

Bureau of Crime Statistics and Research

# FINE DEFAULT



Attorney General's Department  
New South Wales Government

Research Study No.3

# **FINE DEFAULT**

**A Survey of Persons Imprisoned in N.S.W. for the  
Non-Payment of Fines**

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Attorney-General's Department**

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## Preface

Procedures for dealing with the problem of fine defaulting have been the subject of much discussion in New South Wales in recent years. To facilitate discussion, the Bureau has conducted a research project involving a statistical survey of persons imprisoned for failure to pay one or more fines and interviews with such persons in prison. Some of the results were released in an interim report (July, 1984) and we are now pleased to present the final report.

The study was designed by Sandra Egger, Tony Green and Jan Houghton and the final report was written by Jan Houghton. The collection of data and the interviews with fine defaulters in prison were undertaken by Jan Houghton and Tony Green with the assistance of Tiziana Trovato, Judy Perram, Tracy Cusack, Debbie Jones, Gail Travis, Roseanne Bonney, Trevor Milne, Wendy Stephens and Margaret Buckland. The assistance of the N.S.W. Police Department and the N.S.W. Department of Corrective Services is gratefully acknowledged.

Leigh Cooper and Peter McGrath assisted with drafting and editing the sections on the history and legislative development of fines and comparative legislation. Sandra Egger and Pat Ward commented upon the preliminary drafts and Julie Stubbs and Don Weatherburn commented on the final draft.

The report was edited for publication by Arthur Travis and produced by the Word Processing Section of the Attorney-General's Department.

Special thanks must be made to the men and women in N.S.W. prisons who willingly participated in this study. The information they provided contributed greatly to this report and to the recommendations made for changes to the legislative and administrative processes in the treatment of fine defaulters.

A.J. SUTTON  
Director

## Summary Of Findings

### *Rate of imprisonment for default*

1. In 1983, almost 5,000 persons were imprisoned in New South Wales for the non-payment of fines; an increase of 38.8% over 1982.  
In addition, an estimated 2,500 to 3,500 persons served sentences for fine default in country police station lockups.
2. The highest rates of detention in police station lockups were in remote country areas with large Aboriginal populations.
3. In 1983, the number being imprisoned for fine default represented 51.9% of persons under sentence received into N.S.W. prisons.
4. The rate of imprisonment for fine default (other than default arising from infringement notices) is 3.7 per 100. This rate varies considerably by offence.

### *Fine defaulters*

5. The majority (68.5%) of persons imprisoned for default are young, single males under the age of 30.
6. The main reason for default given by defaulters interviewed in prison was their lack of money to pay (71.2%).
7. The majority (56.5%) were unemployed at the time they were fined and remained unemployed until imprisoned for default.
8. Over half (53.0%) of fine defaulters interviewed had never been in prison before. Of the remainder, 68.9% had served previous sentences for the non-payment of fines.
9. Almost half of those interviewed (45.8%) had not appeared in court in respect of the fine for which they were imprisoned. The majority, plus a percentage of those who had appeared in court, displayed a limited knowledge of court processes and enforcement procedures.

### *Sentencing*

10. Over two thirds (67.2%) of those imprisoned were in default of fines imposed for driving and traffic offences; the majority of these (62.4%) from traffic infringement penalty notices.
11. Almost one half (45.4%) of those imprisoned were in default of offences which themselves do not allow for a penalty of imprisonment.
12. The majority (70.9%) of persons imprisoned were in default of one fine only.
13. The average highest fine owed was \$269 with two thirds (66.1%) of those imprisoned being in default of a highest fine of less than \$200.

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14. The average total amount in fines owed by those imprisoned was \$382; over half (52.2%) owed less than \$300, a small percentage (4.9%) owed \$1,000 or more.
15. The majority (73.5%) of those imprisoned were required to serve sentences of less than two weeks; the average sentence to be served for default was 10.9 days.
16. Some defaulters (11.0%) imprisoned had not been allowed time to pay by the court; the majority of those given time to pay were allowed 3 months or less (77.2%).

#### *Enforcement*

17. The majority (79.6%) of all defaulters imprisoned were arrested within twelve months of receiving the fine; almost half (48.9%) were arrested within six months.
18. The average number of days served for default was 8.3; the average number of days served in prison was 7.5 (the majority, 59.8%, were detained at least one night in a police cell).
19. The majority (72.2%) of defaulters imprisoned served the full sentence; one quarter (25.3%) paid the remaining amount owed to secure their release from prison.
20. The majority of defaulters interviewed (63.0%) would prefer a community service order to prison as the penalty.

## Summary of Recommendations

1. The Department of Corrective Services should identify and maintain statistical data on persons (other than those classified on reception as a fine defaulter) who cut out fines while in prison on remand or serving a sentence for another matter.
2. The Police Department should establish a statistical collection for the state of persons serving sentences for fine default in police station lockups.
3. A statutory provision should be introduced requiring that the ability of an offender to pay a fine be determined prior to sentencing and that an offender's means be taken into account when setting the amount of a fine and the time allowed for payment.
4. A statutory provision should be introduced allowing all offenders a minimum period of 21 days to pay.
5. A notice of penalty should be issued to all persons fined whether or not they were present in court; the notice should set out in clear language:
  - (a) Details of the penalty (amount, due date, instalments if any) and how and where payment may be made;
  - (b) Information on how to apply for additional time or instalments, reduction or remission of penalty;
  - (c) Action that will be taken in the event of failure to comply with the conditions of payment and a reminder of the default penalty.
6. Payment for fines or applications as in (5) above should be able to be made at any Local Court in N.S.W. regardless of where the fine was imposed.
7. The discretionary power of Clerks of the Court in respect of the payment of fines should be clarified and extended as follows:
  - (a) By the issue of new guidelines for dealing with applications to vary the conditions of payment with a presumption in favour of granting such applications;
  - (b) By allowing Clerks to take any enforcement action considered appropriate including making contact with defaulters before the issue of a warrant;
  - (c) By allowing the acceptance of payments or applications made after the due date;
  - (d) By allowing the withdrawal of warrants of commitment in a greater range of circumstances than at present.
8. The reminder notice system used for overdue payments on traffic fines should be extended to all fines and should be sent out automatically after default and before a warrant is issued.

9. Courts should keep statistics on:
  - (a) Action taken to enforce fines (reminder letters, personal contacts, warrants, etc);
  - (b) Applications made for additional time or for reduction or remission of penalties.
10. Individual defaulters should have the right to apply for a court means enquiry. Applications would be made to the Clerk of the Court who could refuse leave where no prima facie case of significant alteration to an offender's means is established.
11. A pilot scheme should be undertaken whereby fines enforcement officers are attached to selected courts to assess their cost-effectiveness in recovering fines and preventing default imprisonment.
12. A work order scheme for fine defaulters should be established as an alternative to imprisonment for default.
13. Once a defaulter has been imprisoned, all warrants for that person, as recorded at the Central Warrant Index, should be deemed to have been executed without the need for them to be sighted at the prison or lockup.
14. Persons having served a sentence for default should be advised in writing of the warrants that were satisfied by the period in prison.
15. Further research should be undertaken on:
  - (a) The effectiveness of any new enforcement measures introduced;
  - (b) Additional measures in use elsewhere;
  - (c) Sentencing policy in respect of fines;
  - (d) Other non-custodial sentencing options;
  - (e) Fine payment practices;
  - (f) Other non-custodial default penalties.

## PART I

### INTRODUCTION

## Part I: INTRODUCTION

### Background to the study

The fine is the most commonly used penal sanction in Australia as it is in the United Kingdom and most European countries. In New South Wales in 1982, 66.5% of persons convicted in Courts of Petty Sessions received a fine as the only penalty.<sup>1</sup> Also, over one and a half million statutory fines for traffic infringements were imposed through the penalty notice system.<sup>2</sup> The majority of those who are fined each year pay the fine in the manner and time prescribed. However, the number of those who do not may add up to several thousands against whom action to enforce the penalty must be taken. This action can involve the courts, the police and, ultimately, the prison service. Over recent years, an increasing number of persons have been imprisoned in New South Wales for the non-payment of fines.

Media stories on fine defaulters have usually focused on those who go to gaol because they are too poor to pay or because they refuse to pay on principle or as a protest. Other stories have concerned individuals who, after amassing fines worth thousands of dollars, choose gaol for a few days in preference to paying. It is difficult to place such stories in context because of the inadequacy of statistics on fine enforcement and the almost total lack of information on defaulters who go to prison.

The Bureau of Crime Statistics and Research was requested by the Attorney-General to undertake a study of fine defaulters imprisoned in New South Wales. The objectives of the study were to determine the number and characteristics of such persons and to obtain information on their reasons for not paying. The findings of the study, together with the results of other research in Australia and elsewhere, are to contribute to a review of legislation relating to fines and of administrative processes in the treatment of fine defaulters. Details of the research study and findings are given in Part II, followed by a discussion of the results and the implications for policy in Part III.

