

BRIEFING PAPER

IMPRISONMENT OF FINE DEFAULTERS

THE **ESSENTIAL** MEMBERSHIP FOR
THE LEGAL PROFESSION

Prepared by the Law Society of Western Australia

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IMPRISONMENT OF FINE DEFAULTERS

Issues

1. A recent Western Australian coronial inquest into the death of Ms Dhu, who died in police custody 2 days after being arrested for failing to pay fines totalling \$3,622, has highlighted the serious issue of imprisonment for repeated fine default.¹
2. The Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA), has a discriminatory and disproportionate effect, leading to the over-representation of Aboriginal and Torres Strait Islander peoples, poor people and vulnerable people, in the Western Australian prison system.
3. The key findings of the 20 May 2016 report from the Government of Western Australia Office of the Inspector of Custodial Services titled 'Fine defaulters in the Western Australian prison system' (the Report), were as follows:
 - a total of 54,839 days were served by 7,025 people as part of fine default-only receptions; these people had a total of 7,462 prison receptions between them.
 - Hakea and Bandyup are by far the most heavily burdened by fine default receptions, with Hakea receptions accounting for almost half of the total amount of days served for defaulting on fines.
 - The average length of stay between July 2006 and March 2015 was 7.5 days. Legislative changes, however, had a dramatic impact on average number of days served. Before the changes fine defaulters served an average of 45 days, however, this decreased ten-fold after March 2008 to 4.5 days served on average. The average length of stay for Aboriginal women was most impacted by these changes.
 - Women are disproportionately represented in the fine default-only population, comprising 15 percent of the total prisoner receptions but 22 percent of the fine defaulter population.
4. Unemployment is rife in the fine defaulter prison population, particularly for Aboriginal women. An overwhelming 73% of the female fine defaulters are considered unemployed; 64% of these women are Aboriginal.
5. The majority of fines (54%) were related to minor traffic offences; for drink driving or driving without a licence.
6. In the 2013-14 financial year, the total cost of fine default-only receptions was approximately \$2.29 million.
7. Since July 2006 until the end of the 2013-14 financial year just under \$55 million worth of unpaid fines were cleared by incarceration.²
4. The *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) is not consistent with recommendations made in the Royal Commission into Aboriginal Deaths in Custody Report.³
5. Prior to amendments to the Act in 2008, people who were served a warrant of commitment for failing to pay their fines and/or breaching a Work and Development Order (WDO) were required to 'cut out' their fines cumulatively. The 2008 amendment allowed people to serve multiple sentences for fine default concurrently, effectively only serving the number of days equivalent to their largest fine. While fines can now be 'cut out' by serving prison time concurrently, community work for fines must be worked off cumulatively (that is at \$250 per day). This has created a situation where the length of imprisonment is less than the days required to serve a WDO.⁴

Background

Many Australian jurisdictions have removed the possibility of imprisonment being imposed solely on the basis of continued fine default, with imprisonment only available once a defendant has failed to meet the requirements of a community service order. However, imprisonment for repeated fine default does still occur in other jurisdictions.⁵

These laws often affect those living in rural and remote Australia, the poor, and Indigenous Australians.⁶ For example, 43% of the 1,358 people who entered prison in WA, solely for the purpose of clearing fine defaults in 2013, were Indigenous Australians. Difficulties may arise where individuals are reliant on vehicles for their employment or where they are unable to pay a fine or readily arrange alternative methods of payment.

In the 2018-2019 budget, the Australian Government announced its intentions to introduce new measures to encourage payment of fines from welfare recipients. Welfare recipients who are serial fine defaulters will be required to enter into repayment arrangements with Centrelink.⁷ If repayment arrangements are not entered into, then compulsory deductions will be taken from the welfare payments, in order to establish the payment of the fine.⁸

The Attorney-General John Quigley also discussed people who can afford to pay their fines but simply refuse to, saying that they will risk having their wages or bank accounts garnished.⁹ The Attorney-General also stated that legislative amendments to address the fine-enforcement laws will be introduced to Parliament in 2019.¹⁰

Policy Position

Law Council of Australia

The Law Council of Australia aims to develop a policy paper on fine default imprisonment which will call for national abolition of fine default imprisonment schemes.

