

A guide to enforcement review

Fines and Enforcement Services

Table of contents

1. What is enforcement review?	3
1.1 Who is this guide for?	3
2. Applying for an enforcement review	3
2.1 Who can apply?	3
2.2 What are the application requirements?	4
2.3 When can you apply for enforcement review?	4
2.4 When can't you apply for enforcement review?	4
2.4.1 Fines issued to children	4
2.5 Limit to the number of times that you can apply	5
2.6 Providing true information	5
3. Grounds for enforcement review	5
3.1 Contrary to law	5
3.2 Mistaken identity	5
3.3 Exceptional circumstances	6
3.4 Special circumstances	6
3.4.1 Establishing special circumstances	7
3.5 Person unaware	8
3.5.1 Fines that aren't eligible for person unaware	8
3.5.2 Keeping your address up to date	9
4. The decision-making process	9
4.1 Request for additional information	9
4.2 Power to waive or reduce fees	10
4.3 Education and training	10
5. Outcome of enforcement review	10
5.1 If your fine is confirmed	10
5.1.1 Other options if your application is unsuccessful	11
5.2 If enforcement is cancelled	11
5.2.1 If enforcement is cancelled on grounds other than person unaware	11
5.2.2 If enforcement is cancelled on the ground of person unaware	11
6. Do you need more information?	12
7. The fines lifecycle	13

1. What is enforcement review?

Enforcement review is a process by which you can ask for a review of a fine if you think that the fine was issued unfairly, or if there is a reason why the fine should be withdrawn.

The **Director, Fines Victoria** (Director) is the person who administers the fines system in Victoria. When you apply for an enforcement review, you are asking the Director to review an enforcement agency's decision to issue and enforce your fine.

Enforcement review is available at a certain stage of the fines lifecycle – when the enforcement agency that issued your fine has registered it with the Director for enforcement, and the Director has served you a notice of final demand.

If your enforcement review application is successful, the Director will cancel enforcement of your fine and refer it back to the enforcement agency that issued it. The enforcement agency will then decide what action it wants to take. For example, the enforcement agency might decide to take no further action, meaning that you will not have to pay the fine, or it might decide to commence proceedings in court.

If your enforcement review application is unsuccessful, the Director will continue to enforce your fine and you will need to pay or take other action to deal with it.

Section 5 of this guide has more information about the possible outcomes of enforcement review.

Section 7 of this guide has a diagram that shows the fines lifecycle and your options at each stage, including the option to apply for enforcement review.

The **Fines Reform Act 2014** (Fines Reform Act) is the legislation that gives the Director powers to manage fines. Enforcement review is available under Part 4 of the Fines Reform Act.

1.1 Who is this guide for?

This guide provides information to people about the enforcement review process. The guide aims to help people with fines to understand the purpose of enforcement review, how to apply for enforcement review, how an enforcement review is conducted and the possible outcomes.

If you need help to understand your options, including to decide whether enforcement review is a good option for you, or if you need help to make an application, you should seek legal advice. Section 6 of this guide has a list of organisations that may be able provide you with advice and support.

2. Applying for an enforcement review

2.1 Who can apply?

You can apply for enforcement review if you have:

- received an **infringement notice** (a 'fine'), and
- been served a **notice of final demand** in relation to that notice.

You can authorise a person to apply for enforcement review on your behalf, for example, a lawyer, guardian, financial counsellor, or family member.

A **company** can apply for enforcement review, but only on certain grounds. A company can't apply for enforcement review on the ground of **special circumstances**. More information about the grounds for seeking an enforcement review are at Section 3 of this guide.

2.2 What are the application requirements?

If you apply for enforcement review, your application must:

- be in writing
- state the ground on which you want the fine to be reviewed, and
- provide your current address.

You can find the enforcement review application form on the Fines Victoria website: fines.vic.gov.au. You can submit your application online, by mail, by email, or in person.