### The development of the fine as a sanction

With the exception of Tasmania, the legislation of all Australian states was based on the provisions of the English Summary Jurisdiction Act, 1848<sup>3</sup>. They include: allow time for payment, direct payment by instalments or allow time for payment on giving security. These provisions are not mandatory but are at the discretion of the court. There are no criteria laid down for granting time to pay, and with the exception of Tasmania, there is no presumption in favour of time to pay. With the

1. General offences, 56.5%; drink-drive offences, 82.1%; drug offences, 76.9%. N.S.W. Bureau of Crime Statistics and Research, *Court Statistics 1982*.
2. N.S.W. Police Department, *Annual Report, 1982-83*.
3. See p.10 for a description of this Act.

exception of New South Wales, all states still include provision for the recovery of fine by distress<sup>4</sup>. Each state has developed its own scale of imprisonment for default.

More detail on the law in the Australian states is given in Appendix A to this report. The legislative development of the fine in New South Wales is outlined below and begins with the history of the fine in the United Kingdom.

#### Early history

Fines, in one form or another, have been used as a penalty in the English judicial system for many hundreds of years and have probably been at all times the most commonly imposed penalty for minor offences. Westen (1969) outlines the historical development of the fine and more detailed comments on the laws relating to the fine can be found in Stephen's *History of the Criminal Law in England* and Blackstone's *Commentaries*.<sup>5</sup>

The history of the fine begins with the system of "private settlement" which operated in many early societies where there was no public or common law. An individual who injured or wronged another in some way was obliged to offer compensation to avoid violent retaliation. In this way, the principle of revenge, which often resulted in fierce blood feuds, gave way to the payment of monetary compensation. Examples of such penalties can be found in ancient Mosaic law and in Egyptian, Greek and Roman law.

In England, the fine had its origin in the "bot", "wer" and "wite" of Anglo-Saxon law. Bot was compensation to a person injured by crime, wer was a price which varied according to a person's rank and was paid to the victim's relations if he was killed, and wite was a fine paid to the king or other lord when an offence was committed. These were mostly for first offences. Subsequent offences were punished by mutilation and/or death.

Thus, a private wrong became a public wrong and hence a wrong to the state (represented by a feudal lord or king) which required compensation. The Anglo-Saxon system of private settlement, like the modern system of fines or imprisonment in default, operated most harshly on the poor since it did not distinguish between the person who refused to pay and the person who could not pay compensation. The offender who did not pay was subject to blood feuds or more severe punishment such as exile, slavery or mutilation (Westen, p.782).

This system of compensation to the state was further developed during the rule of the Normans. By the time of the Magna Carta (1215) there had been a move away from physical punishments to monetary punishments. The fact that such penalties were an important source of revenue no doubt also played a major part. Westen comments that justice was administered in order to raise revenue and had no penological goal. An examination of the statutes shortly after 1215 reveals three types of monetary penalties; amercements, fines and ransoms.

Amercements were the commonest and smallest monetary penalty imposed for minor breaches of the law or of some duty to the king or court. It was said that they were so common that every person could expect to be amerced at least once a year. The amercement was assessed according to the means of the offender to pay and

4. Under a warrant of distress, goods and chattels of a defaulting offender may be seized in lieu of money payment (certain goods such as personal clothes and tools of trade are usually exempt).

5. Additional material on the history of the fine and its legislative development was taken from the "Working Paper on the Enforcement of Fines" (1978 unpublished), Criminal Law Review Division, Department of the Attorney-General.

it was levied upon his goods. As justice was administered locally, those assessing the penalty would be aware of what the offender owned and could assess it accordingly. There was apparently a maximum amount that could be fined which varied according to the status of the offender.

The amount of fine to be imposed was invariably not specified in the statute as it is now, but was discretionary and often expressed to be at the will of the king. The fine was not imposed on the offender but was a voluntary settlement by which the offender "made fine" with the king. Offenders were first imprisoned to compel them to pay the fine and not as a punishment.

For this reason fines were also called ransoms at one time, as the offender being at the mercy of the king for having violated his law could only regain his release by redeeming (or ransoming) his freedom by payment of a pecuniary penalty. Our present fine default laws still retain features of this notion of ransom as a defendant who has been fined remains imprisoned until he is freed by payment of the outstanding fine. This was the final settlement, in Latin, *finalis concordia*, from which the word fine is thought to have derived (Westen, p.783).

There were of course sanctions other than fines — outlawry, death, forfeiture of property, banishment from the country (or, less commonly from the town), the pillory, the stocks, double (and even treble) damages — but fines were the most common.

In the Magna Carta (1215), the law on amercement established two principles which are still regarded as being fundamental. First, a penalty should not be excessive and should bear a relationship to the wrong for which it is imposed. Secondly, a penalty should not fall so heavily on the offender that it has ruinous consequences for him. The Magna Carta provided that the offender should be left with his "contentements" — that is those things which are necessary for his support in his station in life. A merchant must be allowed to retain his merchandise, for that is his livelihood, and, likewise, a farmer must be left with his tools and implements for cultivating the land. These principles were restated in later statutes. For example, the Justices of the Peace Act, 1361 provided that fines imposed by justices were to be "reasonable and just, having regard to the Quantity of the Trespass and the Causes for which they be made". Section 11 of the Bill of Rights (1689) likewise declared all excessive fines to be contrary to the known laws and statutes.

By the beginning of the 16th century, the fine had become a punishment rather than a settlement and an offender was "fined" rather than compelled to "make fine". An increasing number of minor offences were punishable by fines and imprisonment had become the punishment for the non-payment of fines. Also minimum and maximum fines were being specified in statutes.

Some few hundred years later, amercement and ransoms have disappeared. Death and imprisonment remain the penalty for felonies, but the fine is the penalty for breaches of an ever increasing number of minor statutory offences which are dealt with summarily before justices. Before 1848, each Act creating an offence also provided for enforcement. In so doing they could only be said to be consistent in their inconsistency. Some legislation allowed the justice to grant time for payment but mostly the fine was payable forthwith. The levy and sale of chattels by warrant of distress was the primary means of enforcement. Imprisonment was sometimes an alternative to distress but in other cases only if distress did not realize the amount of the fine.

In the 19th century, development of the modern system of sanctions began with the debate over penal policy. There was a widespread recognition of the failure of

short-term imprisonment to deter or reform offenders. In many countries, including England, alternatives were sought and the fine became more widely used as a penal sanction (Grebing, 1982).

Until federation, in Australia the development of the law relating to fines and fine enforcement followed that of the United Kingdom and this is outlined below. After federation, each state developed its own legislation based on the existing English law. Later developments in the United Kingdom and the current legislation of Australian states other than New South Wales is described briefly in Appendix A to this report.

#### *Legislative development in the United Kingdom*

The Summary Jurisdiction Act, 1848 consolidated to a large extent the procedure for enforcement of fines. Where the statute creating the offence provided for imprisonment in default of payment without distress, s.23 provided that a justice may issue a warrant of commitment. In this regard the law was not altered.

Where the Act creating the offence provided no remedy or where distress did not realize the fine, the justice was empowered (s.22) to commit the offender to prison for a period of up to three months unless the amount (and costs) was paid.

Sections 19, 20 and 21 dealt with those cases where the Act creating the offence provided for the amount to be raised by distress. Section 19 provided that where a penalty was to be levied upon the goods and chattels of a defendant by distress, a justice could issue his warrant to enforce payment. A proviso was added which enabled an offender (by declaring that he had insufficient goods to be imprisoned) to avoid the selling of such goods as he did possess. It also enabled the justice to take into account the "ruinous" effect that distress might have on the defendant and his family and instead similarly commit him to prison. Imprisonment was a concession extended to the offender to enable him to avoid the hardships of distress. It is perhaps somewhat ironic that today the introduction of some form of levy against personal property is often proposed as an alternative to and as a less repressive mode of enforcement than imprisonment.

Section 20 provided that where a warrant of distress had been issued, the justice could either allow the offender to go at large or could order that he be detained unless he gave security for his appearance on the return of the warrant. If no goods or insufficient goods were found, s.21 provided that the justice could commit the offender to prison and keep him to hard labour for the period provided for in the particular statute.

The first significant alternative to the law as it existed in 1848 was made by the Summary Jurisdiction Act, 1879. This Act made six significant alterations to the law. It

- (a) Introduced a standard rate of imprisonment default — that is the amount of the fine determined the period of imprisonment;
- (b) Allowed the court to grant time to pay, payment by instalments or, time for payment on the giving of a security;
- (c) Allowed the court similarly to postpone the issue of a distress warrant;
- (d) Exempted certain personal property from distress;
- (e) Introduced a uniform procedure for the execution of distress warrants;
- (f) Allowed for a warrant of commitment to issue instead of distress warrants on a broader basis than had been the case under the 1848 legislation.

It would appear then that, from this time onwards, imprisonment rather than distress, would be the usual method of enforcing fine payment.

#### *New South Wales*

The English Summary Jurisdiction Act of 1848 was adopted in this state by the English Duties of Justices (Summary Convictions) Act of 1850.

The Justices (Fines) Act, 1899 adopted some provisions enacted some twenty years earlier in England in the Summary Jurisdiction Act of 1879. Justices were authorized to allow time for payment of fines, payment of instalments or to allow time for payment on the giving of security. The uniform default periods were adopted in exactly the same terms as the English legislation. Justices were authorized to postpone the issue of a warrant of commitment or of distress.

