

The Hon Luke Donnellan MP
Minister for Roads and Road Safety

Via email luke.donnellan@parliament.vic.gov.au

Cc: Hon Martin Foley MP
Minister for Housing, Disability and Ageing
Via email: martin.foley@parliament.vic.gov.au

4 April 2017

Dear Minister

Law Reform proposal – requirements to notify VicRoads of a change of address

We write to propose reform to the *Road Safety (Drivers) Regulations 2009 (Vic)* and the *Road Safety (Vehicles) Regulations 2009 (Vic)* (**Road Safety Regulations**). We have also copied this letter to The Hon Martin Foley MO, Minister for Housing, Disability and Ageing, as the changes proposed would provide significant benefit to people who are homeless and at risk of homelessness.

IMCL is a not-for-profit community legal centre that provides legal assistance to disadvantaged and marginalised people in the City of Melbourne area. IMCL has been assisting people in Melbourne's inner northern suburbs for nearly 40 years. We work with partner organisations in our local community to promote access to justice and health and wellbeing. In the last financial year, we helped 672 clients and provided 736 instances of legal advice.

IMCL provides legal support, advice and representation to a significant number of people navigating the infringement and fines system, and in the last financial year just under 16 per cent of our advices were infringement or fine related.

1. Executive Summary

Through its work assisting clients with offences under the Road Safety Regulations it has become apparent to IMCL that there is a problem with the Road Safety Regulations regarding notifying VicRoads of a change of address.

In particular, the Road Safety Regulations have a disproportionate impact on, and cause financial hardship to already disadvantaged people including those experiencing homelessness and family violence because:

- (a) there is a short time frame of 14 days to notify VicRoads of a change of address and failure to do so is an offence;
- (b) there are restrictions on the types of addresses that can be registered with VicRoads, which does not accommodate those without a fixed residential address or who are in transitional accommodation; and

- (c) these groups are more likely to receive infringements due to their circumstances, and the fact that they are not able to register a new address means they are more likely to accrue multiple unpaid fines.

We believe that this problem could be addressed by amending the Road Safety Regulations to:

- (1) remove the penalty for failing to change address details for people experiencing homelessness and family violence; and
- (2) insert a new definition of residential address to allow for a broader range of addresses to be registered.

Our recommendations for reform are addressed in further detail in section 4 below.

2. The current law

2.1. Road Safety Regulations

Under regulation 56(1) of the *Road Safety (Vehicles) Regulation 2009 (Vic)* (**Regulation 56**) it is a criminal offence carrying a maximum penalty of 3 penalty units for the registered operator of a vehicle to not notify VicRoads within 14 days if the vehicle's garage address or the operator's residential address or address for the service of notices changes.

This offence is a prescribed traffic infringement, and instead of criminal proceedings, a person suspected of contravening Regulation 56 can be issued with an infringement notice.¹ The prescribed infringement penalty is 1 penalty unit.

Further, under regulation 67(1) of the *Road Safety (Drivers) Regulations 2009 (Vic)* (**Regulation 67**) if a holder of a driver licence or learner permit does not notify VicRoads of any change to the person's address within 14 days he/she is also liable for a criminal offence carrying 3 penalty units.

Regulation 67 is also a prescribed traffic infringement, and the prescribed infringement penalty is also 1 penalty unit.²

2.2. Addresses that can be registered

Driver licence holders are required to register their residential address with VicRoads. This can be a Victorian, interstate or overseas address, or a Roadside Delivery or Rural Mail Box address. It is also possible to register a postal address which is different to a residential

¹ Sections 73, 74 and Item 125 in Schedule 7 of the *Road Safety (General) Regulations 2009 (Vic)*.

² *Ibid.*

address for example, the address of an organisation.³ However, a residential address must also be provided.⁴

3. Discriminatory/disproportionate impact of the law on our clients

3.1. People experiencing homelessness

The Road Safety Regulations have a disproportionate and discriminatory impact on our clients who are homeless. Our clients experiencing homelessness include those who are “couch surfing” with family or friends, living on the streets, or regularly moving between different rooming/boarding houses, caravan parks or staying in temporary crisis or transitional accommodation. In addition, often these individuals are not sure how long they will be staying in a particular place.