2.3 When can you apply for enforcement review?

You can apply for enforcement review after you have received a **notice of final demand**.

If you have received a **notice of final demand**, it means that the enforcement agency that issued your fine has registered your fine with **Fines Victoria**. This means that Fines Victoria is now responsible for managing your fine.

2.4 When can't you apply for enforcement review?

You can't apply for enforcement review if:

- your fine is for:
 - drink-driving
 - drug-driving, or
 - excessive speed (which means speeding more than 25 km/h over the speed limit, or more than 130 km/h)
- your fine was issued by a **court**
- a **Sheriff's officer** has served you with a **seven-day notice** and seven days have passed, or you've waived the seven day period
- you are the director of a company and you have been made personally liable for the company's fine (a '**declared director**')
- the Director has made an **attachment of earnings** direction against you to deduct money from your salary
- the Director has made an **attachment of debts** direction against you to deduct money from your bank account, or other money that is owed to you
- the Director has recorded a **charge over land** that you own
- a Sheriff's officer has **seized your vehicle** under a vehicle seizure and sale notice, or
- you have **paid your fine in full**.

2.4.1 Fines issued to children

Fines issued to children (people under the age of 18 years) are managed by the Children's Court, and not by Fines Victoria. For this reason, you can't apply for enforcement review if you are a child or if you received your fine when you were a child.

2.5 Limit to the number of times that you can apply

There is a limit to the number of times that you can apply for enforcement review of a fine. The number of times that you can apply depends on the grounds on which you apply.

You can only make **one application** if you apply because:

- the fine is contrary to law
- the fine involved a mistake of identity
- there are exceptional circumstances, or
- you were unaware of the fine (this is called 'person unaware').

You can make up to **two applications** if you apply on the grounds of **special circumstances**.

2.6 Providing correct and true information

When you apply for enforcement review, you should only provide information that is correct and true. It is an offence to knowingly provide false or misleading information as part of an enforcement review application. If you provide information that you know is false or misleading, you could be liable for a penalty of more than \$1600.

3. Grounds for enforcement review

There are specific grounds on which you can apply for enforcement review. When you apply, your application must specify at least one ground of review. The following section provides guidance on each ground and the types of evidence that you need to provide to support your application on these grounds.

3.1 Contrary to law

You can apply on the ground of **contrary to law** if you believe that the enforcement agency's decision to serve and enforce your fine was inconsistent with the law. For example, you might believe that the fine is invalid for some reason, or that the officer who issued the fine acted unlawfully, unfairly, improperly or outside of their authority.

If you apply on this ground, the Director may consider:

- whether the officer who issued your fine was authorised to do so, made a mistake or acted improperly or unfairly
- whether the enforcement agency has complied with its legal requirements
- whether any signs (such as traffic signs) were clear and visible, if this is relevant to your fine.

3.2 Mistaken identity

You can apply on the ground of **mistaken identity** if you think that the fine was issued to you in error. For example, you might apply on this ground if you are not the person named in the fine.

If you apply for enforcement review on the ground of **mistaken identity**, your application should include evidence such as your birth certificate, passport or driver licence showing that you are not the person named in the fine.

You can't apply on the ground of **mistaken identity** if you are the owner of a vehicle and another person was driving your vehicle and committed the offence. In that situation, you were required to

nominate the driver of the vehicle when you received the fine. There is information on each traffic fine explaining the process for nominating a driver. It is too late to nominate another driver once you have received a **notice of final demand**, and you can't nominate another driver as part of an enforcement review.

3.3 Exceptional circumstances

You can apply on the ground of **exceptional circumstances** if you had awareness and control of your conduct that resulted in your fine but the circumstances leading to the offence were out of the ordinary, unavoidable or unexpected.

Examples of **exceptional circumstances** include if you committed the offence because of circumstances that you couldn't foresee or prevent, such as a medical emergency or if your car broke down.

If you apply for enforcement review on the ground of **exceptional circumstances**, your application should include evidence such as medical evidence or an invoice from a mechanic or a towing service, if it's relevant to your fine.