The Justices Acts Amendment Act of 1900 was a general amending Act and apparently was intended to rectify certain deficiencies in the law as a prelude to the general consolidation of 1902. Section 7(1) of that Act abolished distress for non-payment of fines and other orders and provided, in sub-section (2) of that section, that imprisonment should be ordered in default of payment in all cases. The standard default period was amended to provide for higher fines.

The various enactments dealing with the recovery of fines were repealed and re-enacted in the consolidated Justices Act, 1902. The main provisions are as follows:

- (a) Justices when imposing fines *may* allow time for payment or for payment by instalments (default will occur if any instalment is not paid);
- (b) Justices *may* direct a person to give security for payment with or without sureties;
- (c) Amounts owed by corporate bodies are enforced under the Small Debts Recovery Act, 1912;
- (d) When the amount is not paid, a warrant of commitment to prison will be issued and the person will be kept there until the amount owed (including costs) is paid or the time served;
- (e) Imprisonment for default is at the rate of one day for each \$25 owed with a maximum period to be served of 12 months;<sup>6</sup>
- (f) Justices *may* postpone issuing a warrant of commitment and allow the person more time to pay or may allow payment by instalments;
- (g) Persons already imprisoned for another offence *may* serve the sentence for non-payment of a fine concurrently if the warrant is delivered to the prison;
- (h) If full payment is made to police after the warrant is issued, the warrant will not be executed;
- (i) Part payment of an outstanding amount may be paid at the prison to obtain release after commencement of the default sentence.

The Justices Act was amended in 1983 to provide for courtesy letters to be sent to persons fined under a penalty notice (traffic infringements and other minor offences carrying statutory penalties) who have not paid the fine by the due date giving them a further 21 days before the usual procedures apply.

6. By Act No. 17 of 1931 a standard rate of imprisonment equivalent to \$1.00 per day was introduced. This was altered by Act No. 28 of 1967 to \$2 per day and by Act No. 3 of 1971 to \$5 per day and by Act No. 63 of 1978 to \$25 per day default period.

Despite the legislative changes that have taken place to the system of fines and fine enforcement, the fine today is used almost exactly as it was by the Normans. To quote Westen:

"Today, as then, the individual who is able to pay the fine may escape imprisonment. Today as then the individual who is unable to pay the fine must go to prison. Today, when it is generally believed that the desire for revenue should not be an influential factor in the administration of criminal justice and when imprisonment is the most expensive of punishments, a careful re-examination of the penology and legality of fines is badly needed" (p.786).

The remainder of Part I is concerned with the issues that have been the focus of other research and discussion and which have a bearing on this study.

### Research studies

The Bureau study was primarily concerned with fine enforcement, or rather the failure of fine enforcement since it involved a close examination of defaulters already in prison — that is, persons, who having been penalized for a particular offence, did not respond to the opportunities given to them to comply with the penalty and were finally imprisoned. However, it could be said that the process of fine default begins for many when the fine is imposed or, at some stage, long before the final act of enforcement takes place. Fine enforcement should be seen as the middle stage of a three-stage process: sentencing, enforcement, punishment. Research and discussion on fines has been concerned with separate but interrelated issues relating to all three stages.

In the United Kingdom, the Home Office has undertaken two major studies on the use of the fine as a penalty in magistrates' courts plus some follow-up work in individual courts. These studies analysed data on factors related to non-payment and on enforcement practices by courts. In the light of their findings, the authors questioned the wisdom of courts continuing to impose heavy financial penalties (Sofley, 1973, 1978; Sofley & Moxon, 1982).

Also in the United Kingdom, the National Association for the Care and Rehabilitation of Offenders (NACRO) set up a working party in 1981 to investigate the problem of fine default, current enforcement practices and how the level of imprisonment for default could be reduced. The report recognized that proper sentencing was as important as enforcement in preventing default and its recommendations were wide-ranging (NACRO, 1981).

The growing number of people being imprisoned for default in the United Kingdom has generated a great deal of discussion on the use of the fine as a penalty. Morgan and Bowles (1981, 1983) have been particularly concerned with the lack of research on fines and fine defaulters and see the existing system of fine enforcement as very discretionary. They point to the difficulties of measuring the extent of default at various stages and of measuring the cost and efficiency of the various enforcement practices.

In Australia, serious discussion on fines and the problem of default has continued for a decade but there has been little empirical research until recently. Daunton-Fear (1972) and Rinaldi (1973) raised a number of issues related to sentencing and enforcement and the Australian Law Reform Commission has constantly advocated other non-custodial sentencing and punishment options. Several states have reviewed their use of fines as part of broader reviews; for example, the report of the Victorian Sentencing Alternatives Committee (Nelson Report) in 1979 and the West Australian Report on the Rate of Imprisonment (Dixon Report) in 1981.

A recent research study investigated fine setting and fine payment practices in Victoria by looking at persons fined in a sample of magistrates' courts and following them through to the discharge of the penalty by payment or imprisonment (Challinger, 1983). This study also looked at community attitudes to fines. Challinger concluded that a flexible and imaginative approach was needed to fine setting and payment procedures if fines were to "remain a valuable and viable component of the Victorian criminal justice system" (Challinger, 1983, p.80).

A recent research paper of the Law Reform Commission of Tasmania (Warner, 1984) reviewed the law relating to fines in that state and identified four main problems which must be dealt with: the eroding effect of inflation on the impact of fines; the disparity in the amounts of fines for offences of equal seriousness; the need for a fairer system of taking means into account (Tasmania is the only Australian state with provision for means inquiries after default); and the continued use of imprisonment for default.

In a study by the South Australian Department of Correctional Services (1984), information was obtained on the characteristics of defaulters and their court experiences and on the number being imprisoned. As a result of the findings of this study, it was recommended that action be taken at all stages of the fining process — sentencing, collection, default — to reduce the number being imprisoned.

What then are the important issues in respect of the fine that have led to the recent discussion and call for more research?

### *The fine as a sentencing measure*

The advantages claimed for the fine over custodial penalties have been well documented in the literature. To summarize, a fine is adjustable to both the seriousness of the offence and the offender's ability to pay; in case of error or mitigating circumstances, it can be refunded. Also, there are economic and administrative benefits because fines are a means of raising revenue, yet are relatively cheap to administer. A fine is considered to be an effective deterrent but has less social stigma attached to it than imprisonment; it keeps offenders out of prison and in the community.

However, these claims for the fine fall short in the face of the reality of the operation of the judicial process. There is evidence from the research already undertaken that both the effectiveness and credibility of the fine as a penal sanction are being undermined by sentencing practices and inadequate methods of enforcement.

There are three main issues relating to the use of the fine in sentencing: its appropriateness as a penalty ahead of other sentencing options; the determination of the amount and the method of payment required. The latter two combined represent the degree of impact of the penalty on the offender and offer a great deal of scope for discretion in sentencing. It is generally agreed that equality before the law should not simply mean equal punishment for similar offences but equal impact. In other words, the penalty should fit the offender as well as the offence. In practice, fines are frequently imposed and the time for payment determined with the sentencer having very little knowledge of the offender's ability to pay. Some offenders avoid any penalty as the fine is paid for them by family, business, etc., others flout the decision of the court by choosing prison for themselves when they could well pay the fine. However, for many prison is not the alternative penalty but the inevitable result.

It should be pointed out that in New South Wales as elsewhere, there are statutory penalties for the less serious driving and traffic offences which do not involve the offender in a court appearance unless the charge is contested or the fine is not paid within the time allowed. Offenders who do not pay are summonsed and the penalty then becomes a matter for the court to determine. Some other minor offences are also dealt with in this manner (offences under Local Government Act, Transport Act, etc.) and it is likely that in the future an increasing number of minor offences will be dealt with administratively and not judicially. The determination of the amounts of fixed penalties and their enforcement must not be overlooked by the emphasis in the literature on court-imposed fines.

One of the main findings of the research studies is that there is wide variation in sentencing practices in respect of the fine. Morgan and Bowles (1983) found major differences between two courts chosen for their similarity with respect to the number of persons appearing on charges, the number of cases resulting in fines, and the number of court staff employed. These differences included use of instalments for payment, the time allowed for payment and the amount of fines imposed. The study by Challenger also looked at disparity in fine setting and concluded there was a case for magistrates considering a standard list of characteristics of an offence before setting the fine to ensure fines were determined consistently and reflected community attitudes. Challenger looked at average fines imposed for various offence groups and found fine setting to be affected by four characteristics in addition to the nature of the offence. These were the sex of the offender, the type of judicial officer hearing the case, legal representation, and plea.

Other fining models have been proposed from time to time in various reports. For example, the Australian Law Reform Commission (1979) recommended that the separate penalty provisions for each type of offence be replaced by a general penalty statute with three categories of seriousness. Warner (1984) also suggested a general sentencing provision be enacted to deal with inflation, remove anomalies in penalties and incorporate guidelines on taking means into account (p.61). However, she warned of the need for sentencing guidelines to be developed by an independent body for the control and guidance of the exercise of judicial discretion.