As a result, these individuals often have no address that they are able to register as a residential address with VicRoads (due to the restrictions on acceptable addresses); or they may be moving so frequently that they do not have a fixed address or it is not practical for them to constantly change their registered address. The following case study illustrates the disproportionate impact that the Road Safety Regulations have on these vulnerable individuals.

Case study 1 – Homeless client Brendan

When Brendan⁵ attended IMCL, he was living in a converted shipping container with his two dogs. Prior to this, he was living in his van for two years. Brendan also suffered from Parkinson’s Disease and was receiving assistance from the Royal District Nursing Service.

Brendan had not updated his address because he did not have a fixed address and did not have an address that could be registered with VicRoads. A notice advising that his driver licence had been suspended was mailed to the residence at which he lived prior to becoming homeless. Unaware that his licence had been suspended, Brendan continued to drive. He was subsequently charged with failing to update his address with VicRoads and with driving whilst suspended.

The discriminatory effects of the Road Safety Regulations are compounded by the fact that homeless people are often more likely to receive infringements for driving related offences because they tend to rely more on their car, may be sleeping in their car, may not be able to afford the vehicle registration fees, or may be frightened away from public transport.⁶ Not

³ We understand from enquiries made with VicRoads that VicRoads will accept the address of an organisation as a postal address and that sometimes this organisation will be asked to write a letter on behalf of their client accepting the use of their address.

⁴ VicRoads, *Change of address – additional information* (5 January 2016) <<https://www.vicroads.vic.gov.au/licences/renew-replace-or-update/update-your-details/change-of-address-additional-information>>.

⁵ Name has been changed to protect this individual’s privacy.

⁶ Dr. Bernadette Saunders, Dr. Anna Eriksson, Associate Professor Gaye Lansdell and Ms Meredith Brown, ‘An Examination of the Impact of Unpaid Infringement Notices on Disadvantaged Groups and the Criminal Justice

only are these disadvantaged groups more vulnerable to receiving fines, they are more likely to accrue multiple fines, have less capacity to pay, may be unable to obtain legal advice or unable to prepare the documentation necessary to defend these charges. This can exacerbate the problems they have with gaining employment, participating in the community and re-establishing their lives generally.⁷

3.2. People experiencing family violence

The laws requiring an address to be changed within 14 days also have a disproportionate impact on people who are experiencing family violence. This is particularly in light of the widespread and increasing problem of family violence related homelessness in Australia.⁸

We assist clients who have fled their home out of fear for their safety or the safety of their children. In our experience, because the perpetrators of family violence can isolate their victims and prevent them from working, these clients may not have the resources to secure other long-term accommodation when they leave a relationship. Further, those experiencing family violence may cycle in and out of homelessness and temporary accommodation as they feel compelled to return to the marital home and try to repair their relationship for their children.⁹ These circumstances mean that those experiencing family violence related homelessness may not have a fixed address or an address that is able to be registered with VicRoads.

The following case study illustrates the disproportionate effects of the Road Safety Regulations on those that are experiencing family violence.

Case Study 2 – Mary who is experiencing family violence

When Mary¹⁰ first attended IMCL she had just had her first child, born almost two months premature. She had moved out of the home she had shared with her husband Bob¹¹ due to his drug use and violence towards her. Despite moving away, Bob continued to threaten Mary and she feared for her safety. Due to being forced to leave the marital home, Mary never received a VicRoads notice advising that her licence had been suspended, and Mary continued to drive. Given the extensive family violence she had experienced, Mary did not feel it was safe to update her address with VicRoads. Mary was subsequently served with criminal charges for driving while her licence was suspended and failing to notify VicRoads of a change of address.

4. Recommendations for reform

System –Towards a Best Practice Model’ (Monash University Criminal Justice Research Consortium, February 2013) 55.

⁷ Sophie Clarke, Suzie Forell and Emily McCarron, ‘Fine but not fair: fines and disadvantage’ (Law and Justice Foundation of New South Wales, February 2009) 1, 7.