3.4 Special circumstances

You can apply on the ground of **special circumstances**¹ if you:

- have a mental or intellectual disability, disorder, disease or illness
- have a serious addiction to drugs, alcohol or a volatile substance
- are homeless, or
- are a victim of family violence.

You must be able to show that there was a **connection** between your special circumstances and your offending behaviour. This also means that you need to show that you had special circumstances **at the time of the offence**.

Specifically, if you

- have a **mental or intellectual disability, disorder, disease or illness**, or a **serious addiction to drugs, alcohol or a volatile substance**, you need to show that, because of your circumstances:
 - you didn't understand that your behaviour was against the law, or
 - you couldn't control your behaviour (even if you knew it was against the law)
- are **homeless** or a **victim of family violence**, you need to show that, because of your circumstances, you couldn't control your behaviour (even if you knew it was against the law).

For example, you might apply on the grounds of **special circumstances** if you received a fine for sleeping in your car because you were homeless, or if you have an intellectual disability that meant that you didn't understand that you were committing an offence.

If you apply on the ground of special circumstances, you are acknowledging that you committed the offence, but you are asking for your fine to be reviewed because of your special circumstances at the time of the offence.

¹ You can find the full legislative definition of special circumstances in section 3 of the *Infringements Act 2006*.

The Family Violence Scheme

If you are a victim survivor of family violence, you might be eligible to have your fine withdrawn under the **Family Violence Scheme**, instead of applying for enforcement review.

You can apply under the Family Violence Scheme if you are a victim survivor of family violence, and the family violence substantially contributed to you:

- committing the offence, or
- not being able to name the responsible person.

There are some important differences between the Family Violence Scheme and enforcement review. If you are considering making an application relating to family violence, you should get more information to understand which option is best for you.

For more information, visit fines.vic.gov.au/fvs or call 1300 019 983.

3.4.1 Establishing special circumstances

To establish **special circumstances**, you must provide evidence that you had special circumstances at the time that you were issued the fine, and that your special circumstances meant that you:

- didn't understand that your behaviour was against the law, or
- couldn't control your behaviour (even if you knew it was against the law).

Evidence may include, for example, reports, letters, statements, submissions, statutory declarations, police reports and family violence safety notices.

Who can prepare a report?

If you have an **intellectual disability or a mental illness or disorder**, you should provide a report from your:

- general practitioner
- psychiatrist
- psychologist
- psychiatric nurse.

If you have an **alcohol or drug addiction**, you should provide a report from your:

- general practitioner
- case manager
- psychiatrist
- psychologist
- accredited drug treatment agency
- accredited drug counsellor.

If you are **homeless**, you should provide a report from your:

- case worker
- case manager

- approved agency (for example, the Salvation Army)
- recognised health or community welfare service provider.

If you have experienced **family violence**, you should provide a report from your:

- case worker or social worker (for example, a specialist family violence case worker)
- financial counsellor
- health practitioner (for example, a general practitioner, psychologist, psychiatrist, registered occupational therapist)
- school principal or school welfare coordinator.

What information should the report include?

The report should include:

- the details of the practitioner (the person providing the report) including their qualifications
- an outline of your relationship with the practitioner and how long they've known you
- the nature, severity and duration of your condition or circumstance
- whether you were experiencing symptoms at the time of the offence
- the connection between your offence and your circumstance.

Your evidence should be signed and dated within 12 months of the date of your application. You can provide evidence that is older than 12 months if it relates to a permanent condition, such as an intellectual disability.

3.5 Person unaware

You can apply on the ground of **person unaware** if you didn't know about your fine.

To apply for enforcement review on the ground of person unaware you must submit your application **within 14 days** of the date that you become aware of the fine. You can make a statutory declaration as evidence of the date that you became aware of your fine.