The Swedish day-fine system and variations on it adopted in other European countries has also received a great deal of attention. The basis of the day-fine system is that the fine to be imposed is calculated on two factors assessed independently then multiplied to give the total sum. First, the number of day-fines is determined by the seriousness of the offence and, secondly, the level of each day-fine is determined by the means of the offender. A detailed history of day-fines and their use in a number of countries is given by Grebing (1982).

In Australia, a day-fine system has been proposed by some but has not been received with much encouragement by governments. Generally the concern has been to introduce sentencing guidelines for magistrates including statutory provisions for information on means to be taken into account in the sentencing decision. The Australian Law Reform Commission has also called for a greater range of sentencing options and a more realistic range of statutory penalties. Some of the options suggested by the ALRC and others have been increased use of recognizances and bonds, suspended sentences, probation and convictions without penalty for minor offences and first offenders and, most commonly community service orders.

However, if it is accepted that the fine is currently the best available alternative to a custodial sentence then it is important that it is an effective alternative. As stated in the NACRO report:

"Because of the undoubted merits of the fine we believe that, despite the current economic recession, there is scope for greater use of fines as an alternative to a custodial sentence . . . However, we are mindful of the fact that it serves no purpose to substitute fines for custodial sentences if the offenders concerned go to prison for default" (NACRO, p.2/3).

The report goes on to say that an offender's means should partly determine the size of the fine (the seriousness of the offence being the other factor) and should be the only determinant of the rate and duration of the payment.

#### *Procedures for fine enforcement*

Judicial discretion in the use of the fine as a sentencing measure (amount of fine, time allowed to pay, etc.) is usually followed by administrative discretion in the enforcement of the fine. Studies such as those of the United Kingdom Home Office and Challenger in Victoria, which looked at fine enforcement practices, found differences among courts surveyed on the type of enforcement favoured and the speed of enforcement action.

Morgan and Bowles found the policies of individual court officers varied as much as those of magistrates and that if the sentence pronounced in court was the *de jure* sentence, the adjustment made to it by court staff was the *de facto* sentence (1983, p.80). They distinguished between two forms of adjustment: formal and tacit. Formal adjustments were decisions made about payment after sentence but before default occurred; for example, allowing instalments, extra time to pay. Tacit adjustment occurs when court officers accept payment of instalments of smaller amounts than those agreed upon or at a slower rate than that agreed upon without taking action to enforce the agreement. They concluded that administrative discretion could act as a compensating mechanism for inappropriate sentencing decisions but in practice:

"the fines enforcement process tends to be characterised not just by flexibility, which we think desirable, but by uncertainty and lack of control" (Morgan and Bowles, 1983, p.87).

The result of this was that administrative discretion undermined the credibility of the sentence and made changes in sentencing policy less likely.

The role played by court officers in fine enforcement has not received much attention in other reports and research studies but clearly the administration of fine enforcement policies will affect the rate of default. The costs of the various enforcement procedures need to be related to their effectiveness and the lack of adequate statistical information on the rate of default at each stage of the enforcement process makes this extremely difficult. The conclusion of Morgan and Bowles on the importance of the exercise of administrative discretion could apply equally to New South Wales and there would appear to be great scope for reducing the level of default by the more efficient use of existing procedures and some administrative changes to the whole fine enforcement process.

The two issues that have been the subject of most of the research and discussion of fine enforcement are the use of the means summons or means warrant after default to bring the defaulter back to court for a means inquiry and the continued use of imprisonment as the ultimate sanction for default.

In the United Kingdom, a system of means inquiries has operated since 1935 when restrictions were imposed on imprisonment for default in the first instance except in special circumstances. There are a number of problems associated with means inquiries which have limited their effectiveness in preventing imprisonment. For example, in a study of the relationship between financial circumstances of

defaulters and adjudications of means inquiry courts it was found that many decisions were made on the basis of incomplete information (Softley, 1982). In Tasmania, fine defaulters are also brought back to court and although there is no mandatory requirement for their means to be assessed at this time, financial circumstances are usually considered (Warner, 1984, p.77).

The use of means inquiries will be further discussed in Part III of this report as will other enforcement procedures that could be used to reduce the rate of imprisonment for default such as reminder letters, fine enforcement officers attached to courts, speedier enforcement action and so on.

#### *Penalty for default*

Despite legislative changes such as those in the United Kingdom designed to restrict the use of default imprisonment, the numbers being imprisoned there as in Australia have been increasing. In the research studies reviewed, there has been general agreement that, if maintained, imprisonment for default should be used only for "wilful" defaulters, that is those who can but won't pay. There are now a number of alternative non-custodial sanctions that could be used for defaulters who are unable to pay, such as community service orders, attendance centre programmes, suspended sentences and so on.

A secondary issue related to default imprisonment is whether the default penalty should continue to be set at the same time as the fine is imposed or should it be determined at a court hearing after default has occurred, perhaps even dealt with as a new offence similar to contempt of court (Daunton-Fear, 1972; Fox, 1974; Warner, 1984). The argument for this is that the penalty for default should not be set until the reason for the default is known to the court — that is, whether or not the default is wilful. The deterrent effect of setting the default penalty at the same time as the fine is doubtful given the increasing numbers being imprisoned.

Also subject to some debate is whether the length of the term of imprisonment for default should be fixed, as it is in N.S.W., or variable within a specified range, as in some other states. Warner (1984) argues that a discretionary system such as exists in Queensland, for example, may be too broad and that strict guidelines are required on the factors to be taken into account in setting the default period. Among the states there is great variation in the use of default imprisonment, particularly the dollar rate at which fines are cut out, and the maximum period of imprisonment that can be served, which ranges from 6 months to 2 years (see Appendix A).

Discussion of these issues will be continued in Part III of this report in the light of the findings of the Bureau study. First the extent of imprisonment for fine default in N.S.W. should be determined.

#### **Imprisonment for default in New South Wales**

The Department of Corrective Services classifies as a fine defaulter, a person who is received into prison for the non-payment of a fine only. It excludes from this classification prisoners already in custody (under sentence or on remand) who also "cut out" fines concurrently with other sentences. It is not possible to identify these persons from the records kept by the Department, but undoubtedly a considerable number of warrants for non-payment of fines are called in by persons serving sentences or awaiting court hearings. Other persons who enter a prison classified

as a fine defaulter may subsequently be re-classified for various reasons. For example, following a court appearance on another matter they may be placed on remand or be given a straight prison sentence. They may or may not have been counted as a fine defaulter in the statistics depending at which stage they were re-classified.

It is evident, therefore, that official statistics on the number of persons imprisoned for fine default are an underestimate. The statistics do, however, indicate the extent to which the number is increasing (Table 1). Australian Bureau of Statistics (ABS) data for 1979/80, the latest available, show a total of 3,376 persons received into New South Wales prisons during the year in default of a fine. This represented over 40% of the total number of persons received under sentence. There are no ABS figures available for 1977/78. However, for the four years prior to that, although there was some fluctuation in the number of fine defaulters going to prison as shown in Table 1, the percentage of receptions showed a steady increase. From 6 June 1978, the rate at which fines could be cut out changed from \$5 to \$25 per day. As a result, the Department of Corrective Services reported a 14% increase in the number of persons imprisoned for fine default in the next three months compared to the three months prior to the change.

There are no ABS data available on the number of fine defaulters imprisoned in 1980/81. However, a monthly figure has been kept by the Department of Corrective Services since November 1981. During 1983, 4,939 persons classified as fine defaulters entered New South Wales prisons, an average of 412 per month or 51.9% of prisoners received under sentence. This represents an increase of 38.8% over 1982 when 3,559 fine defaulters were imprisoned, an average of 296 per month or 49.0% of prisoners received under sentence.

It would be expected that one important factor affecting the rate of imprisonment for default would be the number of persons receiving fines. Table 2 shows the number of persons fined in N.S.W. Local Courts per year since 1974,<sup>7</sup> and the number of penalty notices issued for traffic infringements. This latter figure does not indicate the actual number of persons fined in this way since individuals may receive multiple traffic fines in one year. It should also be noted that court statistics are calculated on the basis of the principal offence determined at each appearance, that is, where a person is charged with more than one offence, only the one attracting the highest penalty is recorded. The total number of fines imposed by courts is therefore not known.

Between 1974 and 1982, the number of fines imposed in court increased by 40.2% and the number of penalty notices issued increased by 37.8%. In 1983, there was a decrease in the number of court imposed fines due mainly to fewer fines for drink-drive offences.<sup>8</sup> A comparison of the figures in Table 2 for 1982 and 1983 show that the increased rate of imprisonment in 1983 occurred despite only a modest increase in the number of fines in 1982 and a decrease of 16.5% in 1983. The large increases in fines in 1981 would only have marginally affected the rate of imprisonment in 1983 since the majority of persons imprisoned for default are arrested within 12 months of receiving a fine.<sup>9</sup>

7. Fines imposed for offence of drunkenness excluded. The Intoxicated Persons Act (1979) which came into effect on 17 March 1980 made drunkenness no longer a criminal offence.

8. Following the introduction of random breath-testing in December 1982, there was a 30% reduction in appearances for drink-drive offences.

