



## ***Taking a Smarter Approach to Justice***

### **Position Paper on Imprisonment for Fine Default in Western Australia**

Social Reinvestment WA, April 2018.

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On average, 10 people a day are locked up in WA prisons for failing to pay fines<sup>i</sup>, mostly because of poverty and disadvantage. Others are held in police lock-ups; however, these people are not included in the official prison data. It has been observed that 'cutting out fines in police lockups was commonplace in WA'.<sup>ii</sup> While imprisonment is available as an option for fine default in other jurisdictions, it is rarely used. For example, in NSW no one has been imprisoned for fine default since 1998. It was recently highlighted that imprisonment for fine default is 'most prevalent' in WA.<sup>iii</sup>

Between 2006 and 2015, our state imprisoned 7,025 people for fine default only; the direct cost to the state was \$42 million (this figure does not include the cost to police, courts and custodial transport).<sup>iv</sup> It is also a major concern that once arrested by police on a warrant of commitment, the person must be taken into custody irrespective of their personal circumstances and without any form of judicial oversight.

#### **Women trapped in debt.**

Women are over-represented in this group. Close to a quarter of all women in prison are there solely due to fine default. Over 73% of women imprisoned for fine default were unemployed and 64% were Aboriginal and Torres Strait Islander.<sup>v</sup>

Locking up women who can't afford to pay fines separates children from their mothers and contributes to the unacceptably high numbers of children, particularly Aboriginal and Torres Strait Islander children, entering the out of home care system. Furthermore, women are often responsible for caring for elderly relatives and imprisoning these women places an additional burden to many vulnerable members of the community.

#### **A real impact...**

In 2017, a Western Australian mum made a call to police, fearing for her safety following a visit from a violent family member. The result? She was taken away from her five children and incarcerated after a background check revealed she had an outstanding fine which she was unable to pay.<sup>vi</sup>

A young woman who died in police custody in 2014 was taken into custody for unpaid fines after police suspected her partner had breached a family violence order.<sup>vii</sup>

These stories are not isolated, and Aboriginal and Torres Strait Islander women are more likely than any other group to be jailed for unpaid fines, often whilst unemployed and having no real capacity to pay.

Some of these women will have suffered financial abuse at the hands of a partner or former partner, and we know that almost half (44 percent) of women escaping abusive relationships had a household income of less than \$40,000 post-separation.<sup>viii</sup>

**It is a highly alarming trend that women seeking help from the police for incidents of family and domestic violence are being further victimised and punished for unrelated occurrences.**

#### **Close the Gap**

Unacceptably, the number of Aboriginal and Torres Strait Islander people in Western Australia imprisoned for fine default increased by 480 percent between 2008 and 2013.<sup>ix</sup>

Evidence shows Aboriginal and Torres Strait Islander people are less likely to receive cautions or be diverted from the justice system by police, and are more likely to be fined or convicted. As reported by the Productivity Commission, in WA in 2012-13, 35 percent of Aboriginal and Torres Strait



Islander alleged young offenders were diverted through caution or transferred to a Juvenile Justice Team, compared with 58 percent of non-Indigenous alleged young offenders.<sup>x</sup>

**Social Reinvestment is extremely concerned that law enforcement discrimination means Aboriginal people in WA are some of the most likely people to receive fines but, due to higher instances of socio-economic disadvantage, they are some of the least able to pay those fines. The end result is a far higher chance of being sent to prison.**

In addition, specific barriers (such as remoteness and unreliable postal services, cognitive impairment, literacy difficulties and language barriers) increases the likelihood of fine default and subsequent imprisonment. The fines enforcement system in WA relies heavily on effective notification via post of the various steps in the enforcement process. As just one example an Aboriginal man from regional WA was unaware that his automatic Centrepay deductions had been cancelled by Centrelink and hence he was in default of his payment arrangement for his outstanding fines. If this man hadn't asked the Kimberley Community Legal Services to find out how much his fine debt was, he would never have known and would have likely been arrested on a warrant of commitment.<sup>xi</sup>

Ending imprisonment for fine default is one important step towards **Closing the Gap**.