If you apply for enforcement review on the grounds of person unaware, your application should include evidence showing why you were unaware of your fine. This might include, for example, a copy of your passport or a boarding pass showing that you were overseas, removalist invoices if you moved house or mail theft reports if your mail was stolen.

3.5.1 Fines that aren't eligible for person unaware

You can't apply for enforcement review on the ground of person unaware for a fine for:

- a traffic offence, for example speeding or failing to stop at a red light
- driving in a toll zone without an e-tag
- certain offences relating to driving a boat while under the influence of alcohol
- certain alcohol-related offences committed by a rail safety worker.

If you received a fine for one of these offences, but you didn't know about the fine, you need to apply to the Magistrates' Court (or the Children's Court if you are a child) for an extension of time.

You must apply to Magistrates' Court within 14 days of becoming aware of your fine.

You will need to give the court evidence, such as an affidavit or a statutory declaration, explaining why you were unaware of the fine. The court will set a hearing date and you will need to go to court to explain why you were unaware of your fine. If the court is satisfied that you didn't know about your fine, it can give you an extension of time to deal with your fine.

For more information about these processes, contact the Magistrates' Court of Victoria (mcv.vic.gov.au), or consider seeking legal advice.

3.5.2 Keeping your address up to date

If you change address, you must tell VicRoads your new address **within 14 days**. If a fine is sent to the address that VicRoads has for you, the fine is 'deemed served'. This means that the enforcement agency and Fines Victoria can assume that you received the fine and take action to collect the outstanding amount, even if you no longer live at that address and did not actually receive the fine.

If you don't update your authorised address with VicRoads within 14 days and the reason that you didn't know about a fine is because it was sent to your old address, you can't apply for enforcement review on the grounds of person aware.

4. The decision-making process

The Director can consider a range of factors when conducting an enforcement review, including the strength of any evidence that you provided to support your application.

The Director's decision-making process takes place within the legal framework of the Fines Reform Act and administrative law principles. Decisions are made in accordance with legislation and departmental guidelines.

This means that:

- the review and decision will be carried out in accordance with the law
- the review will be fair (for example, there will be no bias or conflict of interest)
- all relevant matters will be considered and no irrelevant matters will be considered
- proper consideration will be given to your human rights, and
- you will be given information about the outcome of your application and the reason for the decision.

4.1 Request for additional information

If you don't include enough information in your application, the Director can ask you for additional information.

If the Director asks you for additional information, you must:

- provide the additional information within 14 days of receiving the request, or
- write to the Director to ask for more time to provide the information.

If you ask the Director for more time to provide the additional information, the Director can:

- grant your request, and give you more time (but not more than three months), or
- refuse your request.

If you don't provide the additional information within the required time, the Director can conduct your enforcement review without the additional information.

4.2 Power to waive or reduce fees

The Director has discretion to waive or reduce some fees imposed on a fine. The Director can only waive or reduce fees after a fine is registered with Fines Victoria. The Director can waive and reduce fees as part of the enforcement review process. The Director can't waive or reduce fees that have been imposed by a court.

When deciding whether to waive or reduce fees, the Director will consider whether:

- the enforcement agency or Fines Victoria made an administrative error that meant that you weren't notified of the fine, or
- there are any other circumstances that meant that you weren't notified of the fine.

The Director generally won't waive or reduce fees just because you claim to have financial hardship or dispute the offence. Other options are available to you in those circumstances, such as enforcement review, a work and development permit and a payment arrangement.

If the Director waives or reduces fees, you must pay or take other action to deal with the outstanding amount within 21 days.

4.3 Education and training

The Director (and the officers who have the power to conduct enforcement reviews on the Director's behalf) are trained in administrative law principles and decision-making to ensure that they make fair, efficient and high quality decisions. Education and training is provided to officers and reviewed on an ongoing basis.

5. Outcome of enforcement review

There are two possible outcomes of an enforcement review. The Director can decide to:

- **confirm your fine** – this means that your application was unsuccessful – your fine will still be outstanding and you will need to take action to deal with it, or
- **cancel enforcement** – this means that your application was successful – the Director will refer your fine back to the enforcement agency to decide what action to take.