9. See Table 10.

Therefore, other factors must have contributed to the substantial increase in the number of persons being imprisoned for default. Data on a broad range of factors was collected in the three-part study conducted by the Bureau of Crime Statistics and Research in order to determine the characteristics of fine defaulters imprisoned and the reasons for the default occurring.

- (A) A statistical survey of all persons received into New South Wales prisons between January and June 1982 for the non-payment of fines only.
- (B) Interviews with all persons received into three prisons for the non-payment of fines during a four week period from 14 February to 13 March 1983.
- (C) A survey of persons detained in a sample of country police station lockups for the non-payment of fines between January and June 1982.

**Table 1. Fine defaulters imprisoned in N.S.W., 1973-1983**

Year	Number imprisoned*	Percentage of total received under sentence
1973/74	3,086	33.8
1974/75	2,888	33.9
1975/76	3,231	37.4
1976/77	3,075	37.4
1977/78	n.a.	n.a.
1978/79	3,905	42.4
1979/80	3,376	42.5
-----		
1982	3,559	49.0
1983	4,939	51.9

\* Australian Bureau of Statistics, *Prison Statistics, N.S.W.*, 1976-77 and earlier; *Prisoners N.S.W.*, 1978/79 and 1979/80; data from Department of Corrective Services report, 1982 (unpublished).

**Table 2. Fines imposed in N.S.W., 1974-1983**

Year	No. of persons fined by court*	% change	No. of penalty notices issued**	% change
1974	36,666		1,214,153	
1975	37,603	+ 2.6	1,257,570	+ 3.6
1976	39,362	+ 4.7	1,216,063	- 3.3
1977	39,132	- 0.6	1,363,375	+ 12.1
1978	42,876	+ 9.6	1,391,746	+ 2.1
1979	40,915	- 4.6	1,439,489	+ 3.4
1980	42,722	+ 4.4	1,574,603	+ 9.4
1981	50,433	+ 18.1	1,563,025	- 0.7
1982	51,422	+ 2.0	1,673,473	+ 7.1
1983	48,687	- 15.0	1,757,977	+ 5.1

\* N.S.W. Bureau of Crime Statistics and Research, *Court Statistics*, 1983 and earlier: number of persons fined for principal offence per court appearance.

\*\* N.S.W. Police Department, *Annual Reports*: number of penalty notices issued for traffic infringements.

## PART II

### SURVEY RESULTS

## Part II: SURVEY RESULTS

### A. FINE DEFAULTERS IMPRISONED JANUARY TO JUNE 1982

A total of 1,631 persons, classified as fine defaulters by the Department of Corrective Services, were received into New South Wales prisons between 1 January and 30 June 1982. Table 3 shows the number of fine defaulters by prison; over 70% went to metropolitan prisons.

Table 3. Fine defaulters by prison

Prison	No.	%
Long Bay Complex	414	25.4
Parramatta	114	7.0
Silverwater	525	32.2
Mulawa	103	6.3
Total metropolitan	1,156	70.9
Maitland	63	3.9
Bathurst	68	4.2
Goulburn	78	4.8
Grafton	56	3.4
Broken Hill	21	1.3
Narrabri	42	2.6
Emu Plains	16	1.0
Cessnock	97	5.9
Mannus	13	0.8
Oberon	9	0.6
Other	10	0.6
Total country	473	29.0
Not known	2	0.1
Total	1,631	100.0

Information was collected from the Department's statistical returns on:

- *Characteristics*: age, sex, marital status, country of birth, whether of Aboriginal descent;
- *Offences*: principal offence for which fined;
- *Number and amount of fines*: amount of highest fine, total number of fines, total amount owed, default period;
- *Enforcement process*: time from date fine was imposed until date of arrest, receipt into prison and discharge;
- *Outcome of imprisonment*: sentence served in full or in part.

### Characteristics of fine defaulters

A comparison of fine defaulters with the general prison population is given in Table 4. Data on the general prison population was obtained from the results of the 1982 National Prison Census (Walker, J. and Biles, D., 1983). The prison population of fine defaulters differed only slightly in some respects from the general prison population; fine defaulters were younger and there was a higher proportion of females and Aborigines. Overall, the majority of persons going to prison for fine default are young, single males under the age of 30. Differences due to sex and Aboriginity mentioned above are not commented upon in the following general analysis, but selected tables are presented and discussed in Appendix C.

### Offences

As default periods for non-payment of fines can be served concurrently, it is the largest fine which determines the period of imprisonment. Therefore, the principal offence only was recorded. As indicated in Table 5, the majority of persons imprisoned were in default of fines imposed for driving offences (67.2%) followed by property offences (14.9%), drug offences (6.6%) and other miscellaneous offences. Of the driving offences, the majority (62.4%) were for less serious offences dealt with initially by traffic infringement notices. A more detailed breakdown by offence is given in Table 1, Appendix D.

A review of penalties for offences showed that almost half (45.4%) of defaulters surveyed were imprisoned for offences which themselves do not allow for a penalty of imprisonment. These were primarily driving, licence and traffic offences for which penalty notices are issued in the first instance. Other offences included offensive behaviour, betting and gaming and fare evasion which are seen as minor offences and usually penalized by fine only (Table 2, Appendix D).

The offence groups were further analysed to see if the rate of imprisonment for default varied. For each offence group, the number imprisoned (January to June 1982) was divided by half the number of persons who received fines for these offences during 1981<sup>10</sup>. A rate per 100 persons fined was calculated as shown in Table 5.

There is considerable variation in the rate of default by offence with an average 3.7 persons being imprisoned for default per 100 fined. For the largest group, those fined for driving offences, the rate of imprisonment for default is highest for serious licence offences (driving while licence suspended or cancelled). It is fairly low for drink-drive and other driving offences. Of the other categories, assault and fraud offences have the highest rate of default imprisonment.

Rates for offences for which offenders are normally fined through the issue of a traffic infringement notice could not be calculated as data on these offences obtained from the Police Department show only the total number of notices issued. The actual number of persons receiving one or more notices in a year is not known. During 1982, over one and a half million notices were issued (Table 2) and, if it is assumed that the majority received only one notice, over a million persons were fined. Therefore the rate of imprisonment for default for these offences is estimated to be less than one in a thousand.

10. See Table 10. The majority of those imprisoned between January and June 1982 would have been fined sometime after December 1980.

Table 4. Comparison of fine defaulters surveyed with general prison population

Characteristic	Fine defaulters		Percentage of all prisoners
	No.	%	
<i>Sex</i>			
Females	104	6.4	3.7
Males	1,527	93.6	96.3
<i>Age</i>			
Under 20	244	15.0	9.0
20-24	577	35.4	30.7
25-29	296	18.1	22.3
30-34	197	12.1	16.3
35-39	114	7.0	8.9
40-49	101	6.2	8.9
50 +	62	3.8	3.8
Not known	40	2.5	—
<i>Marital status</i>			
Never married	1,092	67.0	63.3
Married/de facto	332	20.3	26.1
Separated/widowed/divorced	186	11.4	10.0
Not known	21	1.3	0.6
<i>Country of birth</i>			
Australia	1,315	80.6	77.9
New Zealand	74	4.5	4.3
United Kingdom	89	5.5	6.0
Other Europe	94	5.8	7.2
Other	47	2.9	4.8
Not known	12	0.7	—
<i>Aboriginal</i>			
Aboriginal	145	8.9	5.9
Non-Aboriginal	1,306	80.1	93.4
Not known	180	11.0	0.8
<b>Total</b>	<b>1,631</b>	<b>100.0</b>	<b>100.0</b>

**Table 5. Rate of imprisonment for default by principal offence**

Offence group	Imprisoned for default		Fined*	Rate of default (per 100)
	No.	%		
<i>Driving offences</i>				
Drink-drive	290	17.8	10,828	2.7
Serious driving	38	2.3	1,471	2.6
Serious licence	83	5.1	766	10.8
Total serious	411	25.2	13,065	3.2
Other driving	287	17.7	nk	nk
Other licence	162	10.0	nk	nk
Registration/insurance	88	5.4	nk	nk
Parking	97	6.0	nk	nk
Other traffic	47	2.9	nk	nk
Total less serious	681	42.0	nk	nk
Total driving	1,092	67.2	nk	nk
<i>Property offences</i>				
Fraud/misappropriation	38	2.3	419	9.1
Stealing	138	8.5	3,178	4.3
Unlawful possession/receiving	22	1.3	304	7.2
Damage property	45	2.8	615	7.3
Total property	243	14.9	4,516	5.4
<i>Other offences</i>				
Drugs	107	6.6	2,401	4.5
Offences against persons	62	3.8	571	10.9
Offences against order	39	2.4	615	6.3
Offensive behaviour	41	2.5	1,440	2.9
Other	42	2.6	2,612	1.6
Total	1,626**	100.0	25,220	3.7***

\* Half number of persons fined in court during 1981.

\*\* Not known in 5 cases.

\*\*\* Excluding less serious driving offences.

**Number and amount of fines**

As shown in Table 6, the majority of defaulters (70.9%) were cutting out one fine only, 20.0% were cutting out two to four fines and less than 10% were cutting out more than four fines. Persons when charged with one driving offence such as speeding are frequently charged with other offences such as driving without a licence or driving an unregistered vehicle. Where there were more than four fines, minor driving, parking and traffic charges were most commonly involved (Table 3, Appendix D).