⁸ Dr Selina Tually, Dr Debbie Faulkner, Mrs Cecile Cutler and Associate Professor Michele Slatter, ‘Women, Domestic and Family Violence and Homelessness A Synthesis Report’ (Flinders University – Flinders Institute for Housing, Urban and Regional Research, August 2008) 1.

⁹ Ibid 16.

¹⁰ Name has been changed to protect this individual’s privacy.

¹¹ Name has been changed to protect this individual’s privacy.

For the above reasons, we recommend that the Road Safety Regulations be amended to:

- (1) remove the penalty for failing to change address details for people experiencing homelessness and family violence; and
- (2) insert a new definition of residential address to allow for a broader range of addresses to be registered.

4.1. Remove the penalty for persons with no fixed address

We recommend that the Road Safety Regulations be reformed to remove the requirement to register a change of address within 14 days and the corresponding penalty where the licence holder is experiencing homelessness or family violence.

This is the approach that has been taken in the voting legislation in Australia in respect of people experiencing homelessness. For example, under the *Electoral Act 2002* (Vic), a person on the electoral roll must notify the electoral commission of a change of address within 21 days.¹² The penalty for breaching this provision is one penalty unit. However, it is not compulsory for a homeless person to enrol or to vote, and a homeless person will not be fined for failing to do so.¹³ A homeless person is defined broadly in this Act as:¹⁴

- (a) a person living in—
 - (i) crisis accommodation; or
 - (ii) transitional accommodation; or
 - (iii) any other accommodation provided under the Supported Accommodation Assistance Act 1994 of the Commonwealth; or

- (b) a person who has inadequate access to safe and secure housing within the meaning of section 4 of the Supported Accommodation Assistance Act 1994 of the Commonwealth.

These electors can register as having no fixed address/as itinerant electors and register using either:

- the address where they were last eligible to enrol;
- the address where a next of kin lives;
- their place of birth; or
- if not born in Australia, a place that they feel the closest connection to.¹⁵

We propose that the Road Safety Regulations be amended in a similar way such that:

¹² *Electoral Act 2002* (Vic) s 23.

¹³ See Victorian Electoral Commission, *Being Homeless Doesn't Make You Vote-less* (26 February 2016) <<https://www.vec.vic.gov.au/Enrolment/BeingHomelessDoesntMakeYouVoteless.html>>. See also, Australian Electoral Commission, *Enrolment for people with no fixed address* (3 May 2016) <http://www.aec.gov.au/enrolling_to_vote/special_category/enrolment_with_no_fixed_address.htm>.

¹⁴ *Electoral Act 2002* (Vic) s 3A(2).

¹⁵ See, eg, *Commonwealth Electoral Act 1918* s 96. See also, Victorian Electoral Commission, *Being Homeless Doesn't Make You Vote-less* (26 February 2016) <<https://www.vec.vic.gov.au/Enrolment/BeingHomelessDoesntMakeYouVoteless.html>>.

- (a) a definition of a homeless person is included in similar terms to the *Electoral Act 2002* (Vic);
- (b) a person who is experiencing homelessness is able to register with VicRoads as a licence holder with no fixed address; and
- (c) an exception to the requirements and offences relating to registering a change of address within 14 days be created for people experiencing homelessness (as defined above) and people experiencing family violence as defined in section 5 of the *Family Violence Protection Act 2008* (Vic).

4.2. Reforms to the types of addresses that can be registered

We also recommend reforms to the types of addresses that are able to be registered with VicRoads. In summary, we consider there is scope to adopt a broader definition of the types of addresses that can be registered to better accommodate people experiencing homelessness and family violence, consistent with the approach taken to road transport legislation in other jurisdictions.