5.1 If your fine is confirmed

If **your fine is confirmed**, it means that your enforcement review application was unsuccessful. This means that the Director has confirmed the enforcement agency's decision to give you the fine. The Director will notify you of this decision in writing within 21 days. The notice that you will receive is called a **notice of infringement confirmation**.

When you receive this notice, you have **21 days** to:

- pay the fine
- apply for a payment arrangement
- apply under the Family Violence Scheme, or
- have a sponsor apply for a Work and Development Permit for you.

If you don't take one of these actions within 21 days, the Director will continue to enforce your outstanding fine and additional fees might be added to your fine.

5.1.1 Other options if your application is unsuccessful

If your application is unsuccessful and was on the grounds of special circumstances, you have the option to make a second application on the grounds of special circumstances. You might choose to make a second application on the ground of special circumstances if you think that you have new or additional evidence to support your application. You can only apply for special circumstances twice for any fine. See section 2.5 for more information about this.

If you are unhappy with the outcome of your enforcement review, you may want to get legal advice about your options.

5.2 If enforcement is cancelled

If **enforcement is cancelled**, it means that your enforcement review application was successful.

The Director will:

- remove the collection fee from your fine
- notify you in writing within 21 days
- refer your fine back to the enforcement agency that issued your fine.

The Director will send the enforcement agency a notice explaining the reason for the decision. The Director may also give the enforcement agency a copy of your enforcement review application.

The enforcement agency must then decide what action it will take and tell you its decision within 90 days. The options available to the enforcement agency depend on the ground of your enforcement review application.

5.2.1 If enforcement is cancelled on grounds other than person unaware

If the Director cancels enforcement on a ground other than person unaware (that is, on the ground of special circumstances, contrary to law, mistaken identity or exceptional circumstances), the enforcement agency must withdraw your fine and:

- take no further action
- give you an official warning, or
- commence a proceeding in court for your alleged offence.

The enforcement agency has 90 days to tell you what action it has decided to take.

If the enforcement agency decides to take no further action or give you an official warning, the matter is finalised and you don't need to do anything further.

If the enforcement agency decides to commence a proceeding for your alleged offence, it means that you will have to appear in court. The court will contact you with information about this process and what you need to do.

5.2.2 If enforcement is cancelled on the ground of person unaware

If the Director cancels enforcement of your fine on the ground of person unaware, the enforcement agency may withdraw your fine and:

- serve you with a new fine

- take no further action
- give you an official warning, or
- commence a proceeding in court for your alleged offence.

If the enforcement agency decides to serve you with a new fine, you need to deal with the new fine. If you don't take action to deal with the new fine by the due date, extra fees can be added and the fine can be registered with Fines Victoria.

If the enforcement agency decides to withdraw your fine and take no further action or give you an official warning, the matter is finalised and you don't need to do anything further.

If the enforcement agency decides to commence a proceeding for your alleged offence, it means that you will have to appear in court. The court will contact you with information about this process and what you need to do.