**Table 6. Number of fines**

Fines	No.	%
One	1,151	70.9
Two	160	9.9
Three	106	6.5
Four	58	3.6
Five	39	2.4
Six	31	1.9
Seven to ten	47	2.9
More than ten	31	1.9
Total	1,623*	100.0

\* Not known in 8 cases.

Table 7 shows the amount of the fine for the principal offence and the total amount owed by each defaulter imprisoned. In cases where a summons had been issued for the non-payment of a fine, the cost of issuing the summons was included (at the time the cost was \$12). The average highest fine was \$269 (the lowest \$32 and the largest \$2,258) and the majority (66.1%) were cutting out a fine of less than \$300. The average total amount owed was \$382 (the highest amount being \$5,670) with just over half (52.2%) owing less than \$300; 25.6% owed \$500 or more in total.

**Table 7. Amount of fine**

Amount	Fine for principal offence			Total owed in fines		
	No.	%	Cumulative %	No.	%	Cumulative %
Less than \$100	217	13.4		146	9.0	
\$100 to \$199	485	30.0	43.4	379	23.4	32.4
\$200 to \$299	367	22.7	66.1	320	19.8	52.2
\$300 to \$399	164	10.1	76.2	191	11.8	64.0
\$400 to \$499	139	8.6	84.8	167	10.3	74.3
\$500 to \$599	137	8.5	93.3	141	8.7	83.0
\$600 to \$999	91	5.6	98.9	194	12.0	95.0
\$1,000 or more	18	1.1	100.0	79	4.9	100.0
Total	1,618*	100.0		1,617**	100.0	

\* Not known in 13 cases.

\*\* Not known in 14 cases.

Table 8 compares the rate of default by offence with the average highest fine and the average total owed per principal offence. The average fine varied considerably by offence ranging from \$72 for parking offences to \$457 for drink-drive offences. The largest average total amounts owed were for serious licence offences (\$556) and drink-drive offences (\$540) with the lowest average total amount owed being \$207 where a minor traffic offence was the principal offence.

Overall, the average fine was 70% of the average total amount owed. However, for minor driving and traffic offences, when multiple fines were more common, the difference was usually greater. For example, the average fine when parking was the principal offence was \$72 but the average total owed was \$341.

**Table 8. Average fines and average total amounts owed**

Offence group	Rate of default imprisonment (per 100)	Average fine	Average amounts owed
		\$	\$
<i>Driving offences</i>	2.7	457	540
Drink-drive			
Serious driving	2.6	318	425
Serious licence	10.8	446	556
Other driving	nk	177	328
Other licence	nk	198	291
Registration/insurance	nk	150	277
Parking	nk	72	341
Other traffic	nk	152	207
<i>Property offences</i>			
Fraud/misappropriation	9.1	344	454
Stealing	4.3	269	335
Unlawful possession/receiving	7.2	288	326
Damage property	7.3	258	353
Drugs	4.5	293	436
Offences against persons	10.9	313	419
Offences against order	6.3	207	308
Offensive behaviour	2.9	168	216
Other	1.6	284	322

Although it is the fine for the principal offence which determines the default period to be served, it was thought likely that the total amount owed for all fines would also influence a person's decision to pay or serve the imprisonment period. However, as reflected in Table 7 and Table 8, there was no obvious relationship between the default imprisonment rate and the total amount owed.

Table 7 shows that the proportion of imprisoned fine defaulters owing small amounts is comparable to those owing larger amounts. Also, with respect to the average amounts owed (Table 8) some offences, for example drink-drive and serious driving offences, had lower than average imprisonment rates although the average total amounts owed were the highest. Other offence groups had fairly high imprisonment rates, for example, unlawful possession/receiving and damage property, but the total amounts owed were below the average.

Default periods for fine defaulters in the survey period ranged from 24 hours to six months. At a cut-out rate of \$25 a day, Table 9 shows that most (73.5%) were

required to serve less than two weeks. Using the actual default period specified in each case, the total number of days to be served was calculated to be 17,746, an average of 10.9 days per fine defaulter.

**Table 9. Period of default imprisonment**

Period	No.	%
Less than 1 week	612	37.6
1 week to less than 2	584	35.9
2 weeks to less than 3	295	18.1
3 weeks to less than 4	59	3.6
4 weeks or more	76	4.8
Total	1,626*	100.0

\* Not known in 5 cases.

### Enforcement

There are a number of periods in the enforcement process which are of interest to the discussion of the treatment of fine defaulters and which indicate points in the process where action could possibly be initiated to enforce the penalty and avoid the imprisonment of defaulters.

- The time taken to enforce the default penalty (period from date fine was imposed until date of arrest for default);
- The time detained in a police station cell prior to imprisonment (period from date of arrest until date of receipt into prison);
- The time served in a prison for default (period from date of receipt into a prison until date of release);
- The total time served for default including both time spent in a police cell and time spent in prison (period from date of arrest until date of release).

#### (a) Time to arrest

In relation to the first stage, from the date the fine was imposed to the person's arrest for default, Table 10 shows that 11.0% were given no time to pay (arrested the same day the fine was imposed). Just under half (48.9%) were arrested within six months of receiving the fine and the majority (79.6%) were arrested within 12 months of receiving the fine. As the exact period of time to pay allowed in each case was not known, it was not possible to estimate the delay period, from when the fine became due to arrest.

An analysis was made of the 184 persons who, it appeared, were not given any time to pay. In respect of demographic and offence characteristics they did not vary from those surveyed overall. For a slightly higher percentage (48.3% compared to 41.6%), the principal fine was in excess of \$250 and a higher percentage (75.5% compared to 70.9%) were in default of one fine only. Also, for 29 persons (15.8%) in this group, the outcome was "other" — that is, their prison classification was changed from fine defaulter. Therefore the final outcome, whether they paid the amount owed or served the default period, could not be determined. The question of time to pay was investigated in the interview sample and will be further discussed with those results.

*(b) Time from arrest to imprisonment*

Once arrested, 40.2% went to prison the same day; the others would have been detained in police cells until transferred to a prison. As shown in Table 11, over 20% were held at a police station for more than one night. Data on fine defaulters who served the whole default period in a police station lockup are presented in Section C of Part II of this report.

*(c) Time served in prison for default*

Table 12 shows the total number of days served after reception into a prison. Over half (56.3%) spent 5 days or less in prison. Excluding those released the same day, the average number of days served in prison was 7.5.

*(d) Total time served for default*

Table 13 shows the total number of days served including that time spent in custody before being received into a prison. A small number (3.9%) were released the same day indicating they paid all or the remaining part of their fine. The median time served for default was 5 days. Excluding those released the same day, the average number of days served for default was 8.3.

**Table 10. Time from receiving fine to arrest**

Period	No.	%	Cumulative %
No time*	178	11.0	11.4
Up to 3 months	280	17.4	28.4
Over 3 to 6 months	330	20.5	48.9
Over 6 to 9 months	289	17.9	66.8
Over 9 to 12 months	207	12.8	79.6
Over 1 year to 2 years	209	13.0	92.6
Over 2 to 3 years	67	4.1	96.7
Over 3 years	53	3.3	100.0
Total	1,613**	100.0	

\* Date of arrest same as date fine imposed.

\*\* Not known in 18 cases.

**Table 11. Time from arrest to imprisonment**

Period	No.	%	Cumulative %
Same day	653	40.2	40.2
1 day	632	38.9	79.2
2 days	162	10.0	89.2
3-4 days	98	6.0	95.2
5-8 days	64	3.9	99.1
More than 8 days	14	0.9	100.0
Total	1,623*	100.0	

\* Not known in 8 cases.

**Table 12. Time from imprisonment to release**

Period	No.	%	Cumulative %
Same day	79	4.8	4.8
1 day	178	10.9	15.7
2 days	216	13.2	28.9
3 days	190	11.6	40.5
4 days	137	8.4	48.9
5 days	120	7.4	56.3
6 days	88	5.4	61.7
7 days	101	6.2	67.9
8-10 days	179	11.0	78.9
11-14 days	134	8.2	87.1
15-21 days	150	9.2	96.3
22-28 days	43	2.6	98.9
Over 28 days	16	1.0	100.0
Total	1,631	100.0	

**Table 13. Time from arrest to release**

Period	No.	%	Cumulative %
Same day	63	3.9	3.9
1 day	88	5.4	9.3
2 days	212	13.0	22.3
3 days	188	11.5	33.8
4 days	151	9.3	43.1
5 days	115	7.0	50.1
6 days	78	4.8	54.9
7 days	140	8.6	63.5
8-10 days	178	10.9	74.4
11-14 days	143	8.8	83.2
15-21 days	200	12.3	95.5
22-28 days	60	3.7	99.2
Over 28 days	15	0.9	100.0
Total	1,631	100.0	

**Outcome of imprisonment for default**

As shown in Table 14, the majority of fine defaulters imprisoned (72.2%) served the full default period; about one quarter paid all or the remaining part of what they owed to secure their release. The "other" category includes persons whose classification changed (went to bail, to police custody, deported etc.) and these were excluded from the further analysis.

