

# **Debts of Prisoners and the Mentally Ill/Cognitively Impaired**

Justice Action Submission to the Law Reform Commission 3/02/2011

Although penalty notices was the subject of the commission, it was noted that the issues and solutions applied to all types of debt. Therefore, the position of Justice Action, as outlined below, will refer to the debts of prisoners and the mentally ill or cognitively impaired holistically.

## **Prisoners**

Justice Action would like to express its dismay that these issues have been discussed at-length with the Sentencing Council and numerous other forums many years ago, yet every proposed improvement has been ignored and nothing has changed. This is despite the irrational and counterproductive way in which debts are handled. The Law Reform Committee has the chance to improve the lives of vulnerable people. We hope that today's meeting will prove to be more fruitful.

Justice Action also advises that prisoners should have a more direct say during the consideration, planning, and review of policies designed to help them. This would provide a crucial perspective and empower a vulnerable section of society. Therefore, bodies such as Inmate Development Committees should be invited to future forums.

## **Executive Summary**

There are multiple problems that have been caused by the debts of prisoners. The key problem is that prisoners are incurring large debts that they cannot pay. This blocks their re-entry into the community in a financial sense and gives them a burden that is impossible to shift. Essentially, it is a life sentence of debt. For example, the Taking Justice into Custody Report found that out of 67 prisoners and ex-prisoners, most had outstanding debt ranging from \$175-\$15000. The NSW Department of Corrective Services stated that on average prisoners owed \$8000. The Sentencing

Council recorded that in 2006 prisoners in NSW earned between \$12- and \$65 dollars per week, with 70% earning approximately \$15 per week. From this income prisoners paid for essential items such as phone calls and sport activities as well as discretionary consumer items such as shoes and toiletries, at prices similar in the general community. In addition, when prisoners have been ordered to pay victim's compensation, 10% of their income will be garnished. The commission considered a number of options regarding the debt of prisoners including wipe outs, pro rata schemes, and cut outs.

### **A Clean Slate: The Best Option**

Justice Action maintains that wiping out prisoners' debt completely is the most effective option. Debt should also be wiped out because prison is the ultimate punishment; hence lesser punishments should be absorbed rather than act as counter-productive punishments, particularly when they fail as deterrents, as outlined above. In practice, prison sentences currently being served can be taken into account during subsequent sentences; however, this does not exist with fines. Wipe outs would rectify this problem.

Debt increases the rate of recidivism. For example, a 2003 NSW study found that 51% of ex-prisoners had debts and were more likely to re-enter prison. This recidivism is the result of two main reasons. Firstly, there is an expectation from prisoners that upon release they will have paid their debt to society and will be able to start again with a clean slate. However, the burden of paying off large debts is an obstacle that prevents them from rebuilding their lives. It hinders their search for a job, housing, credit card or loan, and receiving their driving license. In addition, prisoners often suffer from a lack of support, and many have become alienated from friends and family while in prison. Secondly, ex-prisoners may turn to crime to pay off large debt. According to a 1999 Queensland study many prisoners with debts said they committed a crime to pay it.

### **Cut Outs: A Lesser Option**

Cutting out penalty notices is an option that used to be in effect prior to 1998. We support it only as a back up option for wiping out fines completely. This would involve a fixed rate (e.g. \$150

per day) to be deducted from each debt concurrently. This method would stop prisoners from being continually punished for minor offences after serving their debt to society. This option may also pose a political challenge for the government as cut outs were abandoned after the Jamie Partlic incident. Jamie Partlic was assaulted and left in a coma with permanent brain damage while serving a four-day sentence in Long Bay prison for unpaid fines in 1987. The government decided to treat imprisonment for fines as a last resort, after public outcry over the failure to protect non-violent prisoners from violent prisoners. The introduction of The Fines Act (NSW) 1996 prohibited prisoners from cutting out fines while serving time for other offences, for the benefit of the prisoner. Both changes attempted to prevent people from being incarcerated over fines. However, it is clear that these efforts have been unsuccessful, especially given that ex-prisoner's debt directly contributes to the rate of recidivism. Furthermore, as with the pro rata scheme, the result is that prisoners can be released into society with large debts.