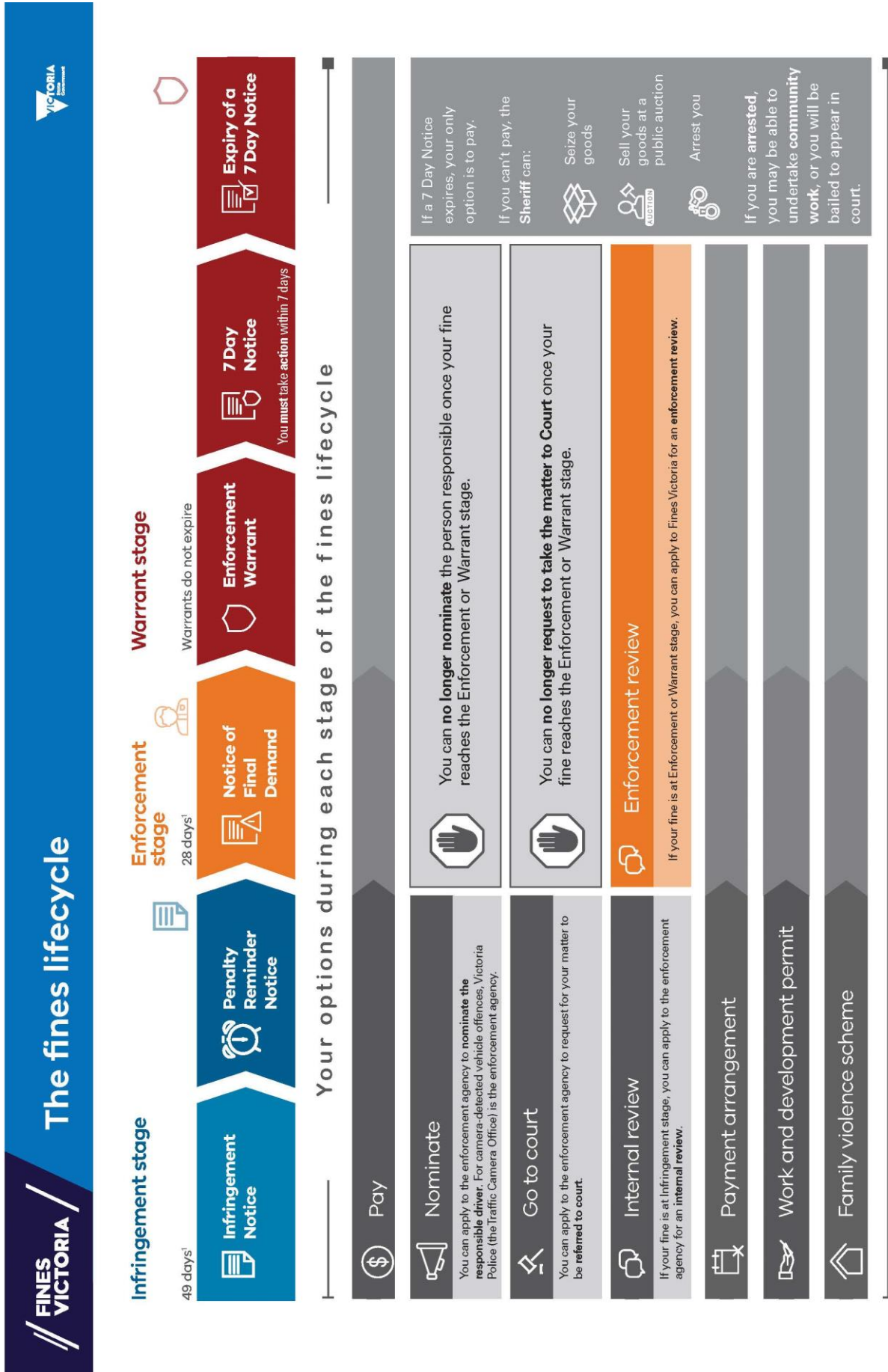
6. Do you need more information?

For more information about your fines and your options to deal with them, visit **fines.vic.gov.au** or call Fines Victoria on (03) 9200 8111.

If you need help to understand your options, including help to decide whether enforcement review is a good option for you, you can seek legal advice, including from:

- a lawyer
- Victoria Legal Aid: legaid.vic.gov.au, 1300 792 387
- the Federation of Community Legal Centres: fclc.org.au, (03) 9652 1500
- Justice Connect: justiceconnect.org.au
- Victorian Aboriginal Legal Service: vals.org.au
- YouthLaw: youthlaw.asn.au

7. The fines lifecycle



¹ These are minimum statutory requirements. In practice, these timeframes may be longer, depending on if/when an enforcement agency registers a fine, and if/when the Director, Fines Victoria applies for an enforcement warrant.