

The Women's Advisory Council (WAC) notes the work of the New South Sentencing Council regarding prisoners and debt in its 2006 report *Interim Report on the Effectiveness of Fines and Penalty Notices*, referred to in the New South Wales' Law Reform Commission's Consultation Paper on Penalty Notices (Chapter 7: Impact on vulnerable groups).

The WAC supports the recommendations made in the Sentencing Council's report with respect to people in custody, notably:

- the systematic elimination of debts of the mentally ill and intellectually disabled prisoners;
- pro rata reduction of outstanding debt;
- development of a more progressive regime for the writing-off of accumulated fines and penalties;
- development of guidelines for debt reduction/licence reinstatement;
- reduction or waiver of fines and surcharges for offenders who successfully complete an accredited job training, or driver education programs or other approved program and who then begin to pay off their debt; and
- extension of three months SDRO moratorium on collection.

The WAC notes that while considerable reform has been initiated in the wake of the NSW Sentencing Council's report, many of the reforms specifically relating to prisoners (whether on remand or under sentence) have not yet been enacted, or have been left to the NSW Department of Justice to implement as stand-alone projects.

For example, the recently developed Work and Development Order which allows disadvantaged people to undertake community work in lieu of payment of a fine has been directed toward an overall 'vulnerable population', and contains no specific reference to prisoners. While people in custody are not exempt from participation in the scheme, the WAC is concerned that the opportunity for debt reduction in prisons has been restricted by their exclusion.

Deliberate inclusion of prisoners as a particularly disadvantaged group would indicate a very real commitment to the eradication of debt among those in custody and upon release.

Progress on other recommendations appears to have stalled. The Sentencing Council's recommendation that the State Debt Recovery Office be provided with 'the names of those prisoners assessed as having a mental illness or an intellectual disability at intake, for whom the expunging or writing off of accumulated debts for penalties or fines would be appropriate' does not appear to have occurred. Rather, application to the SDRO / Hardship Board must still be made on a case by case basis.

The WAC is also concerned that the consequence of non-payment of fines and penalty notices rapidly results in the suspension of drivers' licences. As the NSW Sentencing Council noted,

‘Historically, the imposition of fines on Aboriginal offenders has been a major factor in the over-representation of Aboriginal people in the prison population. As one of the driving motivators behind the overhaul of the NSW fines regime was to eliminate imprisonment for fine default, it would be of major concern if people can eventually find themselves imprisoned as a result of relatively minor offences for which imprisonment was considered inappropriate in the first place.’

While licence suspension may be effective measures to prevent fine default for those who can afford to pay and who wish to avoid such a penalty, the result for those on limited incomes who cannot afford to pay them is excessive. The link between licence suspension for non-payment of fines or penalty notices and incarceration for subsequent driving breaches was confirmed by the Roads and Traffic Authority (RTA) in the NSW Sentencing Council’s report.

According to the *NSW Justice Health Inmate Health Survey (2009)*, 45% of women in custody left school prior to completing year 10, at an average age of 14 years. Almost 70% were unemployed in the six months prior to incarceration; of these 25% had been unemployed for 10 or more years. Recent research commissioned by the WAC has also indicated that Aboriginal women in custody have not been in receipt of Centrelink payments, despite a need for income support.¹

On consideration of such issues, it seems apparent that there is very little likelihood that fines and penalty notices are able to be recovered from those in custody. The amount of staff time and level of detail required to achieve SDRO write-off or waiver of debt in a single case is daunting. Reform aimed at reducing debt for those in custody as a group, is a necessary practical consideration.

The WAC is cognisant of, but does not ascribe to, the view noted by the Commission that ‘prisoners relate to penalties imposed on them and the interests of justice require their payment’. Rather, it is of the view that as debt impacts so negatively on incarcerated populations, their families and the wider community, and as the incarcerated population possesses many of the characteristics of the other vulnerable groups noted by the Commission, such as mental illness, homelessness, intellectual disability etc, that all possible measures should be taken to implement strategies that will minimise this population’s financial burden.

¹ Money Talks, Narratives of Aboriginal and non Aboriginal women inmates in New South Wales about their access to income in the community. See too Lawrie, R. (2002) *Speak Out Speak Strong: Researching the Needs of Aboriginal Women in Custody*, Sydney: Aboriginal Justice Advisory Council, available at: http://www.lawlink.nsw.gov.au/lawlink/ajac/ll_ajac.nsf/pages/ajac_publications#13.]