Two factors thought likely to influence a defaulter's decision whether to pay or serve the full sentence would be the total amount owed and the period to be served as determined by the highest fine. These factors would continue to operate after the person was imprisoned. As shown in Table 15, those who owed the least (less than \$100) were more likely to serve the full sentence than to buy themselves out. Similarly, Table 16 shows that those facing the shortest default sentences were more likely to serve them in full. For the others however, there did not appear to be any

Table 14. Outcome of imprisonment

Outcome	No.	%
Served in full	1,178	72.2
Paid fine in full or part	413	25.3
Other	40	2.5
Total	1,631	100.0

relationship between serving the sentence in full and the total amount owed or the default period to be served.

Also of interest was whether persons owing large total amounts in fines were serving only a few days in prison for default. As previously mentioned, the period to be served is determined by the highest single fine owed. Defaulters who paid their outstanding fines in full or part to secure their release were excluded. As shown in Table 17, the majority of those who owed a total of \$500 or more served a longer period for default than the average period of just over one week (see Table 13).

There are, of course many other factors which are likely to influence the decision to serve or pay. For example, economic circumstances, employment status, location, previous history of imprisonment and so on. These factors will be explored in the analysis of defaulters interviewed in prison (Section B) and the survey of those detained in country lockups (Section C).

Table 15. Total amount owed and outcome

Amount	Served sentence in full	
	No.	%
Less than \$100	135	93.1
\$100 - \$199	283	76.7
\$200 - \$299	222	72.1
\$300 - \$399	139	73.5
\$400 - \$499	109	66.1
\$500 - \$999	220	67.5
\$1,000 +	60	78.9
Total	1,168*	74.0

\* Amount not known in 10 cases.

Table 16. Default period and outcome

Period (weeks)	Served sentence in full	
	No.	%
Less than 1	501	83.5
1 to less than 2	397	70.4
2 to less than 3	178	62.5
3 to less than 4	39	67.2
4 +	53	74.6
Total	1,168	74.0

Table 17. Period served and total amount owed

Period (weeks)	Less than \$200		\$200 - \$499		\$500 - \$999		\$1,000 +		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Less than 1	381	91.1	78	16.6	30	13.6	12	20.0	501	42.9
1 to less than 2	37	8.9	302	64.4	44	20.0	14	23.3	397	34.0
2 to less than 3	—	—	89	19.0	77	35.0	12	20.0	178	15.3
3 to less than 4	—	—	—	—	36	16.4	3	5.0	39	3.3
4 +	—	—	—	—	33	15.0	19	31.7	52	4.5
Total	418	100.0	469	100.0	220	100.0	60	100.0	1,167	100.0

## Summary of findings (A)

1. The majority (68.5%) of persons imprisoned for default are young, single males under the age of 30 (Table 4).
2. Over two thirds (67.2%) of those imprisoned were in default of fines imposed for driving and traffic offences; the majority of these (62.4%) from traffic infringement penalty notices (Table 5).
3. Almost one half (45.4%) of those imprisoned were in default of offences which themselves do not allow for a penalty of imprisonment (Table 2, Appendix D).
4. The rate of imprisonment for court-imposed fines is estimated at 3.7 for each 100 persons fined overall although the rate varies considerably by offence (Table 5).
5. The majority (70.9%) of persons imprisoned were in default of one fine only (Table 6).
6. The average highest fine owed was \$269 with two thirds (66.1%) of those imprisoned being in default of a highest fine of less than \$200 (Table 7).
7. The average total amount in fines owed by those imprisoned was \$382; over half (52.2%) owed less than \$300, a small percentage (4.9%) owed \$1,000 or more (Table 7).
8. The majority (73.5%) of those imprisoned were required to serve sentences of less than two weeks; the average sentence to be served for default was 10.9 days (Table 9).
9. Some defaulters imprisoned (11.0%) had not been allowed time to pay (Table 10).
10. The majority (79.6%) of all defaulters imprisoned were arrested within twelve months of receiving the fine; almost half (48.9%) were arrested within six months (Table 10).
11. The average number of days served for default was 8.3 (Table 13); the average number of days served in prison was 7.5 (Table 12); the majority, 59.8%, were detained at least one night in a police cell (Table 11).
12. The majority (72.2%) of defaulters imprisoned served the full sentence; one quarter (25.3%) paid the remaining amount owed to secure their release from prison (Table 14).

## B. INTERVIEWS WITH FINE DEFAULTERS IN PRISON

Interviews were conducted with people imprisoned for fine default at three metropolitan prisons: Long Bay, Silverwater and Mulawa. All persons received into those prisons for fine default during a four-week period from 14 February to 13 March 1983 were to be interviewed. Long Bay and Silverwater were selected as the greater percentage of male fine defaulters go there and Mulawa as the majority of females go there. For the state overall, 389 persons classified as fine defaulters were received into all prisons during the four-week period; 281 (72.2%) of those went to prisons in the sample (Table 18).

The prison recorded by the Department of Corrective Services was that at which the person was first received although, in a small number of instances, the interview may have been held at another prison to which that person had been transferred. Persons received at Parramatta for fine default were usually transferred almost immediately to Silverwater or Long Bay. Some Long Bay prisoners were interviewed at the Miroma Centre run by the Salvation Army. At the time defaulters with four or more days to serve were selected to go there on a voluntary basis to serve their sentence.

Of the 281 persons admitted to the prisons in the sample, 219 were interviewed. As shown in Table 19, a number of persons could not be interviewed, either because they had completed their sentence (usually a two-day or three-day sentence over a weekend) or had been released after paying all or the remaining part of the fine before the interview could be arranged.

A statistical survey form (Form A, Appendix B) was completed from Department of Corrective Services records for each respondent in the sample. There were found to be only minor differences in the characteristics of those interviewed and those in the six-month survey (Section A). Tables comparing demographic data and data on the principal offence, the number of fines and amount owed, the time served and the outcome of imprisonment for default are given in Appendix F.

To summarize, the majority of those interviewed were males (93.2%) aged less than 30 (66.6%) who had been fined for a driving or traffic offence (69.9%). Most were cutting out one fine only (80.3%) and had less than two weeks to serve for default (75.8%) and most served the full sentence (69.9%). A total of 15 women were interviewed (6.8%). Only four Aboriginals were interviewed in the metropolitan prisons. However, it is likely that the majority of Aboriginal defaulters would serve their sentences in country prisons or police station lockups.

Table 18. Fine defaulters interviewed

Prison	Number received	Number interviewed	Percentage interviewed
Long Bay	90	61	67.8
Silverwater	168	143	85.1
Mulawa	23	15	65.2
	281	219	77.9
Other prisons	110	—	—
Total	389	219	56.3

Table 19. Interview sample

Reason	No.	%
Not interviewed		
Paid fine in part or full	23	8.2
Served sentence	30	10.7
Refused interview	6	2.1
Not presented for interview	3	1.1
Total not interviewed	62	22.1
Total interviewed	219	77.9
Total received	281	100.0

## INTERVIEW RESULTS

The main purpose of the interviews was to determine the principal reasons for the non-payment of fines. To do this, the interview questionnaire was designed to obtain information from fine defaulters including:

- (a) Their knowledge of the procedures for the payment of fines and for the enforcement of fines;
- (b) Their previous history of imprisonment for fine default or for other offences;
- (c) The social and economic factors contributing to the non-payment of fines;
- (d) Their attitude to penalties for fine default.

A copy of the schedule of questions is attached (Appendix E) and, in the following analysis, the question numbers in brackets relate to this. Most questions required only a yes/no or a pre-coded answer and the responses are tabulated in the Appendix; unless otherwise specified, the results discussed refer to this table. Interviewers were also asked to record as much of the additional information given to them by the respondents as possible. It should be remembered that self-reported data may contain inaccuracies, inconsistencies and bias and should, therefore, be interpreted with caution.

## Knowledge of fines and enforcement procedures

Respondents were asked to answer the questions in respect of the principal fine for which they were serving the default period. This was specified because those in default of multiple fines may have received them at different times either from the court or by statutory penalty or a mixture of both.

A third of respondents (34.6%) were cutting out one fine only (Q.17) and the remainder (65.4%) claimed to be cutting out other fines. However, the Department of Corrective Services' records showed that only 43 (19.7%) of the respondents interviewed were cutting out more than one fine (Table F3, Appendix F). There are two possible explanations for this:

- (a) A large number of imprisoned fine defaulters mistakenly believe they are cutting out all their fines when in fact only one warrant has been executed (each fine on which default occurs results in a separate warrant being issued);
- (b) The information being supplied to the Department of Corrective Services is incomplete. That is, not all the offences are being listed or, as is more likely as the details are supplied at the time of the person's reception, warrants which are called in later are not listed.

The question of defaulters calling in warrants will be returned to later. Some respondents were unaware of the number of fines outstanding and the total amount owed (Q.18, 19) and of those who said they were cutting out more than one fine, almost one third (29.6%) did not know the total amount owed.

