOU IN ADDITIONAL COST.

Payment should be posted to P.O. Box 4444, Parramatta. 2150. All cheques should be made payable to THE SECRETARY, POLICE DEPARTMENT. Part payments can not be accepted. Do not post cash.

Payment may be delivered to the Cashier, Ground Floor, 130 George Street, Parramatta, or Police Headquarters, 14 College Street, Sydney, between 8.30 a.m. and 4.30 p.m., Monday to Friday.

RETURN BUTT PORTION WITH PAYMENT



PLEASE TEAR ALONG DOTTED LINE

I ATTACH CHEQUE/MONEY ORDER

FOR \$

MOTOR VEHICLE:
DUE DATE:
INFRINGEMENT No:
REFERENCE No:

PRINT ALL DETAILS HERE ON REVERSE OF CHECK OR ORDER

CHEQUE/ORDER'S NAME

CARDHOLDER'S SIGNATURE

BANK ACCOUNT NUMBER

EXPIRY DATE AMOUNT

496

008 210686 152727634 >

PART A

N.S.W. POLICE
PARKING INFRINGEMENT NOTICE
(Section 18B, Motor Traffic Act, 1909 as Amended)

YOU MAY DISPOSE OF THIS MATTER BY:-
(A) PAYMENT OF THE PENALTY WITHIN 21 DAYS BY:
(B) COMPLETING THE COURT ELECTION ON THE REVERSE OF THIS INVOICE WITHIN 21 DAYS.
(C) TAKING NO ACTION AND AWAITING AN ENFORCEMENT ORDER BEING ISSUED.

PROCEDURE FOR PAYMENT OF PENALTY

Post prescribed penalty to SECRETARY POLICE DEPARTMENT, BOX 4444, PARRAMATTA 2150; OR deliver to: Cashier, Ground floor, Police Headquarters, 14 College St., Sydney; OR Cashier, Ground floor, Police Traffic Branch, 130 George St., Parramatta, between 8.30 a.m. & 4.30 p.m. Mondays to Fridays **WITH THIS FORM**. Cheques & Money orders should be crossed, marked NOT NEGOTIABLE and made payable to the SECRETARY, POLICE DEPARTMENT. **DO NOT POST CASH.**

THIS FORM MUST BE WITH YOUR PAYMENT.

TO THE OWNER OF MOTOR VEHICLE No. _____ it is alleged that at about/between _____ m. and _____ m. on _____ the above vehicle stood upon _____ Street _____ between _____ and _____

H 29065 4

AND THE OFFENCE INDICATED BY A CROSS (X) WAS COMMITTED.

OFFENCE		\$
STAND CONTRARY CLEARWAY SIGN	<input type="checkbox"/>	\$60
STAND CONTRARY TRANSIT LANE SIGN	<input type="checkbox"/>	\$60
NOT STAND CLOSE AND PARALLEL	<input type="checkbox"/>	\$25
STAND CONTRARY "NO STOPPING"	<input type="checkbox"/>	\$60
NOT ANGLE PARK CORRECTLY	<input type="checkbox"/>	\$25
STAND CONT. LOAD/ TRUCK ZONE SIGN	<input type="checkbox"/>	\$35
STAND WITHIN 6MT OF BUILDING ALIGN.	<input type="checkbox"/>	\$25
STAND AT EXPIRED METER No.	<input type="checkbox"/>	\$25
STAND CONTRARY "NO STANDING SIGN"	<input type="checkbox"/>	\$25
STAND CONTRARY NO PARK 1HR OR LESS	<input type="checkbox"/>	\$25
STAND CONTRARY NOTICE EXCESS TIME	<input type="checkbox"/>	\$25
STAND BETWEEN BUS STOP/STAND/ZONE	<input type="checkbox"/>	\$35

SIGNATURE OF REPORTING OFFICER _____

DIV OF ISSUE _____

**PART PAYMENT OF THIS PENALTY CANNOT BE ACCEPTED
THIS FORM MUST BE FORWARDED WITH YOUR PAYMENT**

Summary of certain provisions of Section 18A of the Motor Traffic Act, 1909, as amended/Section 270o of the Local Government Act, 1919, as amended

The abovementioned Sections include provisions to the effect that where a parking offence occurs in relation to a motor vehicle the owner shall, without affecting the liability of the driver, be guilty of an offence, in all respects as if the owner were the actual offender.

However, where the owner is not the actual offender he will not be liable if:- within twenty one days after issue of an infringement notice he supplies the Secretary, Police Department, with a statutory declaration setting out the name and address of the person who was in charge of the vehicle at the time of the alleged offence (See reverse side of this notice), OR he satisfies the Secretary, Police Department, that at the relevant time the vehicle was stolen or illegally taken or used.

BANKCARD: IF YOUR WISH TO PAY BY BANKCARD PLEASE COMPLETE BELOW.

AMOUNT \$ _____ BANKCARD NUMBER: _____

CARDHOLDER'S NAME (As shown on Bankcard) _____

Expiry Date _____

CARDHOLDER'S SIGNATURE _____ Date _____

APPENDIX 1

PART A

N.S.W. POLICE
TRAFFIC INFRINGEMENT NOTICE
(Section 18B, Motor Traffic Act, 1909 as amended)

YOU MAY DISPOSE OF THIS MATTER BY:-
(A) PAYMENT OF THE PENALTY WITHIN 21 DAYS.
(B) HAVING IT DEALT WITH BY A COURT BY COMPLETING THE COURT ELECTION ON THE REVERSE SIDE OF THIS NOTICE WITHIN 21 DAYS
(C) TAKING NO ACTION AND AWAITING AN ENFORCEMENT ORDER BEING ISSUED.

PROCEDURE FOR PAYMENT OF PENALTY

Post prescribed penalty to SECRETARY, POLICE DEPARTMENT BOX 4444, PARRAMATTA 2150; OR deliver to: Cashier, Ground floor, Police Headquarters, 14 College St., Sydney; OR Cashier, Ground floor, Police Traffic Branch, 130 George St., Parramatta, between 8.30 a.m. & 4.30 p.m. Mondays to Fridays **WITH THIS FORM**. Cheques and money orders should be crossed, marked NOT NEGOTIABLE and made payable to the SECRETARY, POLICE DEPARTMENT. **DO NOT POST CASH.**
(N.B. PART PAYMENT CANNOT BE ACCEPTED) THIS FORM MUST BE WITH YOUR PAYMENT.

THIS FORM MUST BE WITH YOUR PAYMENT.

SURNAME (BLOCK LETTERS) _____ FIRST NAMES _____
M _____ ADDRESS _____ POSTCODE _____
WHO FURNISHED TO ME AS HIS PLACE OF RESIDENCE _____
LICENCE NUMBER _____ CLASS _____ DATE OF BIRTH _____
N 643851 DID AT _____ M ON _____ / / B
DRIVE MOTOR _____ STATE OF REGISTR. _____ No. _____
UPON _____ STREET _____

AND THE OFFENCE INDICATED HEREUNDER BY A CROSS (X) WAS COMMITTED

OFFENCE		\$
EXCEED SPEED 16 Km/H AND UNDER	<input type="checkbox"/>	\$50
EXCEED SPEED OVER 16Km/H	<input type="checkbox"/>	\$80
EXCEED SPEED OVER 30 Km/H	<input type="checkbox"/>	\$100
DRIVE CONTRARY TO STOP SIGN	<input type="checkbox"/>	\$90
DRIVE CONTRARY TO GIVE WAY SIGN	<input type="checkbox"/>	\$90
DISOBEY TRAFFIC LIGHTS	<input type="checkbox"/>	\$90
MAKE UNLAWFUL U/TURN	<input type="checkbox"/>	\$70
NOT GIVE PROPER OR TIMELY SIGNAL	<input type="checkbox"/>	\$50
DRIVE/CROSS O/SIDE SEP. LINES	<input type="checkbox"/>	\$90
NEGLIGENT DRIVING (ACCIDENTS)	<input type="checkbox"/>	\$70
UNREGISTERED VEHICLE	<input type="checkbox"/>	\$50
UNINSURED VEHICLE	<input type="checkbox"/>	\$50
UNLICENCED DRIVER	<input type="checkbox"/>	\$50
NOT PRODUCE LICENCE	<input type="checkbox"/>	\$30
REG LABEL NOT COMPLY	<input type="checkbox"/>	\$30
NOT WEAR SEAT BELT	<input type="checkbox"/>	\$50
NOT WEAR HELMET	<input type="checkbox"/>	\$30
TYRES NOT COMPLY	<input type="checkbox"/>	\$30

DIV OF ISSUE _____

SIGNATURE OF POLICE OFFICER _____

BANKCARD: IF YOU WISH TO PAY BY BANKCARD PLEASE COMPLETE BELOW.