The Law Council of Australia published a Consultation Paper on Prisoners and Detainees in August 2017. This Paper had a brief section on the issue of fine default imprisonment, and how it disproportionately affects the disadvantaged, including Aboriginal and Torres Strait Islander people.¹¹

In January 2019, the Law Council of Australia released a joint statement with the Law Society of Western Australia, calling on the State Government

to repeal laws that provide for imprisonment as a result of unpaid fines and outlining the disproportionate impact on people who experience significant disadvantage, including Aboriginal and Torres Strait Islander people.¹²

Law Society of Western Australia

The Law Society of Western Australia's position is as follows.

- The focus needs to be on collection/recovery of outstanding payments of court fines;
- To endorse the garnishing of Commonwealth benefits and salaries at a COAG level, subject to a safeguard that fine defaulters are not deprived of a minimum living income, and query whether it is possible for there to be an order from the court to a central agency which would enable automatic payment to prevent defaulting;
- Garnishing power to extend to employer, company, to enable garnishing of employees salary; and
- the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) has a discriminatory and disproportionate effect, leading to the over-representation of Aboriginal and Torres Strait Islander peoples in the prison system; and
- Willing to accept imprisonment as final step if test in s69h(2)(c) *Sentencing Act 1991* (Vic) is satisfied.

NOTES

6. Joanna Menagh, 'Ms Dhu inquest: 'distressing' footage of dying woman withheld despite family's wishes', ABC news (online), 24 March 2016.
7. Office of the Inspector of Custodial Services, 'Fine defaulters in the Western Australian prison system: Key findings' (20 May 2016) <<http://www.oics.wa.gov.au/reports/fine-defaulters-in-the-western-australia-prison-system/key-findings/>>.
8. Amnesty International Australia and Clayton Utz, 'Review of the Implementation of the RCIADIC – May 2015' (Web page) < <https://www.changetherecord.org.au/review-of-the-implementation-of-rciadic-may-2015>>.
9. Ibid, <<http://www.oics.wa.gov.au/reports/fine-defaulters-in-the-western-australia-prison-system/background/>>.
10. Law Council of Australia, 'Summary of Consequences of Continued Fine Default', June 2016.
11. Western Australia, Fine Defaulters - Incarceration, Parl Paper no 1832 (2014).
12. Alexis Carey, 'Centrelink crackdown: Government announces bold plans to reclaim debt' News.com.au (News article, 10 May 2018) <<https://www.news.com.au/finance/money/costs/centrelink-crackdown-government-announces-bold-plans-to-reclaim-debt/news-story/1543f9bb20701dfd3df02981ecc74811>>.
13. 'Encouraging lawful behavior of income support recipients', Department of Social Services (Web page) <https://www.dss.gov.au/sites/default/files/documents/05_2018/d18_13637_budget_2018-19_-_factsheet_-_encouraging_lawful_behaviour_of_income_support_recipients.pdf>.
14. Kate Campbell, 'WA fine defaulters to have bank accounts, wages docked under radical plan', Perth Now (News article, 14 October 2018) <<https://www.perthnow.com.au/politics/policy/wa-fine-defaulters-to-have-bank-accounts-wages-docked-under-radical-plan-ng-b88989328z>>.
15. Ibid.
16. Law Council of Australia, 'Prisoners and Detainees' (Consultation Paper, August 2017) 31 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Prisoners%20and%20Detainees.pdf>>.
17. Law Council of Australia, 'Joint Statement: Law Council of Australia and Law Society of Western Australia regarding imprisonment for unpaid fines' (Media Statement, 8 January 2019) <https://www.lawcouncil.asn.au/media/media-releases/joint-statement-lca-and-lswa-regarding-imprisonment-for-unpaid-fines>.

Policy Position

The Law Society of Western Australia supports the initiative from the Australian Government to use repayment arrangements through Centrelink benefits for welfare recipients, on the basis that there is a safe guard that fine defaulters are not deprived of a minimum living income, and the garnishing of wages and bank accounts of fine defaulters who choose to default on their court.



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