Model road transport legislation and regulations have been made by the Commonwealth Governor-General that are designed to be referenced or enacted by the state and territory governments. One of these regulations is the *National Transport Commission (Road Transport Legislation – Driver Licensing) Regulations 2006* (Cth). Regulation 15 of these regulations provides that drivers must notify the driver licensing authority of a change in residential address or address for service of notices within 14 days. A residential address ‘must be an address in the jurisdiction at which the driver licensing authority may ordinarily make personal contact with the person’.¹⁶ Further, ‘[i]f there is no postal service to a driver’s residential address, the person must also provide an address for the service of notices’.¹⁷ These model regulations have been applied in other Australian jurisdictions.¹⁷

Similarly, in certain states in the United States of America, it is possible for homeless people to use a ‘descriptive address’, such as ‘under the west end of the Burnside Bridge’ as a residential address. If a descriptive address is used, the person must also provide another address where the person can receive mail.¹⁸ Moreover, in other states there are systems in place for a homeless person to use the address of an organisation that provides services to the person,¹⁹ or the address of a homeless shelter at which they are staying.²⁰

¹⁶ *National Transport Commission (Road Transport Legislation – Driver Licensing) Regulations 2006* (Cth), sch 2 reg 15(2).

¹⁷ See, eg, *Road Transport (Driver Licensing) Regulation 2008* (NSW), reg 117. See also, *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* (Tas), reg 36.

¹⁸ Oregon Department of Transportation, *Required Identity Documentation* <<http://www.oregon.gov/ODOT/DMV/pages/driverid/idproof.aspx#homeless>>; Montana Department of Justice Motor Vehicle Division, *Identity Confirmation for Driver Licenses and ID Cards* <<https://dojmt.gov/driving/required-docs/>>.

¹⁹ For example, in Indiana homeless people may provide a letter from a legal representative at a government or not-for-profit entity stating that the organisation provides services to the homeless person and is willing to accept delivery of mail on their behalf see: Bureau of Motor Vehicles, *Proving Indiana Residency* <<http://www.in.gov/bmv/2770.htm>>.

²⁰ Florida Department of Motor Vehicles, *Drivers License Identification Requirements* <<http://www.dmvflorida.org/drivers-license-identification.shtml>>.

In addition, we note that Australia Post has a number of facilities that enable people without a fixed address to send post to, including its for paid “Hold Mail” service and the free “Post Restante” service, where mail can be sent to a chosen post office and when mail is received at the nominated post office, the recipient is notified via the alternate contact details and can collect for up to 30 days.

Consistent with these approaches, we recommend that the Road Safety Regulations be amended to include the following definition of residential address:

- (a) A residential address may be an address in the jurisdiction at which the Corporation may ordinarily make personal contact with the person, including, but not limited to:
 - (i) the address of crisis accommodation; or
 - (ii) the address of transitional accommodation; or
 - (iii) the address of any other accommodation provided under the *Supported Accommodation Assistance Act 1994* (Cth); or
 - (iv) an address c/o Post Restante at an Australia Post post office; or
 - (v) a descriptive address of the location where the person primarily resides.

- (b) If there is no postal service to the person’s residential address, the person must also provide an address for the service of notices.

Including this definition of residential address would allow a person experiencing homelessness to register the address of their crisis/transitional accommodation or use a descriptive address if they are sleeping on the streets. It would also allow them to nominate the address of an organisation such as that of a support worker or friend/family member for the service of notices to ensure they still receive correspondence from VicRoads. This amendment would also assist individuals experiencing family violence who have been required to leave their home as a result of the family violence.

Introducing this definition and removing the penalty for failing to update address details would encourage and allow licence holders to more easily update their details with VicRoads. This would in turn increase the likelihood of individuals receiving VicRoads notices and taking appropriate action to promptly address infringements and avoid accruing multiple charges.

5. Conclusion

In order to address the discriminatory impact of the Road Safety Regulations on those experiencing homelessness and family violence we recommend introducing an exception to the requirement to register a change of address within 14 days where a person is homeless or without a fixed address due to family violence, and including a new broad definition of residential address which would allow a homeless person to register an appropriate address with VicRoads.

We hope that the above proposal will be taken into consideration and we would be pleased to have an opportunity to meet with you to discuss this proposal further.

Yours sincerely



Daniel Stubbs
Chief Executive Officer