AMOUNT \$ _____ BANK CARD NUMBER: **496** _____

CARDHOLDER'S NAME (As shown on Bankcard) _____

Expiry Date: _____

CARDHOLDER'S SIGNATURE _____ Date _____

NOTICE OF ENFORCEMENT ORDER

Justices Act, 1902. Part IVB — Division 2

APPENDIX 1

CASE NO.

TOTAL DUE

DATE DUE

D.O.B.

Please forward payments to:—
Clerk of the Local Court
P.O. Box A814
SYDNEY SOUTH, 2001

If you require a receipt,
please tick the box.

Please detach this portion and forward with your payment.

CASE NO.
DEFENDANT
LICENCE NO.
DATE OF ORDER
OFFENCE
OFFENCE DATE
OFFENCE PLACE
OFFENCE PARTICULARS

INF. NO.
VEH. NO.

PENALTY

COSTS

TOTAL DUE

DATE DUE

AN INFRINGEMENT NOTICE ISSUED BY THE POLICE FOR THE ABOVE OFFENCE HAS NOT BEEN PAID. AN ORDER HAS NOW BEEN MADE THAT THE PENALTY BE PAID TO THIS OFFICE TOGETHER WITH COSTS. TAKE NOTICE THAT UNLESS THE AMOUNTS ARE PAID TO THIS OFFICE BY THE FINAL DATE SHOWN THE CROWN SOLICITOR WILL BE INSTRUCTED TO COMMENCE LEGAL PROCEEDINGS AGAINST THE COMPANY WHICH MAY RESULT IN FURTHER COSTS.

Payments will NO LONGER be accepted by the POLICE DEPARTMENT. ALL PAYMENTS, ENQUIRIES AND CORRESPONDENCE should be directed to:—

CLERK OF THE LOCAL COURT
P.O. BOX A814
SYDNEY SOUTH, 2001

TELEPHONE NO.
(02) 269 9666

EXCEPT FOR ENQUIRIES IN RESPECT OF MATTERS WHICH MAY HAVE OCCURRED PRIOR TO THIS ORDER, E.G. WHERE IT IS CLAIMED PAYMENT HAS ALREADY BEEN MADE TO THE POLICE DEPARTMENT, THESE SHOULD BE DIRECTED TO:—

SECRETARY
N.S.W. POLICE DEPT.
P.O. BOX 4444
PARRAMATTA, 2150

TELEPHONE No.
(02) 633 9500

If you make enquiries to the court about this matter you must refer to the CASE NO. shown at the top of this notice.

INFORMATION FOR YOUR ASSISTANCE IS PRINTED ON THE BACK OF THIS FORM.



ENFORCEMENT ORDER

Justices Act, 1902. Part IVB — Division 2

APPENDIX 1

CASE NO.

TOTAL DUE

DATE DUE

D.O.B.

CASE NO.
DEFENDANT
LICENCE NO.
DATE OF ORDER
OFFENCE
OFFENCE DATE
OFFENCE PLACE
OFFENCE PARTICULARS

INF. NO.
VEH. NO.

PENALTY

COSTS

TOTAL DUE

DATE DUE

UPON BEING SATISFIED AS REQUIRED BY SECTION 100L(1) OF THE JUSTICES ACT, 1902, I ORDER THAT THE WITHINMENTIONED OFFENDER PAY TO THE CLERK OF THE COURT, LEVEL 4, 302 CASTLEREAGH STREET, SYDNEY, THE ABOVEMENTIONED PENALTY AND COSTS, AND I DO FURTHER ORDER PURSUANT TO SECTION 82, (2A) OF THE SAID ACT THAT IN DEFAULT OF PAYMENT OF THE SAID SUMS, THE PENALTY AND COSTS BE ENFORCED AS AN ORDER FOR THE PAYMENT OF MONEY UNDER THE COURTS OF PETTY SESSIONS (CIVIL CLAIMS ACT) 1970.

AUTHORISED JUSTICE

CERTIFICATE

Justices Act, 1902. Part IVB — Division 2

I, _____ being an appropriate officer of the N.S.W. Police Department of 14-24 College Street, Sydney, certify that in relation to the above offence that:—

- a Penalty Notice in relation to the above offence was served on the above offender on _____ and as at the belowmentioned date, remains unpaid.
- a Courtesy Letter relating to the offence was served on the offender in accordance with Section 100J on _____
- a period of at least 21 days has elapsed since the Courtesy Letter was so served.
- the offender has not, in accordance with Section 100J, declined to be dealt with under Division 2 of Part IVB of the Act.
- an Information has not been laid in relation to this offence, and the time for laying an Information has not expired.

Date

APPROPRIATE OFFICER

Def't's
Address:
Card No. BB
S.C.
on

Court of Petty Sessions,
302 Castlereagh Street, Sydney.
Box 4229, G.P.O., Sydney 2001

Justices Act, 1902

Warrant of Commitment upon a Conviction or Order for a Penalty

To all Police Constables in the State of New South Wales and to the
Superintendent of the Silverwater Prison Complex at Silverwater in
the said State.

BY VIRTUE OF AND FOLLOWING an order made or a conviction recorded against

(hereinafter call the defendant)

D.O.B.

Lic. No.

Date/Place:

Vehicle:

Offence*:

*State
Offence
shortly.

†Total amount
outstanding
including
Court costs.

the sum of † _____ dollars and _____ cents

due for payment by the said defendant remains unpaid:

THIS WARRANT commands you the said Constables of Police or any of you to take and safely convey the said defendant to the said Prison and there deliver him to the Keeper thereof together with this warrant; and I do hereby command you the said Keeper to receive the said defendant into your Prison and there imprison and keep him to hard labour for the space of _____ unless the amount mentioned and the sum of _____ dollars for costs of enforcing the conviction or order including the costs and charges of conveying the said defendant to prison shall be sooner paid but subject to the provisions of section 94 of the Justices Act, 1902, and for so doing this shall be your sufficient warrant.

Dated this _____ day of _____ 19 _____ at the Court of Petty Sessions, 302 Castlereagh Street, Sydney, in the said State.



Justice of the Peace.

Penalty \$ _____ (Trans/Rev Fines)
Court Costs \$ _____ (Revenue Fees)
Enforcement costs \$ _____ (Revenue Fees)
\$ _____

VEHICLE TRANSFER ADVICE

This form is to be used by dealers and others buying and/or selling motor vehicles to advise the DMT of ownership changes, and to apply for transfer of registered ownership, when the certificate of registration is not available.

Be Warned: False declarations attract penalties of up to \$500 under the Motor Traffic Act and of up to \$5,000 and/or 12 months imprisonment under the Stamp Duties Act.

SALE NOTICE — to be completed by the seller as previous registered owner of the vehicle.

Please type or print in BLOCK letters

Seller's Full Name		Licensed Motor Dealer No. (if applicable) DL	
Seller's Full Address		Postcode	
Buyer's Full Name		Licensed Motor Dealer No. (if applicable) DL	
Buyer's Full Address		Postcode	
Sale Date: / / 19	Total Sale Price (including any trade-in value) \$	Inspection Report No.	

VEHICLE DETAILS — to also be completed by the seller when possible, otherwise the new owner.

Please type or print in BLOCK letters

Registration No.	Year Built	Make	Model
Engine No.	Chassis No.		

I declare these details to be correct.

Seller's or Owner's Signature

Date

Be Careful:

PRIVATE SELLERS, including those trading-in vehicles to dealers, should avoid liability for any parking fines or traffic offences committed after the sale by sending a separate Notice of Disposal Card to the DMT immediately. Cards are available at Motor Registries and Inspection Stations.

TRANSFER APPLICATION — to be completed by the new owner as applicant for transfer of the registered ownership.

Please type or print in BLOCK letters

Full Name or Business Nominee Name		Date of Birth / / 19	Drivers Licence No.
Full Company or Business Name (if applicable)		Licensed Motor Dealer No. (if applicable) DL	
Full Address		Postcode	
Registration Nos. of any other vehicles owned		City or Town of Usual Garaging	
Type of Use Intended (tick one box) PRIVATE <input type="checkbox"/> PENSIONER <input type="checkbox"/> BUSINESS <input type="checkbox"/> PRIMARY PRODUCTION <input type="checkbox"/> GOODS CARRIAGE <input type="checkbox"/> RE-SALE <input type="checkbox"/>			
Purchase Date / / 19	Total Purchase Price (including any trade-in value) \$		
Transfer Fee \$	Stamp Duty (at \$2 per \$100 of purchase price) \$	Total Amount Payable and Enclosed = \$	

I declare these details to be correct.

