# Inspector’s Overview

## Scope of report and key policy questions

The imprisonment of fine defaulters in Western Australian prisons has been a contentious issue for some time. Debates have centred around the number of defaulters in prison, their impact on an already-crowded prison system, the cost of short terms of imprisonment for fine default, and whether the state is too quick to imprison fine defaulters rather than using alternatives. Very different views have been put as to the extent of the problem and the potential solutions, and the matter has generated political division.

Some of the issues involved in fine default are beyond our jurisdiction as they involve the powers and practices of the courts, the police, and the fine enforcement sections of the Department of the Attorney General. At times during this review, some people in some government departments complained that we were going beyond our jurisdiction in undertaking this work. That is clearly not so: I am legislatively mandated to provide independent oversight of matters that impact on prisons. These necessarily extend to matters such as the number of fine defaulters; their profile (including their offending, and demographics); their impact on the prison population and the operation of prisons; the costs of their incarceration; and their welfare and treatment in prison. I have a legislative responsibility to report independently to Parliament on such issues if I believe this to be necessary or appropriate.

The report focuses primarily on the period from July 2006 to June 2015. The most important single finding is that while the number of people received into prison each year for fine default has increased markedly, there are few people in prison for fine default at any given time. This is because fine defaulters tend to serve very short periods in custody: their ‘turnover’ is high but their stay is short.

The policy implications of this are clear. First, *reducing the number of fine defaulters in prison will not lead to a significant reduction in either total prisoner numbers or the extent of overcrowding in the prisons*. As we and the Auditor General reported in 2015, the main ‘target’ for anyone seeking to reduce the prison population should be the alarming rise in the number of people held on pre-trial remand (Office of the Auditor General [OAG] 2015; Office of the Inspector of Custodial Services [OICS] 2015a). At the time of writing, the remand population comprises over 29 per cent of the total prison population, up from 16 per cent a decade ago

On the other hand, however, *having people ‘churning’ in and out of custody for short periods for fine default is financially costly (several million dollars each year), socially undesirable, and risky and disruptive for prisons*. It is therefore incumbent on all agencies to ensure that everything possible is done to reduce this churn.

Significantly, this report has also revealed demographic differences, with Aboriginal women being by far the most likely cohort to be in prison for fine default. The death of Ms Dhu in police custody lies outside our jurisdiction. However, the current coronial inquest into her death has added poignancy and urgency to our findings.

## What are the numbers?

In the nine year period between July 2006 and June 2015 an average of 803 people entered the prison system for unpaid fines each year. However, the patterns have been very uneven. The following table illustrates two key points:

1. The number of fine default receptions has grown markedly
2. The reception rate for fine default has grown much faster than the overall reception rate.

*Fine default receptions as a proportion of total prison receptions from July 2006 to June 2015*

|  |  |  |  |
| --- | --- | --- | --- |
| Financial year | Fine default receptions | Total receptions | Proportion of fine default receptions |
| 2006/2007 | 177 | 6607 | 1.80% |
| 2007/2008 | 442 | 7201 | 6.10% |
| 2008/2009 | 396 | 7562 | 5.20% |
| 2009/2010 | 1018 | 7062 | 14.40% |
| 2010/2011 | 1480 | 7119 | 20.70% |
| 2011/2012 | 1081 | 7535 | 14.30% |
| 2012/2013 | 1304 | 8130 | 16% |
| 2013/2014 | 1127 | 8051 | 13.90% |
| 2014/2015 | 603 | 8364 | 7.20% |

2014/2015 saw a welcome and sharp decrease in the number of fine default receptions. However, numbers still remain well above 2008/2009 levels. It is too early to know whether they will go back up again.

## Why the increase in receptions?

The reasons for the increase in fine default receptions are not clear but it is likely a number of legislative and policy changes had an impact.

First, a number of legislative amendments came into effect in March 2008. The most notable of these was that people were now able to ‘cut out’ multiple fines concurrently rather than cumulatively. This meant that a person with multiple fines would only have to serve sufficient time in prison to pay off the largest fine at the rate of $250 per day. As a result, the number of days of imprisonment required to cut out multiple unpaid fines reduced significantly. However, the 2008 amendments did not alter the way fines could be worked off by undertaking community work, still requiring them to be worked off on a cumulative basis. It has been hypothesised that more people may now, in effect, be ‘electing’ to go to prison to clear multiple fines rather than undertaking a payment plan or community work. It was beyond the scope of this review to test this hypothesis. It appears plausible in some cases but is certainly not likely to be a complete explanation. And better evidence, not supposition or anecdote, is needed.

A second change which may have impacted on the number of fine default receptions was a 2009 policy whereby a stricter approach was taken to people who breached conditions on Work Development Orders (WDOs). Again while this appears plausible in some cases, it is unlikely to account for all. And, again, hard evidence is needed if the right policy responses are to be made.