One concern with this scheme is that it may place an extra burden on the prison system. Prisoners may choose to extend their time in prison or that people may commit crimes in order to remove their debt. JA's position is that no one in prison would choose to extend his/her stay. Also, wipe outs for debt would eliminate this problem. Regarding the latter problem, if a person cannot pay their debt he/she will be incarcerated anyway. Moreover, the fact that people are being sentenced with penalty notices, fines, court costs, and victim's compensation at amounts so ludicrous that they are being imprisoned reflects a greater injustice that needs to be rectified. Specifically, it is the fact that magistrates are not taking financial circumstances into account during sentencing. The Prisoners Legal Service cites magistrates as taking an average of four minutes to consider individual's cases. Moreover, the State Debt Recovery Office (SDRO) is rarely sympathetic to individuals trying to have their debts written off, reduced to a manageable amount, or a realistic time frame. This occurs despite the SDRO clearly stating in their guidelines that these options should be granted to those in financial distress. In this light, wipe outs (or cut outs) can be seen as an effort to correct a fault in the execution of the legal system.

### **Pro Rata Schemes: The Least Effective Solution**

Prisoner's debts are also extremely costly for the government given that most of them cannot be paid and the bureaucratic process is overly complex. Some may argue that it is the amount of debt that is the problem, rather than the debt itself. This is where pro rata schemes have been proposed as a solution. However, even if people were able to work off some of their debt in prison, they may still be in debt upon release, which brings us back to the problem outlined above. This scheme would add further bureaucracy to an immensely complex system, which also translates into greater government expenditure. Pro rata schemes bring up the issue of Work Development Orders (WDOs), a program where prisoners can pay fines by undertaking unpaid work, paid work, educational courses, and medical and mental health programs. Justice Action believes that WDOs should be tied into parole not debt. Parole boards view WDOs favourably, so further incentive is unnecessary. Furthermore, Justice Action believes that contrary to the viewpoint of Corrective Services, prisoners would not be willing to sacrifice money to pay off debt in a pro rata scheme. This is because prisoners only have the potential to earn a very small income. In 2006, the Sentencing Council recorded that 70% of NSW prisoners earned approximately \$15 per week. From this income prisoners paid for essential items and extra items such as shoes and toiletries, at prices similar in the general community. Furthermore, prisoners may have family and friends who are in financial difficulty, and they will be given priority with any money that can be spared. Therefore, Justice Action does not support this scheme.

## **Debts of People with Mental Illnesses or Cognitive Impairment**

### **Write Offs**

The fines of prisoners with mental illnesses or cognitive impairment should be automatically written off if they do not have the capacity to understand why their offence was wrong, or if they do not understand the concept of fines or the fine process. To take a case in point, one man accumulated tens of thousands of dollars in fines, even though he did not comprehend the reasons for his fines. They failed to act as a deterrent and his disability prevented him from ever being in a position to pay his debt. Another case involves a woman who could not understand the rules of public transport and incurred thousands of dollars of debt over five years. She could not grasp the

meaning of the penalty notices and usually gave them to her mother. Justice Action does not advocate that problematic behaviour be ignored; instead, we propose the implementation of peer-mentoring support programs to alter behaviour and people.

With regard to other reasons such as financial distress, Justice Action believes that there should be an independent body that reviews each case and makes a decision. This responsibility should not be delegated to the SDRO because of its unsympathetic attitude towards applicants and because of the complex process involved in applying. For instance, in the case above, applications to write off the fines had to be resubmitted with each fine for five years, until the SDRO agreed to review her file and write off her debt on a three monthly basis. Another case involved a man with a mental age of eight who could not grasp the concept of fare or fare evasion. The SDRO rejected an application to waive his fines. The man's father had to appeal to the Transport Minister who asked RailCorp to arrange for the man to travel without penalty in the future.

## **Conclusion**

Justice Action urges the Law Reform Commission to implement these recommendations and reduce crime, improve the quality of life for vulnerable people, and better society.