Applicant's Signature

Date

Be Prompt:

New owners must lodge this application within 7 days of the purchase to avoid the \$50 surcharge.

NOTICE OF DISPOSAL — to be completed when the vehicle has already been subsequently disposed of.

Please type or print in BLOCK letters

New Owner's Name		Date of Birth / / 19	Drivers Licence No.
New Owner's Address		Postcode	
Licensed Motor Dealer No. (if applicable) DL	Telephone No. (if known)	Sale Date / / 19	
Name and Address of Conessee for the Previous Owner (if applicable)			

I declare these details to be correct.

Signature

Date

How and When To Use This Advice

This VEHICLE TRANSFER ADVICE is for use by dealers buying and selling vehicles, by consignees acting for sellers, and by private buyers acquiring vehicles, when the relevant certificate of registration is not available.

Dealers advising of vehicles sold or traded-in to them must have the previous owner (the seller) complete the Sale Notice and Vehicle Details sections before completing the Transfer Application section and lodging the Advice with the DMT. Dealers who have already sold the vehicle to another dealer or private buyer, should also complete the Notice of Disposal section. In the latter case and all sales to private buyers, dealers must provide the new owner with a second copy of the Advice lodged with the DMT, with at least the Sale Details and Vehicle Details sections completed.

In the short term while old-style certificates of registration remain current, dealers must also use the Advice to notify acquisitions and disposals, attaching the old-style certificate to the Advice when lodging it with the DMT.

Consignees, such as dealers and auction houses, selling vehicles on behalf of owners must have the owner complete as much as possible of the Sale Notice and all of the Vehicle Details sections before accepting the vehicle for sale. After the sale, the consignee must complete the Sale Notice and the Notice of Disposal section and lodge the Advice directly with the DMT. In special circumstances prior approval will be given for consignees to complete all of the Sale Notice and Vehicle Details sections on behalf of owners. It is not necessary for consignees to complete the Transfer Application section.

Consignees must prepare the Advice in duplicate and provide the new owner with the second copy which may then be used to apply for transfer of the registration.

Private buyers including companies and businesses, applying for transfer of registration must have the dealer or previous owner (the seller) complete the Sale Notice and Vehicle Details sections before completing the Transfer Application section and lodging the Advice with the DMT. Private buyers unable to contact the previous owner, must complete both the Vehicle Details and Transfer Application sections.

Value for stamp duty purposes is the greater of the sale and purchase prices declared. Both sale and purchase prices must be declared as the amounts actually received and paid, including any trade-in allowances. When a proper sale has not taken place, such as in a gift or bequest, the purchase price in the Transfer Application must be a realistic valuation obtained, for example, from an insurance company or motor dealer.

Who is Eligible for a Primary Producer Concession?

Appendix 2

A CONCESSION is available on lorries, tractors, trailers and station wagons owned by a primary producer, or eligible rural co-operative society, and used solely or principally for carting primary produce, or materials, provisions or commodities of any kind used in the business of primary production, or for purposes of clearing land for primary production. Vehicles used or let for hire are not eligible.

A PRIMARY PRODUCER is a person, business or company using land:

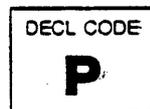
- for the production of fruit, grain, flowers, vegetables, tobacco, or farm or agricultural produce of any other description;
- for dairy farming, poultry or other bird farming, pig farming, bee keeping or oyster culture;
- as a nurseryman;
- as a pastoralist for the rearing or grazing of horses, cattle or sheep; or
- for gathering leaves from which eucalyptus or other oil is to be distilled.

Any concession granted will be withdrawn if the vehicle is used or let for hire and its registered owner may be liable for prosecution.

The applicable legislation is the Motor Vehicles Taxation Management Act.

DMT

Department of Motor Transport, N.S.W. *Effect - May '86,*
 Head Office at 52 Rothschild Avenue, Rosebery. 2018
 Phone: (02) 662-5000 for customer service.
 Over 90 Motor Registry locations across the State.



91

PRIMARY PRODUCERS DECLARATION

This form is to be completed by primary producers seeking to register or renew other than a car or motorcycle at concessional rates. The definition of a primary producer is on the back of this form.

Be Warned: *Persons making false declarations are liable to prosecution.*

PRIMARY PRODUCER DETAILS — to be completed by the applicant for concessional rates.

Please type or print in BLOCK letters

Full Name	Position in Business (e.g. owner, director, manager, etc.)	
Full Business or Company Name (if applicable)		
Full Address	Postcode	
Type of Primary Production	Total Hectares of Land in Use	
Type of Goods or Produce Carried		
Place where Primary Production is Carried Out (as above if same as address)	Postcode	
Registration Nos. of Vehicles for which Concessional Rates are Claimed (attach schedule if insufficient room)		

I declare these details to be correct and that the vehicles nominated are solely or principally used by me in primary production activities.

Signature of Applicant

Date

CERTIFYING AGENT DETAILS — to be completed by the applicant's registered tax agent or qualified accountant.

Please type or print in BLOCK letters

Full Name		
Full Business or Company Name (if applicable)		
Full Address	Postcode	
Professional Status	Qualifications	

APPLICATION FOR RENEWAL

Appendix 2

Be Prepared:

An Inspection Report (pink slip) issued by an Authorised Inspection Station must accompany this application unless the vehicle is exempted from inspection or covered by the Heavy Vehicle Inspection Scheme.

Be Warned:

False declarations attract penalties of up to \$500 under the Motor Traffic Act.

ALTERED DETAILS — to be completed by the applicant if the details shown on this renewal certificate have changed

Please type or print in BLOCK letters

Full Address (if changed)		Postcode
Full Business Nominee Name (if applicable and changed)	Date of Birth	Drivers Licence No.
Drivers Licence No. (if address changed)	Registration Nos. of any other vehicles owned (if address changed)	

RENEWAL DETAILS — to be completed by the applicant

Be Ready:

PENSIONERS seeking renewal at concessional rates must complete a separate Declaration form and provide evidence of holding a current Pensioner Health Benefits Card.

PRIMARY PRODUCERS seeking renewal at concessional rates of other than a car or motorcycle must complete a separate Declaration form and have it counter-signed by a registered tax agent or certified accountant.

Please type or print in BLOCK letters

Type of Use intended (tick one box)

PRIVATE
 PENSIONER
 BUSINESS
 PRIMARY PRODUCTION
 GOODS CARRIAGE

Inspection Report No.	City or Town of Usual Garaging	Amount Enclosed
		\$

I declare these details to be correct.

Applicant's Signature

Date

TAKE THIS APPLICATION TO YOUR LOCAL MOTOR REGISTRY OR MAIL IT TO THE ADDRESS SHOWN ON THE CERTIFICATE

PLEASE DO NOT DETACH

07/03/06

Buy

Tax Type	A.C.	Rate %	Use
Ins. No.	Dec:		Date of Lodgement
IN FORCE UNTIL			

Engine Number

FORM
3

**RENEWAL
CAR**

ALTERED ITEMS

C. ADD C. NAME
 C. ADD & C. NAME
 ENGINE No.
 CONDITION
 Other Alterations

Registration No.	Make	Body	Tare (kg)

Terms and Conditions:

	Regn. Fee	Tax Levy	Weight Tax	Third Party Premium (S.I.C.)	TOTAL AMOUNT PAYABLE
VAT					
BUSINESS					
PENSIONER					

INSPECTION REPORT NUMBER	MOTOR REGISTRY
INTERIM LABEL NO.	EXPIRING ON
	PASSED FOR PAYMENT

PROCEDURE FOR SALE OF THIS VEHICLE

Appendix 2

Be Ready:

Intending sellers should obtain an Inspection Report (pink slip) from an Inspection Station and a Notice of Disposal Card from any Motor Registry or Inspection Station.

Be Warned:

False declarations attract penalties of up to \$500 under the Motor Traffic Act and of up to \$5,000 and/or 12 months imprisonment under the Stamp Duties Act.

SALE NOTICE — to be completed by the currently registered owner, the SELLER, and handed to the new owner

Please type or print in BLOCK letters

Buyer's Full Name	Licensed Motor Dealer No. (if applicable)	DL
Buyer's Full Address	Postcode	
Sale Date / / 19	Total Sale Price (including any trade-in value) \$	Inspection Report No.

I declare these details to be correct.