**Imprisonment for fine default just doesn't add up.**

Putting people in prison costs taxpayers **\$772** a day in the first week alone. On **average 10 people every day** are locked up in WA prisons for being unable to pay fines, and between 2006 and 2015 the WA Government spent more than **\$42 million** locking up these non-violent offenders.<sup>xii</sup> Meanwhile, community work sentences cost **only \$43 a day**.<sup>xiii</sup>

Whilst one day of incarceration 'works off' unpaid fines of \$250; alarmingly this counter-intuitive option costs taxpayers between \$345 and \$772 per day, AND, the fine is never recouped.<sup>xiv</sup>

While fines can be 'cut out' by serving prison time concurrently, community work for fines must be worked off cumulatively. This has created a situation where the length of imprisonment is less than the days required to serve a work and development order, **essentially incentivising prison to those with very few choices**.<sup>xv</sup> **Alternatives to prison save money and just make sense.**

**There are alternatives.**

People who have committed a non-violent offences can be sentenced to community-based sentences with community service requirements, doing work that benefits the wider community such as farming, cleaning, and rehabilitating vegetation. These are meaningful penalties and community work sentences keep low level offenders from being exposed to more serious offenders who, while in jail, can influence them to escalate their criminal behaviour.<sup>xvi</sup>

New South Wales introduced a Work and Development Order Scheme for vulnerable and disadvantaged fine defaulters, whereby fines can be 'cut out' by undertaking activities such as health treatment, counselling, life skills development etc.<sup>xvii</sup> **This means people who do not have the financial means or capacity to pay fines, can work off their fines at the same time as ensuring in the future they have a greater capacity to avoid infringements and give back to their communities.** Because this scheme has been successful it has been adopted and adapted for Queensland and Victoria by their respective governments.<sup>xviii</sup>

**The solution is simple.**

Western Australia imprisons vulnerable and disadvantaged people who cannot pay fines at an enormous expense without any tangible benefits in terms of community safety. Social Reinvestment WA calls for this practice to end immediately.

The solution requires a two-pronged strategy:

1. reduce the number of fines imposed by courts (front-end reform); and



2. establish an effective alternative scheme for vulnerable and disadvantaged fine defaulters.

The WA Government is currently developing an expanded conditional release order (CRO). Low risk offenders will be able to engage in 'approved activities' such as treatment, education and training, voluntary work and other programs as part of a CRO. The objective of this new order is to reduce the number of offenders who are sentenced to fines by the courts. SRWA understands that once placed on a CRO the offender will be provided with written material and/or information about online resources in order to identify and access an appropriate 'approved activity'.

SRWA supports this scheme in principle but highlights the need to ensure that Aboriginal and Torres Strait Islander people are able to effectively access the 'approved activities'. In practice, this might require Aboriginal support workers to be co-located at courts to assist offenders to understand the process and requirements (and in some instances Aboriginal language interpreters may be required). In locations where duty lawyers from Legal Aid WA or the Aboriginal Legal Service of Western Australia are not available or where they are already overstretched with numerous clients, this will be even more critical.

Significantly, this new scheme will not assist those people who are already in default of their fine payments nor will it stop people receiving fines in court.

We support WA Attorney General John Quigley's previous calls for legislative change on this issue.

**SRWA asks the Western Australian Parliament to:**

1. *Remove imprisonment as an option for fine default; At the very least ensure that imprisonment can only be imposed for fine default by a magistrate after the offender has had an opportunity to be heard.*
2. *Implement a work and development order scheme for vulnerable and disadvantaged persons (as currently used in New South Wales, Victoria, and Queensland.)*
3. *Allow community work orders to cancel unpaid fines concurrently rather than consecutively, in line with the current system for prison sentences. (See 2008 amendments to the Fines Penalties and Infringement Notices Enforcement Act 1994 WA.)*

Our recommendations are in line with those made previously by the Australian Law Reform Commission<sup>xix</sup>, the Law Society of Western Australia<sup>xx</sup>, The Office of the Inspector of Custodial Services,<sup>xxi</sup> Western Australian Chief Justice Hon. Wayne Martin,<sup>xxii</sup> and the UN Special Rapporteur on Violence against women.<sup>xxiii</sup>

Social Reinvestment WA represents 19 organisations and with one voice we call for change.

*We need to keep kids with their mums, we need to keep families and communities together, and we need to put into practice Smart Justice for WA.*

**End imprisonment of fine defaulters in WA.**

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<sup>i</sup> Office of the Inspector of Custodial Services, (April 2016), *Fine defaulters in the Western Australian prison system*, Government of Western Australia. Available at: <[http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3914182a267c7268541194a448257fd20032c2e4/\\$file/4182.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3914182a267c7268541194a448257fd20032c2e4/$file/4182.pdf)>

<sup>ii</sup> Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No. 133 (December 2017) [12.19].

<sup>iii</sup> Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No. 133 (December 2017) [12.18].

<sup>iv</sup> Office of the Inspector of Custodial Services, (April 2016), *Fine defaulters in the Western Australian prison system*, Government of Western Australia, iv.

