



7 February 2011

NSW Law Reform Commission

RE: Penalty Notices

The New South Wales Law Reform Commission (NSWLRC) is in the process of reviewing the current penalty notice scheme enforced by the State Debt Recovery Office (SDRO) in NSW. One of the focuses of this review relates to the fairness of the system in its application to vulnerable people.

On Thursday 3rd February 2011, the Women in Prison Advocacy Network (WIPAN) was invited to attend a roundtable meeting to discuss the NSWLRC review regarding how penalty notices affect prisoners in NSW. Also attending were representatives for community organisations including Justice Action and the Community Restorative Centre. Other stakeholders present were the NSW Legal Aid Commission, Corrective Services NSW, Department of Ageing, Disability and Home Care (DADHC) and the Attorney-General's Department. The aim of the roundtable meeting was for these representatives to give their insight and recommendations to assist prisoners in NSW.

The Women in Prison Advocacy Network (WIPAN) is a grassroots organisation run by a united group of professional women, including ex-prisoners, dedicated to advancing the human rights of women caught-up in the criminal justice system. WIPAN addresses the issues facing criminalised women through advocacy to make criminal justice systems fairer and on an individual level by mentoring women ex-prisoners. WIPAN believes that by providing women with post-release support, recidivism rates will be reduced and the burgeoning prison population will be minimised. We anticipate that this meeting has been a step in the right direction in fulfilling some of these goals.

WIPAN recognises that prisoners as a group are significantly more disadvantaged than the general population.¹ Indigenous people, people with mental health issues, those with drug and alcohol problems and those from predominately lower socio-economic backgrounds are over-represented within NSW prisons.² As well, majority of people in custody are fraught with issues relating to penalty notices and debt, as evident from statistics presented in Consultation Paper 10 published by the NSWLRC in September 2010.³

Prisoners are released into society with the intention of "starting again" only to be plagued by the difficulties associated with finding employment and housing, reconnecting with family members, gaining access to healthcare and dealing with drug addictions and mental health issues. Additionally, female prisoners exhibit a variety of specific needs that are often more complex than those of their male counterparts.

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Consequently, re-offending is of a particularly high risk during the first two years of release whilst the individual is trying to manage the complexities that accompany reintegration.⁴ Evidence to date indicates that there is a worsening cycle of re-offending within the NSW prison population. In 2008, NSW had the highest recidivism rate in the country at 42%, which was considerably higher than the national average of 38.2%.⁵ In 2008/2009 Corrective Services NSW reported that 43.21% of female prisoners were returning to custody within 2 years of release.⁶ WIPAN believes that prisoner debt is contributing to this cycle of re-offending by limiting offenders ability to successfully reintegrate as law-abiding and productive citizens of society.

This process of re-offending is worsened when considering statistics that Australian prisoners on average owe \$8000 each in outstanding debt, as described in Consultation Paper 10.³ WIPANs evidence demonstrates that at least 90% of our clients are released from prison with considerable State Debt Recovery Office (SDRO) fines. The presence of such extensive debt creates yet another barrier against an already exceptionally disadvantaged section of society and encourages re-offending which inflicts greater pressure on the burgeoning prison population. WIPAN believe the focus should be on removing these barriers, rather than creating new ones.

Upon considering these facts, WIPAN strongly advocates for the cut-out of penalty notices as was the general consensus recommended at the meeting. This reform would involve a pre-determined amount to be deducted from every prisoners debt per day that they served in prison. In this way, prisoners are serving their debts to society whilst incarcerated without perpetually being punished for minor offences such as traffic violations and transport offences, which constitute the majority of penalty notices issued in NSW.

Statistics show that women are generally imprisoned for less serious offences than men. From 1999-2009, shoplifting was the most common offence committed by NSW female offenders (15%), followed by non-domestic assault (9%), fraud (7%), drug use/possession (7%) and domestic assault (5%).⁶ Accordingly, the majority of women serve relatively shorter prison terms than men, commonly less than one year.⁶ As such, we recommend that the cut-out of penalty notices be unconditional, whereby all prisoners regardless of length of sentence, nature of offence or prisoner classification should be included within this scheme. We also argue that cutting out penalty notices should extend to remandees who in 2009 constituted 23.4% of the prison population.⁷ While these prisoners are unsentenced, the time spent by many people on remand is lengthy and just as debilitating on their lives as it is for those convicted of offences. The imposition of conditions would be a form of discrimination resulting in the exclusion of an extremely disadvantaged segment of the prison population.

The cut-back of penalty notices is a cost effective and efficient solution that would most certainly save the SDRO significant resources that would otherwise be used seeking and enforcing unpaid fines from recently released prisoners. As well, this scheme removes one of the myriad of complexities that define post-release life for offenders and helps them to reintegrate back into society more successfully. Case studies of WIPAN confirm that this reform is likely to reduce recidivism and ease the pressure on the already burgeoning prison population in NSW.

If required WIPAN can provide the NSWLRC with a case-study drawn from our mentoring program, that supports the need for reform in relation to penalty notices in NSW.

WIPAN strongly urges the above mentioned recommendation of cutting out penalty notices for prisoners be enforced, to promote crime prevention, reduce re-offending and help to support some of the most disadvantaged people within society.

Endnotes

1. Baldry, E 2008, 'The booming industry: Australian prisons', *Debate*, No. 4, pp.114.
2. Hale, S 2010, New South Wales, Legislative Council, Hansards and Papers, *Prisoner Rehabilitation*, 19 May 2010, pg.23028.
3. New South Wales Law Reform Commission 2010, *Consultation Paper 10: Penalty Notices*, New South Wales Government, September 2010, accessed 2 February 2011 at <www.lawlink.nsw.gov.au/lrc>.
4. Jones, C, Hua, J, Donnelly, N, McHutchison, J and Heggie, K 2006, 'Risk of re-offending among parolees', *Contemporary issues in crime and justice*, No. 91, NSW Bureau of Crime Statistics and Research.
5. Hale, S 2009, *Government's costly failure: recidivism's nation's highest*, media release, accessed 2 December 2010, <<http://www.sylviahale.org.au/news/government2019s-costly-failure-recidivism-nation2019s-highest>>.
6. Corrective Services NSW 2010, *Women offenders*, New South Wales Government, accessed 2 February 2011, <<http://www.correctiveservices.nsw.gov.au/offender-management/offender-services-and-programs/women-offenders>>.
7. Corben, S 2010, 'NSW Inmate Census 2009: Summary of Characteristics', *Corrective Services NSW*, no.34, pp.1-87.