Seller's Signature

Date

Be Careful:

Avoid liability for any parking fines or traffic offences committed by the new owner by sending a completed Notice of Disposal Card to the DMT immediately.

TRANSFER APPLICATION — to be completed by the new owner, the BUYER, and lodged with the DMT

Please type or print in BLOCK letters

Full Name or Business Nominee Name	Date of Birth / / 19	Drivers Licence No.
Full Business or Company Name (if applicable)	Licensed Motor Dealer No. (if applicable) DL	
Full Address	Postcode	
Purchase Date / / 19	Total Purchase Price (including any trade-in value) \$	City or Town of Usual Garaging
Type of Use Intended (tick one box)		
PRIVATE <input type="checkbox"/> PENSIONER <input type="checkbox"/> BUSINESS <input type="checkbox"/> PRIMARY PRODUCTION <input type="checkbox"/> GOODS CARRIAGE <input type="checkbox"/> RE-SALE <input type="checkbox"/>		
Transfer Fee \$12.00	Stamp Duty (at \$2 per \$100 of purchase price) +	Total Amount Payable and Enclosed = \$

I declare these details to be correct.

Buyer's Signature

Date

Be Prompt:

New owners must lodge this application with the DMT within seven days of the purchase. Late applications incur a transfer fee surcharge of \$50.

FOR EFFICIENT SERVICE TRANSACT YOUR BUSINESS AT YOUR NEAREST MOTOR REGISTRY

THIS IS TO CERTIFY THAT subject to the imprint of the Cash Register and to any condition(s) endorsed hereon, the vehicle described herein is hereby registered under the Motor Traffic Act, 1909, in the name of the withinmentioned person. This certificate of registration shall, unless sooner suspended or cancelled, remain in force until the date shown herein.

M. J. BUTLER, Commissioner

If payment is made by cheque the registration will be cancelled if the cheque is not met on presentation

3

CERTIFICATE OF REGISTRATION OF MOTOR CAR

Tax Code	Rate
----------	------

No. of	Dev.
--------	------

IN FORCE UNTIL

RENEWAL

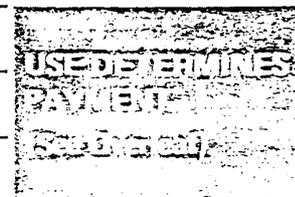
Engine Number

Registration Label No.

Registration No.	Make	Body	Type
------------------	------	------	------

Endorsements and Conditions

	Rate	Stamp Duty	TOTAL AMOUNT PAYABLE
PRIVATE		FULLY ALLOCATED TO ROADWORKS	
BUSINESS			
PENSIONER			



RESUME OF INFORMATION RECEIVED FROM OVERSEAS JURISDICTIONS

Information was obtained from a sample of 10 City and Provincial Governments overseas. These included :

Denver, Colorado, U.S.A.
Houston, Texas, U.S.A.
Miami, Florida, U.S.A.
New York, N.Y., U.S.A.
Milwaukee, Wisconsin, U.S.A.
Washington, D.C., U.S.A.
Province of Alberta, Canada
Province of British Columbia, Canada
Province of Ontario, Canada
United Kingdom (London)

City of Denver, Colorado, U.S.A.:

The System applied in Denver is similar to that applicable here in Sydney. Similar problems are experienced. The Denver Boot is also employed. This is a mechanical device fixed to the wheel of the vehicle as a result of a certain number of parking tickets being issued against the vehicle. This has been an effective deterrent for the flagrant violators who also have to pay a fee to have the boot removed. Using the boot procedure against "delinquent moving traffic" violators is also being considered. Another initiative being considered is an amnesty period for a month for overdue parking tickets. The purpose of this would be to provide an incentive to the public to take care of outstanding fines without having to pay the increased penalties imposed because of the delinquency. This however hadn't been carried out as of the date of their response (30 November, 1984).

Colorado has adopted some of the variations being considered here in New South Wales. Certain minor traffic violations have been decriminalised resulting in the courts taking a civil judgement rather than imposing criminal penalties. The remedy for failing to pay the judgements is that neither issuance nor re-issuance of a drivers licence is allowed.

City of Houston, Texas, U.S.A.:

Houston follows a similar system to N.S.W. and has similar problems. In the City of Houston the court processes in excess of one million cases each year for parking and traffic infringements. The City has eight full time courts and five part-time courts and, at the time of correspondence (11 December, 1984), had 500,000 warrants of arrest outstanding. This apparently is a problem throughout the State of Texas. The City has ten warrant officers in the police department which overall consists of 2,900 officers. They experience the same problem as we do.

The City has considered private debt collectors but doesn't feel that this is the answer to the problem.

They have consistently petitioned the State Legislature to make the payment of outstanding warrants fines a condition of renewing drivers licences and/or motor vehicle registrations but have been unsuccessful to date.

They also considered the use of wheel locks but in view of certain legal implications felt that this would not work.

The matter was also discussed at the American Judges Association Conference in Las Vegas, Nevada and it appears that according to the writer of the correspondence, a Mr. Felix Stanley, Director and Presiding Judge of the City of Houston Municipal Courts, other judges have expressed similar problems in other jurisdictions in the U.S. and Canada.

City of Miami, Florida, U.S.A.:

Metropolitan Dade County has provided the following information :

1. Traffic Violations Points system, followed by licence cancellation. Offenders can request trial where, if guilty, appropriate punishment is given. Usually a fine, sometimes attendance at driver's school is required. If a warrant has been issued for a traffic violation, a failure to appear for trial etc. the driver's licence cannot be renewed.
2. Parking Violations By mail as in N.S.W. Can go to Court if requested. System relies heavily on warning notices to vehicle owners in an attempt to induce offenders to make a prompt payment for parking violations. The system has the flexibility to issue a warrant for X number of parking violations. Currently, if there are more than 10 parking tickets issued for a particular vehicle, it is placed on a special listing which is supplied to the Police and the vehicle can be immobilised by affixing a boot to one of the wheels. There is no active program to apprehend violators with more than ten parking tickets. Consideration has been given to turning over unpaid tickets to a private collection agency but no final decision has yet been made.

An improvement in the collection rate has occurred since the system was introduced in March, 1983. The key to the new system is sophisticated computer programs. Since its introduction operating costs have been cut by \$100,000 annually and additional revenues of \$4,000,000 have been collected. The computer system cost \$150,000 to develop. It handles 600,000 fines p.a.

City of Milwaukee, Wisconsin, U.S.A.:

Milwaukee has recently introduced a new system. Generally speaking, if a person fails to pay a parking ticket the registration of a persons automobiles/vehicles is suspended until the fine is paid. In addition the person is not able to annually renew the vehicle registration without paying outstanding fines. The suspension of registration applies to all vehicles registered under the violators name up to 45 vehicles. Corporations with registered fleets of vehicles are apparently prompt in paying their parking fines.

The new law became effective in 1983. Before 1983 warrants were issued and personally served on those who failed to pay their fines. Arrests were made and nine police were employed by the city for this process. In 1982, 70.95% of parking traffic violations were voluntarily paid, which represents \$3.6 million for 452,000 citations. In 1983, 84.22% were voluntarily paid, representing \$4.7 million for 506,000 citations. In

1984, through the month of September, 82% were voluntarily paid. A substantial number of the unpaid fines were of course released, voided or imposed upon out of State operators which explains why these figures appear to be low.

According to the Mayor's office, the new law has not only increased the amount of fines voluntarily paid but further savings are also being made by reassigning the nine police employees to other duties.

The City also has a policy of towing illegally parked cars that have two or more outstanding citations more than 30 days old. As regards traffic fines, or what they call moving traffic citations, as opposed to non-moving citations, the traffic officer is authorised to take possession of the violator's driver's licence upon issuance of the citation. The license is held as bail. The violator is given a receipt for his license which authorises the violator to drive until he either pays the forfeiture or appears in Court at the time designated on the fine in the citation. If the violator fails to pay the citation and further fails to appear in Court a default judgement may be entered against him or his driver's licence may be suspended for a certain time unless the citation is paid. For a serious violation the court has a discretion to issue a warrant to bring the violator before the court.

In summary, the City of Milwaukee uses cancellation of registration for parking fines and cancellation of licenses for traffic fines.