<sup>v</sup> The Law Society of Western Australia (December 2016), *Briefing Paper: Imprisonment of Fine Defaulters*, Law Society WA, Available at <<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/Law-Society-Briefing-Papers-Imprisonment-of-Fine-Defaulters.pdf>>



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- <sup>vi</sup> Sarah Collard, (30 September 2017), *ABC News*, “Aboriginal woman jailed over unpaid fines after police call, 10 months on from Ms Dhu inquest”. Available at: <<http://www.abc.net.au/news/2017-09-29/indigenous-woman-jailed-over-unpaid-fines-after-police-call/9002656>>
- <sup>vii</sup> State Coroner Fogliani, (16 December 2016), *Findings of the Inquest into the Death of Ms DHU*, Coroners Court of Western Australia. Available at <[http://www.coronerscourt.wa.gov.au/linquest\\_into\\_the\\_death\\_of\\_ms\\_dhu.aspx?uid=1644-2151-2753-9965](http://www.coronerscourt.wa.gov.au/linquest_into_the_death_of_ms_dhu.aspx?uid=1644-2151-2753-9965)>
- <sup>viii</sup> Prue Cameron. (2014) *Relationship Problems and Money: Women talk about financial abuse*, WIRE Women’s Information, West Melbourne.
- <sup>ix</sup> Paul Papalia, (November 2014), *Locking in Poverty: How Western Australia drives the poor, women and Aboriginal people to prison*, WA Labor Discussion Paper, WA Labor. Available at: <[https://www.markmcgowan.com.au/files/Locking\\_in\\_Poverty.pdf](https://www.markmcgowan.com.au/files/Locking_in_Poverty.pdf)>
- <sup>x</sup> Productivity Commission, *Overcoming Indigenous Disadvantage 2014 Report*, Figure 11.2.4.
- <sup>xi</sup> Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No. 133 (December 2017) [12.28].
- <sup>xii</sup> Office of the Inspector of Custodial Services, (April 2016), *Fine defaulters in the Western Australian prison system*, Government of Western Australia.
- <sup>xiii</sup> Paul Papalia, (November 2014), *Locking in Poverty: How Western Australia drives the poor, women and Aboriginal people to prison*, WA Labor Discussion Paper, WA Labor.
- <sup>xiv</sup> Office of the Inspector of Custodial Services, (April 2016), *Fine defaulters in the Western Australian prison system*, Government of Western Australia.
- <sup>xv</sup> The Law Society of Western Australia (December 2016), *Briefing Paper: Imprisonment of Fine Defaulters*, Law Society WA.
- <sup>xvi</sup> Aboriginal Legal Service of Western Australia, (August 2016), *Addressing fine default by vulnerable and disadvantaged persons: Briefing paper*, ALSWA Inc., Available at: <<http://www.als.org.au/wp-content/uploads/2015/08/Briefing-Paper-August-2016-signed-1.pdf>>
- <sup>xvii</sup> Aboriginal Legal Service of Western Australia, (August 2016), *Addressing fine default by vulnerable and disadvantaged persons: Briefing paper*, ALSWA Inc.
- <sup>xviii</sup> INCA Consulting, (May 2015), *Evaluation of the Work and Development Order Scheme: Qualitative Component: Final Report*, NSW Department of Justice. Available at: <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0018/25218/WDO-Final-Evaluation-Report-May-2015.pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0018/25218/WDO-Final-Evaluation-Report-May-2015.pdf)>
- <sup>xix</sup> Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper No 84 (2017)
- <sup>xx</sup> Office of the Inspector of Custodial Services, (April 2016), *Fine defaulters in the Western Australian prison system*, Government of Western Australia.
- <sup>xxi</sup> Office of the Inspector of Custodial Services, (April 2016), *Fine defaulters in the Western Australian prison system*, Government of Western Australia.
- <sup>xxii</sup> The Hon. Wayne Martin AC Chief Justice of Western Australia, (2015), *Indigenous Incarceration Rates: Strategies for Much Needed Reform*, Law Summer School, Supreme Court of WA. Available at: <[http://www.supremecourt.wa.gov.au/\\_files/Speeches\\_Indigenous\\_Incarceration\\_Rates.pdf](http://www.supremecourt.wa.gov.au/_files/Speeches_Indigenous_Incarceration_Rates.pdf)>
- <sup>xxiii</sup> Victoria Tauli-Corpuz, (September 2017), *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia*, United Nations Human Rights Office of the High Commissioner. Available at: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E>>
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