Further legislative amendments, which came into effect in 2012, enhanced the enforcement measures available as an alternative to imprisonment, including wheel clamping of vehicles, removal of number plates and seizure of goods. In New South Wales, Queensland and Victoria the introduction of such measures appears to have reduced the number of fine default imprisonments.

## Short stays and low numbers on any given day

From July 2006 to June 2015, there were 7462 prison receptions in Western Australia solely for fine default. The majority of these were for very short periods of imprisonment. The effect has been a very high churn rate for receiving prisons but low numbers of fine defaulters in prison on any given day.

Analysis of daily data for November 2015 showed that on average there were only 11 fine defaulters in prison on any given day. There was nothing to suggest this was not a reasonably indicative figure for a longer time period.

Prior to the 2008 amendments, the average length of imprisonment for fine defaulters was 40 days. Since these amendments the figure has dropped to 4.5 days. This was an across the board reduction and was not impacted by particular demographic considerations such as gender or Aboriginality. Almost 80 per cent of fine defaulters now serve less than a week in prison, and 22 per cent serve less than 48 hours.

## Costs

It is far more expensive per day to house short stay prisoners than longer term prisoners. The Department of Corrective Services (the Department) does not have robust figures but has told us and the Auditor General that it estimates that short stays of up to a week cost around $770 per day, more than double the overall average cost of $332 per prisoner per day.

In simple terms it seems that between July 2006 and June 2014 just under $55 million worth of unpaid fines was cleared by 7462 prison receptions for fine default. In total, 7025 people served just over 54,800 days in prison. Using the Department’s estimated figure for the cost of short term imprisonment prisoners of $770 per day, the cost was $42 million. This figure does not include other justice system costs, such as the costs incurred by police, the courts and the transport of people to prison. These costs can be very substantial in the regions.

## Who is in prison, where are they, and what were their offences?

The two main metropolitan reception prisons are Hakea Prison and Bandyup Women’s Prison. Not surprisingly, these two prisons account for the majority of fine default receptions. Hakea accounts for almost half of all fine default receptions and days served, and Bandyup for almost 15 per cent. As a consequence of growing remand numbers, these two prisons are already under the greatest stress in terms of prisoner numbers and occupancy rates. The pressures they face are exacerbated by the need to process fine defaulters in and out. Medical and reception services at small regional prisons such as Broome are also under serious stress (Office of the Inspector of Custodial Services [OICS] 2015b).

This report also shows some troubling gender and race differences. Women are disproportionately represented in the fine default population, particularly Aboriginal women. Across the whole review period, Aboriginal women comprised only 15 per cent of total prisoner receptions but 22 per cent of fine default receptions. Furthermore, Aboriginal people comprised 64 per cent of female fine defaulters and only 38 per cent of male final defaulters.

People who are unemployed or in lower paying occupations make up a high proportion of total fine default receptions. Almost 24 per cent of the total fine defaulter population were categorised as unemployed at the time of their reception into prison. There was also a remarkable contrast in the data between men and women. At the time of their reception into prison over 73 per cent of female fine defaulters were considered to be unemployed. By comparison only 10 per cent of male fine defaulters were considered to be unemployed at that time. Additionally, of the women who were considered to be unemployed prior to their entry into prison, 64 per cent were Aboriginal.

Based on an analysis of available data, the majority of offences (54%) for which people were jailed for non-payment of fines were for traffic related offences, including drink driving and driving without a licence.

## Looking ahead

Reducing the number of people in prison for fine default will not reduce the state’s rising daily imprisonment rate because fine defaulters constitute only one in 500 prisoners. However, the flow of people into custody for short periods for fine default has increased markedly since 2008.

In considering future options, it is important to reflect on the justification for imprisonment for fine default. By definition, people who have been fined for an offence do not deserve to be in prison for their offence. In fact, when a court fines someone, it has explicitly ruled out using tougher options such as immediate imprisonment, a suspended sentence, a community based order or an intensive supervision order. In effect, imprisonment for fine default is imprisonment for non-compliance with a court order.

There is little doubt that imprisonment needs to remain as the ultimate deterrent for people who wilfully refuse to pay or to engage in other measures to work off fines. However, it is a costly way to tackle the problem, and one that imposes significant burdens on our already severely stretched prisons. We also need better information on how many fine defaulters really are truly wilful (in other words, they are able to pay but choose not to) and how many are genuinely unable to pay or to comply with options such as community work. The evidence presented in this report is limited but gives cause for concern, as Aboriginal women, and especially unemployed Aboriginal women, are the most likely to be imprisoned for default.

In short, the number of people in prison for fine default at any given time is small. However, it is incumbent on Government, working with relevant Departments, Agencies and the not-for-profit sector, to examine innovative ways to reduce the flow of people into prison for fine default and to reduce the social and financial costs of short term incarceration.

Imprisonment must be the option of last resort and the law should impact equally on all. However, imprisonment for fine default is currently impacting disproportionately on Aboriginal women, already a vulnerable and disadvantaged group. The coronial inquest into the tragic death in custody of Ms Dhu has added stark reality to this message.

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