City of New York, N.Y., U.S.A.:

There are two authorities in the City of New York, Parking Violations Bureau and the Traffic Violations Bureau. The Parking Violations Bureau has been able to increase its revenue from \$79.4 million in 1978 to \$101.7 million in 1984 without a significant increase in the number of fines issued. Initiatives pursued by this organisation in the last five to ten years have been on two fronts. Firstly on the court hearing process and secondly on the issuing and processing of fines. Extensive use of EDP is made. Measures to pursue scofflaws, who are those who fail to answer parking summonses, include

- . the owner of a New York State registered motor vehicle for which three default judgements have been entered on summonses issued within an 18 month period will be certified by the Department as a scofflaw and the registration of the said vehicle will be denied renewal until the outstanding summonses have been satisfied
- . there is provision for the garnishment of non exempt wages, attachment of non exempt personal property, attachment of non exempt real property as well as other remedies more specifically set forth in the statute which is article 59 of the Civil Practice Law and Rules
- . approximately 40% of summonses issued became default notices. The Bureau has a broadly based national collection and enforcement operation which uses 13 professional collection agencies to seek out those who fail to appear, notify them of outstanding summonses due, forward them a second chance to question or contest the summonses, if individuals still fail to respond, institute the necessary legal

steps on behalf of the Bureau to enforce the judgement by execution and levy upon non exempt assets. This leverage and multiplication of effort has turned a fledgling in house collection and enforcement effort established in 1975 into a comprehensive program whereby over \$800 million in judgements, accumulated between 1979 and 1978, have been assigned for collection. This system was introduced in May 1978.

- . To ensure efficient collection the authorities keep a close check on the productivity of the collection agencies.
- . There is also an out-of-state collection program whereby contracts are entered into to identify and locate out-of-state registrants. In 1978 the City generated \$1.9 million as a result of these measures and currently collections are running at about \$3.1 million p.a.
- . The City also uses what they call the 'French Boot' immobilisation device. This was introduced in 1979. 651 vehicles as at the 30th June 1980 had been booted and towed as seized assets of judgement debtors. The authorities also tow vehicles and also screen towed vehicles to see if there are outstanding judgements against the registered owners.

It was reported that these programs combined doubled in a short number of years the amount of monies received in payment of old judgements from 11.9 million in 1978 to 22.8 million in 1979 and 20.0 million in 1980.

According to authorities, statistics demonstrate that while the bureau tries to give "the little guy in the street a fair shake in his day in court", it comes down hard on those who flagrantly disregard the law and avoid their responsibility. It is claimed that this effort by the Bureau, especially in the last number of years has instilled a credibility in the Bureau's efficiency and to cause a greater respect for the laws in traffic regulation in New York City.

Other measures include:

- . the City also has improved its data collection e.g. summonses and fine notices are being designed to make the data processing of the information more efficient.
- . there is also a write off policy for debts that aren't collectible. The categories that come into this area include those that are statute barred by the statute of limitations, those that are unprocessable where the name and address of the registered owner is not traceable and finally those that are government entities like consular vehicles and so on where recovery cannot occur and also those that are legally uncollectible summonses where there are default judgements outstanding anyway and recovery cannot legally be made.
- . there are special revenue programs including a law that requires car rental firms to pay traffic and parking fines at the time of registration renewals.

New initiatives suggested for the future but not yet implemented include

- . improved interfacing and information exchange with the Department of Motor Vehicles
- . redesign of the computer system to increase the rate of owner identification identifying plate switchers and implementing more flexible collection strategies and also to monitor traffic enforcement agents productivity
- . development of a microcomputer hand-held summons issuing device, coupled with a full scale in-state Tow Program which enables defaulters and plate switchers to be identified more quickly.

Comments on the New York System include:

- . the 'French Boot' immobilisation device issued by collection agencies is a sub process of the collection system. The device is attached to the tyre of the vehicle thereby immobilising the asset of judgement debtor.
- . according to the New York authorities, non renewal of registration is a major deterrent device. Over 14,000 registrations are deferred on a monthly basis. Apparently less than half of these remain unsatisfied in which case respondents resort to other means to overcome the system.
- . there are adverse affects of non-registration. These include respondents driving unregistered vehicles, plate switching, change of state or owner registration
- . imprisonment of offenders is not used as a deterrent concerning parking violations.
- . where registration is denied or when the vehicle is impounded by the way of the french boot, the offender is not imprisoned.

District of Columbia, Washington, D.C., U.S.A.:

Under this system most of the tickets for non-moving (parking) violations are issued by non-police officers and all of the moving violation and some of the non-moving violations are dealt with by the police. The process was recently decriminalised and warrants for parking tickets are not now issued, people are no longer locked up unless an individual owes \$750 or more and refuses to respond. The authorities also have the power to immobilise the vehicle by placing a metal boot on the vehicle where there is a refusal to pay or there are in excess of two tickets outstanding. Some vehicles which are impeding traffic or causing safety problems are also towed away. Approximately 7,000 tickets are issued each day by non-police ticket writers and approximately 4,000 are issued by the Police Department.

The district employs hearing examiners that are non-judicial. They are law school graduates, cases are heard by these people and there are approximately 400 such cases heard each day. The respondent also claims

that drivers' bad habits have been improved, and that they have the highest collection rate of tickets issued in the United States.

Province of Alberta, Canada:

In Alberta, the system for collection of unpaid traffic fines is identical to that in New South Wales.

For parking fines the system is different. The first step of the process is the placing of a parking tag on a vehicle. The tag, which is issued by a municipality, prescribes the penalty to be paid. Should payment not be received, the municipality can commence further action by laying a charge against the registered owner of the vehicle. The registered owner is served with a summons to the offence and is commanded to appear in court. In court, he/she is assessed a fine and "enforcement by judgement" is ordered in default of payment. Enforcement by judgement means that a civil process is to be utilised to collect the outstanding fines. Should the fine remain unpaid, the municipality is advised, who can then proceed with a civil collection process which can involve the issuing of writs of execution. Little collection activity is actually pursued utilising civil collection methods as the process is time consuming and cumbersome relative to the amount of fine assessed.

Alberta is also looking at the use of restricting drivers licences and/or motor vehicles registration should a fine remain unpaid, but they too are currently having similar problems to ourselves.

Province of British Columbia, Canada:

Monies for parking offences are collected through the courts by each of the municipalities concerned. There is no default or imprisonment should the defendant not pay his/her fine.

This province has experienced similar difficulties to New South Wales. There is a substantial number of dollars outstanding in overdue fines involving approximately 20,000 accounts. Enforcement is by civil process. In respect of the traffic fines, the province is currently reviewing the possibility of enforcement through the drivers licence renewal process and an integrated computer system has been devised to that end.

Province of Ontario, Canada:

Ontario has a comprehensive system for handling minor offences. These are provided for by the Provincial Offences Act 1979. This act covers a whole range of minor offences including parking and traffic fines. Initially a person committing an offence is served with a certificate of offence. Within 15 days of receipt of an offence notice a person has three choices - to plead guilty and pay the fine as per New South Wales, to plead not guilty and ask for the matter to be dealt with by Court as per the current system in New South Wales or to appear before a Justice and explain the circumstances of the offence.

If no action is taken, as in New South Wales, it is assumed that the offender is guilty of the offence. The matter appears before a Justice in the court office and the Justice will enter a conviction and impose the set

fine shown on the offence notice. The Court clerk then sends a notice of the conviction and fine and date on when the fine is due.

In the event of something going wrong with the system the Provincial Offences Act provides fail-safe mechanism for reopening a proceeding where a defendant did not have the opportunity to dispute the charge because the necessary notice or document did not arrive at his address. In this case the defendant may appear before a Justice in the court office and give an explanation as to why he did not dispute the charge or appear at the hearing. He/she must do this within 15 days of learning that he/she had been convicted.

It is the object of the Provincial Offences Act to keep people from gaol because of their inability to pay a fine. A fine becomes due and payable 15 days after it was imposed. The court is required to ask the defendant if he wishes an extension of time to pay. It may also make inquiries of the defendant and may order periodic payments or otherwise. The defendant may in the meantime request a further extension. A fine is in default when any part of it is due and unpaid for 15 days or more. Since a fine is not due until 15 days after it is imposed, the defendant actually has 30 days to pay before collection proceedings will commence.

For the purposes of collecting unpaid fines, a Justice examines all unpaid fines in the Court office and under some circumstances must order that a permit or licence held by the defendant be suspended or not renewed until the fine is paid. This occurs for example, where the Highway Traffic Act prescribes that a drivers licence is suspended if they don't pay a fine for a violation of that Act. Alternatively the Justice may direct the clerk of the Provincial Offences Court to proceed with civil enforcement of the fine. A civil court could authorise deductions to be paid from the defendant's wages or order some of his property to be seized and sold.

Gaol is seen only as a last resort. In some situations a Justice may issue warrant for the committal of a defaulting defendant to prison. Before he can do this he must be satisfied that all other methods of collecting the fine which are reasonable under the circumstances have been tried and failed or would not be likely to result in payment. In addition, the Justice must give the defendant 15 days notice of the intent to issue a warrant and an opportunity to be heard, thus imprisonment would be ordered only for the most obstinate and wilful fine defaulter.

The availability of civil enforcement protects the community against the change in the offenders financial circumstances, but gaol would not be used where there is no reasonable probability of payment or of a recommission of the offence.

Where imprisonment is used and a defendant is subject to more than one term of imprisonment at the same time, the terms are to be served consecutively unless the court has specifically ordered them to be served concurrently. This reversed the previous law which permitted irresponsible offenders to erase hundreds of dollars of traffic fines by staying overnight in a gaol cell. The purpose of this change is to encourage payment instead of allowing those persons to avoid payment while at the same time causing the public to incur the substantial costs of incarceration.

The Provincial Offences Act also gives the court the power in exceptional circumstances to impose a fine that is less than the minimum fine so that

in the statute it creates the offence. The court may also suspend the sentence without imposing conditions. This may be done only where "exceptional circumstances exist so that to impose the minimum fee would be unduly oppressive or otherwise not in the interests of justice".

Sentencing provisions of the Act also provide for the creation of programs by which defendants could pay their fine by means of credits for work performed.

Defendants convicted of these offences can also appeal.

United Kingdom (London and other local Authorities):

Notices served for parking offences very often ignored and currently no special system in force for collecting unpaid fines. "There are a great number of cases and it is impossible to take all of them to court."

New provisions in the Transport Act, 1982 Part 3, Section 33, will come into force early 1986. These are aimed to improve the enforcement of fixed penalties which are ineffective largely because motorists ignore them and the time limit for proceedings to be brought expired.

Government proposed that in the absence of response to the notices issued either by payment of penalty or request for a hearing, penalty will automatically be treated as if a fine were imposed and on conviction will be enforced by the Courts together with the amount to cover expenses without the need for a court hearing. This appears to offer nothing new to what is already done in New South Wales.

In practice, however, some local authorities record full details of each offence and then, when a persistent offender has failed to pay up on a number of occasions, he or she is presented with a full list of offences and the fines payable and invited to pay up or be prosecuted. This approach is said to make the collection process more cost effective.

USE OF SHERIFF'S OFFICE TO SERVE PROCESS

The Task Force recommended, inter alia, that there be no general transfer of service responsibilities from the Police to the Sheriff. It was undecided as to whether service by post should be introduced. Arguments advanced against transferring service of warrants to Sheriff's officers included:

- . information available to Police frequently makes service possible that otherwise would not be possible and there are practical as well as policy reasons why persons other than police cannot be given access to this information;
- . general Police work is often greatly assisted by the contact with local citizens that comes from the duty to serve process - hence this enhances Police efficiency;
- . the likely introduction of "self-enforcing" traffic process will greatly reduce the volume of process to be served by the Police;
- . there are many areas in the State in which there is a police station but no branch of the Sheriff's Office.

As regards "warning attendance", the Task Force argued against these being transferred to the Sheriff's Office for the following reasons:

- . all orders for penalties now require the Court to send notice of the penalty - there already is a "warning notice" and no justification for requiring a "warning attendance" exists in every case;
- . Police now effectively make "warning attendances" in most cases; arrests are made only where the defaulter appears likely to decamp, or has wasted the chances given to him or her. This exercise of discretion by the police is vitally important - they must retain the option of immediate arrest for the cases where it is needed.
- . "warning attendances" would certainly increase the cost of the system as well as the failure rate; if the attendance must be by Sheriff's officer, problems of communication would be added, the attendance would in effect be an irritation to decamp and the failure rate would be much higher.

The task force concluded, inter alia, that:

- ". there be no general transfer of service responsibility from the police to the Sheriff;
- . there be no imposition of a general duty to make a "warning attendance" before executing a warrant;
- . that if a general duty to make "warning attendances" is imposed, it be imposed on the police not the Sheriff's officers."

However by June, 1984 the Police Department took a different view towards the involvement of Sheriff's officers. In evidence before the Committee, the Commissioner stated, inter alia:

"...I look to any other resource that may help us, even assistance from the Sheriff's Office ...
... Perhaps the Sheriff's officers could be better utilised than they are ..."

Mr. Abbott went on to say:

"... It is not a function that police somersault to perform. It has a very low priority as far as police are concerned. For that reason I would be prepared to give it up tomorrow. It has benefits to policing, but there are also a lot of disadvantages there ... "

Following representations from the Police Department and the subsequent concurrence of the Police Board, the Minister for Police and Emergency Services wrote to the Attorney General recommending that a further inter-department committee be established to again review the question of Sheriff's officers' involvement in the execution of warrants. The terms of reference for this review were:

"To consider and report to the Attorney General and Minister for Police on the feasibility, desirability and cost effectiveness of:

1. relieving police of the their present duties of executing warrants of commitment by transferring this responsibility to Sheriff's officers including an estimation of police time to be saved and the extent to which that time can be effectively utilised;
2. examine relevant proposals respecting the computerised police warrant system and the additional resources which would be required in the Sheriff's office to undertake the responsibilities proposed."

The introduction of the SEINS system rendered this issue largely irrelevant.

COLLECTION BY COMMERCIAL AGENCIES

Option (a)

This option involves the collection of warrants having an annual value of \$29 million. A proposal was submitted by a debt collection agency and is summarised in the following table:

Table 1: Collection with Private Agencies: Option (a)

Step	Assumed Collection Rate		Fee \$
	\$M p.a.	%	
Use of third party issued, selective by worded letters of demand 2-3 in number Cash flow generated within 30 days of getting account for action	14.5	50	\$4-\$5 per acct
Telephone collectors or paid calls within a further 30 days using Credit Reference Agency information	8.7	30	\$10-\$20 per acct
Further tracing, road calls and legal action	2.9	10	\$20-\$30 per acct
Write off as untraceable or hardship cases	<u>2.9</u>	<u>10</u>	<u>--</u>
Total	29.0	100	\$3.375 million
No of warrants to agencies p.a.	250,000		
Value of warrants	\$29 million		
Total collection	\$26.1 million (90%)		
Less total fees charged	\$3.375 million (12.7% of collections)		
<u>Net revenue</u>	<u>\$22.725 million</u>		
Savings in Police Resources	\$5 million (approximately)		

The proposals submitted in relation to Option (a) claim that debt collection agencies can collect approximately 90% of outstanding debts and charge a fee of approximately 12.7% of receipts leaving a net revenue of \$22.725 million from the \$29 million of warrants issued per year. By comparison the police department currently satisfies warrants to the value of \$20.7 million. After taking into account the fact that approximately \$2 million of these warrants are satisfied by detainment the net revenue under the current system would probably be about \$18.7 million per annum which on this basis again by using debt collection agencies (if the rates claimed are assumed to be correct) would be approximately \$4 million per annum. In addition police resources in the order of \$5 million could be reallocated.

In evaluating the above proposal it is not clear whether the debt collection agencies require a capacity to convert the warrants to writs of execution given that some litigation is envisaged.

One disadvantage of this option would be resistance by the Police Association. When questioned on this, the former Commissioner stated in evidence:

"...I'm a businessman, I have \$38 million there I could collect by using a private debt collection agency on a commission basis, as the lawyers and the doctors and other professional people do, and I would certainly entertain that. I have not gone into the percentages as to how it would be carried out, but to say the least it is not a function that police somersault to perform. It has a very low priority as far as police are concerned. For that reason I would be prepared to give it up tomorrow."

The Commissioner went on to say that the ordinary policeman regards warrant duty merely as a debt collection performance and is an area like traffic enforcement which brings the policeman into contact with the community in a very unfavourable way.

This option is only feasible if it is assume that the success rate claimed by private debt collection agencies would be achieved.

Option (b)

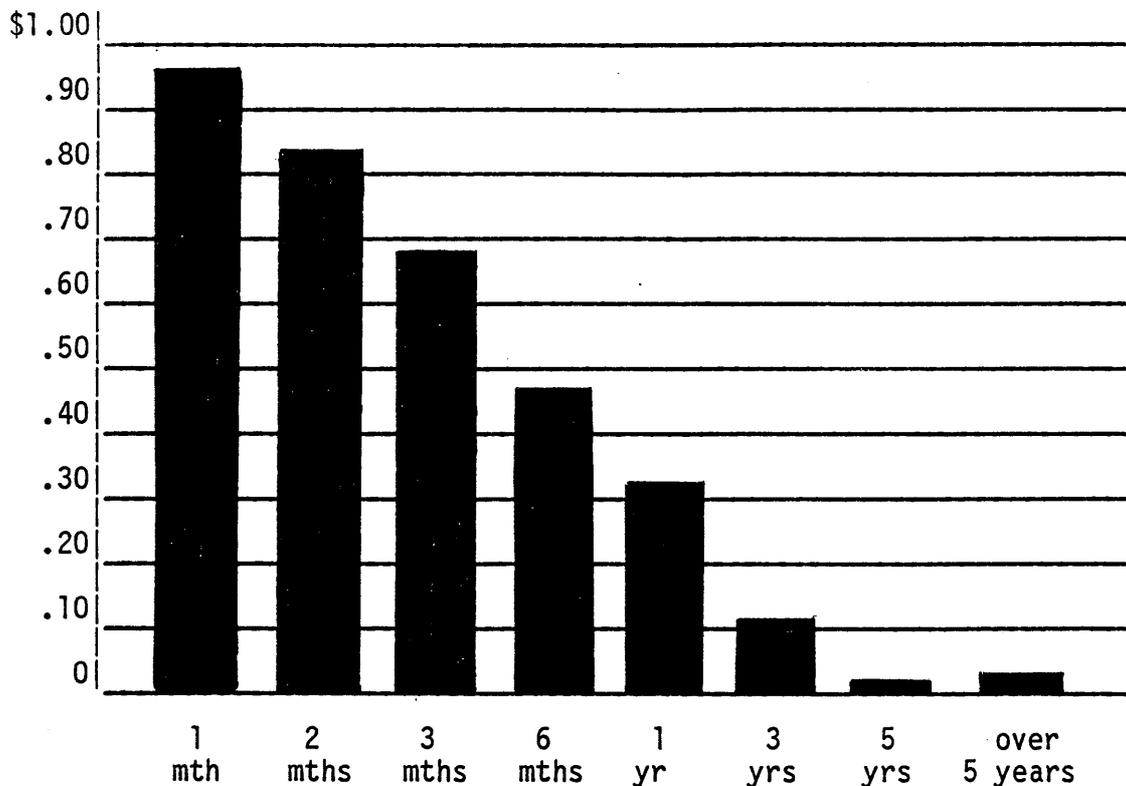
This option assumes the transfer of the collection of monies associated with warrants after initial collection attempts by the police. A proposal in this regard was obtained from a private debt collection agency. This proposal is summarised in Table 2.

Table 2: Collection with Private Agencies: Option (b)

Step	Assumed Collection Rate		Fee \$ million
	\$ million	%	
Trace and collect by phone and field call	2.9	33	0.475
Litigate and collect	2.9	33	0.725
Write off	-	34	0.725
Total	5.8	100	1.925
Number of warrants to agencies (30% of 250,000)	75,000 p.a.		
Value of warrants	\$8.7 million		
Net gain to revenue using option (b)	\$3.875 million		
Saving in police resources	negligible.		

Again if it is assumed that the success rate claimed by the agencies could be achieved this proposal would increase revenue to the State by approximately \$4 million per annum. However, negligible savings in police resources would occur.

A further difficulty with this option is the fact that private debt collection agencies would not be engaged in the debt collection process until at least nine months after the infringement notice was issued. The success rate of debt collection is inversely proportional to the time elapsed since the debt was incurred. The industry has provided the following chart to demonstrate how the collection rate diminishes over time.

Diminishing Collection Rates Over TimeOption (c)

This Option involves the use of private agencies to trace addresses of fine defaulters.

Most mercantile agencies have access to credit bureaux. One of the most significant bureaux is the Credit Reference Association (CRA) which provides one million reports per year to its members. Not all debt collectors are members of the CRA. In 1979 CRA held files on approximately 1.4 million consumers. This number is understood to be expanding at 4% per annum. The Association is controlled by the Retail Traders Association and the Australian Finance Conference.

The use of credit bureaux like the Credit Reference Association for the purposes of collecting parking and traffic fines has privacy implications. These are discussed in Section 9.

The Committee was interested to see whether private mercantile agents with access to bureaux such as the CRA could improve the efficiency of locating fine defaulters. To this end two pilot studies have been carried out by the Traffic Branch of the New South Wales Police Department. The first pilot study concerned one thousand warrants selected at random. Particulars of name, address, date of birth and licence number were given to a firm called Accelerated Computer Collections.

For a cost of \$3000 the firm ran the Police Department's records against those of the CRA. As a result of the check, more recent address information than that available on the Department of Motor Transport records, was provided in respect of 324 warrants. These were sent to the field for satisfaction or execution. Of these 202 were returned to the warrant index unit of which 168 were classified "not known at this address". A total of 21 were satisfied with a value of \$2,693 and seven warrants of value \$884 were executed. Six warrants had not been returned at the time these statistics were taken.

This study did not demonstrate any greater ability to trace fine defaulters that normally occurs through normal police recycling of unexecuted warrants.

To carry out this check Accelerated Computer Collections were instructed not to allow information about fine defaulters to be recorded on CRA files. It should be pointed out that when searches are carried out by CRA members the problem that the member is faced with in respect of each debtor is added to the CRA records.

In view of the results of the first pilot study a second pilot study using 99 warrants, each having a value exceeding \$500, was organized. On this occasion the same firm was asked to carry out more detailed inquiries in an effort to positively relocate the whereabouts of persons so that police could have better information to work from. The results of both the first and second pilot studies is summarised in Table 3.

The second pilot study traced 61% of the warrants to a new or the same address. Although precise figures were not obtained the Police response rate was not startlingly high.

A number of interesting statistics have emerged from the pilot study.

1. For the average warrant, that is the thousand selected at random, 82% of offenders were already on CRA records.
2. For the sample of 99 for the second pilot study with defaulters owing \$500 or more, initial CRA check showed that 57% were on CRA records and further tracing increased this number to 68%.
3. The number of persons that can be traced to new addresses using mercantile agencies and credit bureaux is substantial.

TABLE 3: Results of Pilot Studies

	(a) No Trace At All	(b) On Record but No Trace	(c) Traced to Same Address	(d) Traced to New Address
First Test Sample of 785 (1) This sample was only run through C.R.A.	18.35	<u>56.00</u>	32.11 <u>84.67</u>	<u>19.56</u>
2nd Test Sample of 99 (2) When only run through C.R.A.	<u>42</u>	33 <u>75%</u>	<u>3</u> <u>57%</u>	<u>21</u> <u>24%</u>
2nd Test Sample of 99 (3) After inquiries by Accelerated Computer Collections Staff	<u>31</u>	7 <u>38%</u>	<u>9</u> <u>68%</u>	<u>52</u> <u>61%</u>

Collection of Personal Information

1. Personal information should not be collected by unlawful or unfair means, nor should it be collected unnecessarily.
2. A person who collects personal information should take reasonable steps to ensure that, before he collects it or, if that is not practicable, as soon as practicable after he collects it, the person to whom the information relates (the 'record-subject') is told:
 - a) the purpose for which the information is being collected (the 'purpose of collection'), unless that purpose is obvious;
 - b) if the collection of the information is authorised or required by or under law—that the collection of the information is so authorised or required; and
 - c) in general terms, of his usual practices with respect to disclosure of personal information of the kind collected.
3. A person should not collect personal information that is inaccurate or, having regard to the purpose of collection, is irrelevant, out of date, incomplete or excessively personal.

Storage of Personal Information

4. A person should take such steps as are, in the circumstances, reasonable to ensure that personal information in his possession or under his control is securely stored and is not misused.

Access to Records of Personal Information

5. Where a person has in his possession or under his control records of personal information, the record-subject should be entitled to have access to those records.

Correction of Personal Information

6. A person who has in his possession or under his control records of personal information about another person should correct it so far as it is inaccurate or, having regard to the purpose of collection or to a purpose that is incidental to or connected with that purpose, misleading, out of date, incomplete or irrelevant.

Use of Personal Information

7. Personal information should not be used except for a purpose to which it is relevant.
8. Personal information should not be used for a purpose that is not the purpose of collection or a purpose incidental to or connected with that purpose unless:
 - a) the record-subject has consented to the use;
 - b) the person using the information believes on reasonable grounds that the use is necessary to prevent or lessen a serious and imminent threat to the life or health of the record-subject or of some other person; or
 - c) the use is required by or under law.
9. A person who uses personal information should take reasonable steps to ensure that, having regard to the purpose for which the information is being used, the information is accurate, complete and up to date.

Disclosure of Personal Information

10. A person should not disclose personal information about some other person to a third person unless:
 - a) the record-subject has consented to the disclosure;
 - b) the person disclosing the information believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the record-subject or of some other person; or
 - c) the disclosure is required by or under law.

SAMPLE

F THE CITY OF NEW YORK
 R PARKING VIOLATIONS BUREAU
 O P.O. BOX 337, N.Y., N.Y. 10272
 M

JUNE 6, 1984

PLATE NUMBER NY 2767AYG

<u>MONS #S</u>	<u>DOCKET #S</u>	<u>ISSUE DATE</u>	<u>FINE</u>	<u>PENALTY</u>	<u>PAYMENT</u>	<u>AMOUNT</u>
						<u>DUE</u>
[REDACTED]	[REDACTED]	2/ 5/84	\$20	\$25		\$45
[REDACTED]	[REDACTED]	2/ 5/84	\$20	\$25		\$45
[REDACTED]	[REDACTED]	2/ 1/84	\$20	\$25		\$45

TOTAL NUMBER OF SUMMONSES. 3

TOTAL AMOUNT DUE. \$135.

OFFICIAL RECORDS OF THE PARKING VIOLATIONS BUREAU INDICATE THAT YOU HAVE FAILED TO ANSWER OR PAY IN FULL FOR THE NUMBER OF SUMMONSES SHOWN ABOVE. UNDER THE LAW, THIS IS CONSIDERED AN ADMISSION OF LIABILITY. DEFAULT JUDGMENTS HAVE BEEN RENDERED AND DOCKETED WITH THE OFFICE OF THE CLERK OF THE CIVIL COURT OF THE CITY OF NEW YORK.

FINAL NOTICE FROM THE PARKING VIOLATIONS BUREAU

IF YOU FAIL TO RESPOND TO THIS FINAL NOTICE, THE PARKING VIOLATIONS BUREAU IS AUTHORIZED BY LAW TO ENFORCE AND COLLECT THESE JUDGMENTS. THIS INCLUDES THE FOLLOWING ACTIONS ...

ASSIGNMENT OF YOUR CASE TO A COLLECTION AGENCY.

SEIZING OF NON-EXEMPT PERSONAL PROPERTY, INCLUDING MOTOR VEHICLES.

RESTRAINING YOUR BANK ACCOUNT.

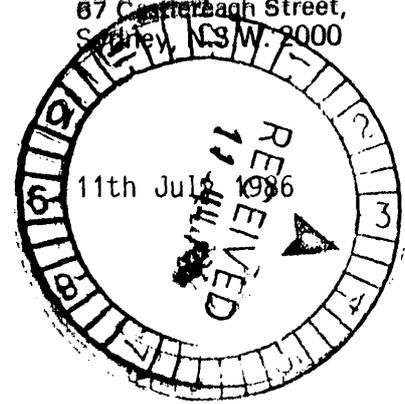
DEDUCTING MONIES FROM YOUR NON-EXEMPT WAGES.

PREVENTING YOU FROM RENEWING THE REGISTRATION OF YOUR MOTOR VEHICLE.

NOTE: YOUR PAST PAYMENTS FOR SUMMONSES EITHER WERE LATE (YOU STILL OWE PENALTIES) OR WERE FOR OTHER SUMMONSES. IF YOU MADE FULL PAYMENT OR HAD ALL YOUR SUMMONS(ES) SATISFIED AFTER MAY 11, 1984 YOU MAY IGNORE THIS NOTICE.

IN ORDER TO CLEAR THESE JUDGMENTS, SEE REVERSE SIDE.

CHALFONT CHAMBERS
9th Floor,
67 Castlereagh Street,
Sydney, NSW 2000



Mr Frank Sartor,
Director,
Public Accounts Committee,
Parliament House,
SYDNEY NSW 2000

Dear Mr Sartor,

Re: Unpaid Parking and Traffic Fines

Thank you for your letter dated 8th July 1986 together with:

1. letter dated 3rd July 1986 from the Attorney General's Department to the Committee; and
2. pages 10 and 11 both dated 26th June 1986 from Section 10 of the Draft Report.

I am surprised that the Attorney General's Department has reiterated its advice that cancellation of a driver's licence would make a motor vehicle policy void in the event that the unlicensed driver was involved in an accident. The Department is quite wrong. The Department has failed to understand the operation of an exclusion clause in a policy of insurance. The Department has also failed to have regard to the current law affecting the operation of exclusion clauses in policies of insurance in this State.

It would perhaps be helpful if I remind the Committee that a policy of insurance is a type of contract. In return for the payment of a premium an insurer agrees to indemnify an insured against certain specified losses. The wording of each policy must always be looked at to determine the circumstances in which losses are or are not covered.

Motor vehicle policies of insurance fall into two types. First, there are those that cover an insured's legal liability to pay other persons compensation for personal injuries. Such policies are statutory policies of insurance under the Motor Vehicle (Third Party Insurance) Act, 1942 and will not be effected by the cancellation of drivers' licences. Secondly, there are those that cover property damage. Some provide comprehensive cover, that is they indemnify an insured against damage to his own motor vehicle and against legal liability to compensate other persons for loss arising out of the use of the motor vehicle. Some only provide third party property damage cover, that is they indemnify an insured against legal liability to compensate other persons for loss arising out of the use of the motor vehicle. The Committee's deliberations could only affect comprehensive and third party property damage policies.

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2.

My experience is that all motor vehicle policies follow pretty much a standard pattern. I attach a copy of the current comprehensive policy issued by NRMA Insurance Ltd and a copy of the third party property damage policy issued by the Government Insurance Office. Both are typical of each sort of policy. Clauses like Clause 10.1(b) on page 6 of the NRMA policy and Clause 2 on page 14 of the GIO policy are found in every policy of insurance.

The general law of contract applies to insurance policies. An insured must bring himself within the terms of the policy to have a valid claim. However, if an insurer can show that a particular loss was excluded under the policy it escapes liability to pay that claim. The responsibility for showing that the exclusion clause applies in a particular instance rests on the insurer. It is obvious that depending on the circumstances one loss under the policy may be covered whilst another loss under the same policy may not be covered. If an exclusion clause applies in a particular instance the policy itself continues to have effect even though that particular loss is not covered by the policy. The policy does not become void.

Void means that the policy never at any time had any binding legal effect. An operative exclusion clause simply means that the policy of insurance does not cover a specific loss. The policy continues to have legal effect. If the Attorney General's Department were correct the absurdity would be that a prior valid claim under a policy could be defeated by a subsequent claim which attracts the operation of an exclusion clause because the policy upon the operation of the exclusion clause ceased to exist altogether and for all purposes.

Statute in this State now provides that not every exclusion clause which would have had operative effect can be relied upon by an insurer to avoid liability under a policy of insurance. Previously it did not matter that an exclusion clause had nothing whatsoever to do with the likelihood of the loss occurring. Hence a stationary motor vehicle at traffic lights struck from behind would not be covered if the driver of the motor vehicle in front were unlicensed. Section 18B of the Insurance Act, 1902 was enacted as a result of the NSW Law Reform Commission's Report on Insurance Contracts: LRC 34-1983. A copy of Section 18B is attached. It applies to all contracts of insurance entered into, reinstated or renewed after 1st April, 1984. The Committee will be aware that motor vehicle policies of insurance are renewed each year. Hence, Section 18B applies to all current motor vehicle policies of insurance. The Section requires that there be a causal connection between the subject matter of the exclusion clause and the loss before the insurer can rely upon the exclusion clause. The unlicensed driver would be covered in the above example.

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3.

The Committee's proposal to cancel licences means that action would be taken against drivers who are already licensed. Those drivers would all be qualified, although they would possess varying degrees of competence. All would be experienced drivers. All could show that the loss under the policy would have occurred whether or not they were licensed. Cancellation of a licence, making a driver unlicensed, would not cause a loss or contribute to it. Exclusion clauses relating to unlicensed drivers are directed more to persons who have never been licensed or who are inexperienced. They obviously present a greater risk to insurers.

I note that Clause 10 of the NRMA policy on page 5 says that "we may refuse a claim, or cancel this policy, or do both..." in the event that the motor vehicle was being driven by an unlicensed driver. Section 18B would prevent NRMA Insurance Ltd refusing the claim. Section 18B would not prevent it from cancelling the policy for the future.

It is apparent that the Attorney General's Department has not had section 18B brought to its attention. The Committee might think it useful to ask the Department to reconsider its advice in the light of Section 18B. I would appreciate receiving a copy of the Department's further advice if that course is adopted.

Yours faithfully,



Alan Lucas