As mentioned earlier in this report (see Table 5), many of those imprisoned were in default of driving and traffic offences which were dealt with initially by way of statutory penalty not requiring a court appearance. Others failed to appear in court when summonsed to do so. As shown in Table 20, almost half of the respondents (45.8%) had not made a court appearance for the offence for which they were fined. It was considered likely that there would be differences between those who had appeared in court and those who had not, particularly in respect of their knowledge of their own obligations and of fine enforcement procedures.

Table 20. Court appearance

	No.	%
Fined after court appearance	117	54.2
No court appearance	99	45.8
Total	216*	100.0

\* Not known in 3 cases.

Questions on which many respondents had very little knowledge related to the granting of time to pay (Table 21), application for additional time, payments by instalments and remission of fines. Table 22 shows the responses to these questions according to whether or not the respondent appeared in court.

- (a) *Time to pay.* 53.0% of those interviewed said they had been granted time to pay without having to request it; 21.0% were not given any time and 26.0% did not know (Q.2).

Of the respondents who had not been granted time to pay initially, a number (n = 26) indicated they had asked for time to pay at the court hearing (Q.3). However, a quarter of the respondents (24.7%) said they did not know they could apply for time to pay (Q.4).

The final outcome was that over half (58.0%) of respondents were allowed, either immediately or after applying, periods of time for payment ranging from one week to one year (Q.5). A small number claimed not to have been allowed any time at all (n = 10, 4.6%) and over one third (37.4%) did not know if they had been given any time or, if they had, how long they had been given.

Table 21 shows the periods of time allowed. The majority of those allowed time were given three months or less (77.2%). Only one person who had not appeared in court was allowed over three months to pay.

As shown in Table 22, for those who had appeared in court, the proportion granted time to pay was higher (71.8%). A considerable number of those who had not appeared in court did not know if they were allowed time to pay (52.5%). However, most of these would have received their fine from a traffic

Table 21. Time allowed for payment

Time*	No.	%
One/two weeks	18	14.2
Three/four weeks	37	29.1
One to two months	19	15.0
Two to three months	24	18.9
Three to six months	18	14.2
Six months to one year	11	8.7
Total	127	100.0

\* In 10 cases time to pay was not allowed; in 82 cases the respondent did not know if time was allowed or, if allowed, how long a period had been given.

infringement which allows a period of time (21 days) automatically. Those who failed to pay within the time and did not respond to a summons to appear in court would presumably not have been granted more time to pay. Respondents were also asked if they were aware they could apply for additional time to pay (Q.15); however, a high percentage (40.6%) did not know this. The proportion of those who did not know was greater for those who had not appeared in court (51.5%) but still almost one third of those who had appeared in court (30.8%) did not know. A small number of respondents (19.2%) had applied for additional time to pay (Q.13) and it was granted to half of these (Q.14). Over half (54.8%) of those who were unaware they could apply for additional time or who had applied but been refused claimed they would have been able to pay if they had been given more time (Q.16).

- (b) *Payment by instalments.* The magistrate hearing the charge may allow payment of a fine by regular instalments or the person can apply to the Clerk of the Local Court after the hearing. Only 26 respondents (11.9%) indicated they had been allowed to pay by instalments (Q.6). As with the other questions relating to payment provisions, a large number of respondents (33.8%) did not know if instalments were allowed; 15 of these had appeared in court. The amount of each instalment ranged from \$5 to \$250 and instalments were to be paid weekly, fortnightly or monthly (two-monthly in one case) (Q.7, Q.8). Two respondents did not know the amount of the instalments. As would be expected, the smaller instalments (\$50 or less) were to be paid weekly or fortnightly and the largest instalments monthly. Of the respondents granted payment by instalments, only 10 had made any payments; all had more than one instalment before defaulting and three had made 12 or more. Respondents not granted payment by instalment were evenly divided on whether they would have been more likely to pay if allowed instalments (Q.10).
- (c) *Remission.* The majority of respondents (87.2%) did not know they could apply for remission of the fine (Q.12).<sup>11</sup> This applied equally to those who had appeared in court and those who had not. Only five persons had applied for remission and of these four had appeared in court (Q.11).

### Previous history of imprisonment

As shown in Table 23, for the majority (53.0%) of persons imprisoned for default it was their first experience of prison. Approximately one third of respondents (32.4%) said they had been in prison for fine default on at least one prior occasion (Q.20). Of these, almost half (45.1%) had been imprisoned for fine default more than once previously (Q.21). Also, 18.7% of respondents had spent time in police cells for default (Q.25, Q.26). In 29.6% of cases respondents also indicated they had been in prison previously for reasons other than fine default (Q.24).

An examination of records at the Criminal Records Office at the Police Department showed that 68.0% of all respondents had a previous conviction recorded against them and some had a considerable number of convictions although, for most, the records showed that the previous convictions had most often resulted in a fine, not a prison sentence.

11. Fines and Penalties Act, 1901, No. 16. Section 8 gives the Governor the power to remit a monetary penalty imposed under any other Act, or extend mercy to any person imprisoned for non-payment.

Table 22. Knowledge of procedures

	Court appearance		No court appearance	
	No.	%	No.	%
<i>Time to pay (Q.2)</i>				
Granted without request	84	71.8	31	31.3
Not granted	28	23.9	16	16.2
Not known	5	4.3	52	52.5
<i>Knowledge of requesting time to pay (Q.4)</i>				
Knew	97	82.9	60	60.6
Did not know	19	16.2	35	35.4
Not known	1	0.9	4	0.9
<i>Time allowed to pay (Q.5)</i>				
No time allowed	7	6.0	3	3.0
Time allowed	91	77.8	33	33.3
Did not know	19	16.2	63	63.6
<i>Knowledge of requesting additional time (Q.15)</i>				
Knew	81	69.2	48	48.5
Did not know	36	30.8	51	51.5
Not known	—	—	—	—
<i>Instalments (Q.6)</i>				
Agreed to	23	19.7	2	2.0
Not agreed to	79	67.5	38	38.4
Not known	15	12.8	59	59.6
<i>Knowledge of remission (Q.12)</i>				
Knew	15	12.8	13	13.1
Did not know	102	87.2	86	86.9
Not known	—	—	—	—
Total	117	100.0	99	100.0

### Social and economic factors

The six-month survey data found the predominant social group among imprisoned fine defaulters was the young single male and this was confirmed in the interview sample. Respondents were also asked questions about their employment, sources of income, financial commitments and dependants. The results show that over half (56.5%) were unemployed at the time of receiving the fine (Q.32).

The main source of income for respondents who were unemployed was the unemployment benefit or some other pension such as the sickness benefit (Q.36, 37, 38). At the time of this survey, the basic unemployment benefit was \$64 per week. Six respondents claimed not to have been receiving any income at all.

Table 25 shows the employment status of respondents at the time of receiving the fine; 94 respondents (43.5%) were employed. Of these, the majority (83.0%) were in full-time employment and the remainder in part-time or casual employment (Q.33). As shown in Table 26, almost half (46.8%) were in the sales/clerical/skilled occupation group and half were unskilled (47.9%) (Q.34).

Table 23. Previous prison experience

Prison experience	No.	%
Not been to prison before	116	58.0
Prison for fine default before	38	17.4
Prison for other reasons before	32	14.6
Prison for fine default and other reasons before	33	15.0
Total	219	100.0

Table 24. Previous convictions

Convictions	No.	%
1-2	19	12.8
3-5	37	24.8
6-10	34	22.8
11-15	23	15.4
16-20	12	8.1
21-25	13	8.7
Over 25	11	7.4
Total	149	100.0

Table 25. Employment status

Employment status	No.	%
Employed		
— full-time	78	36.1
— part-time/casual	15	6.9
— not known	1	0.5
Total employed	94	43.5
Not employed	122	56.5
Total	216	100.0

Table 26. Occupation group

Occupation	No.	%
Professional/managerial	2	2.1
Semi-prof./middle management	3	3.2
Sales/clerical/skilled	44	46.8
Unskilled	45	47.9
Total	94	100.0

The average weekly income of those respondents in employment is shown in Table 27 (Q.35). The majority (76.1%) were earning less than \$300 per week. The average weekly earnings for all males as at 30 June 1982 was \$322.30 (Australian Bureau of Statistics).

Table 27. Total average weekly income

Income	No.	%
Less than \$150	12	13.0
\$150-\$199	23	25.0
\$200-\$249	19	20.7
\$250-\$299	16	17.4
\$300-\$399	8	8.7
\$400 +	14	15.2
Total	92	100.0

Of the respondents employed, only 38 (40.4%) remained in continuous employment (Q.41) up to the time of being imprisoned and all said they would be returning to their job on release (Q.42). Seven respondents claimed they lost their job because of being imprisoned (Q.43).

Eighty-three respondents (37.9%) indicated that there had been changes in their personal or financial circumstances after they had received the fine (Q.44, Q.45). The change that had occurred most often was that some persons had lost their job. Other changes included increasing business debts, setting up house, sickness or injury and, in a few cases, being sent to prison for other matters.

Respondents were asked to indicate if they had failed to pay their fine because any money they had was required for other purposes (Q.46, Q.47). The majority (70.8%) said yes and that they needed all their income for general living expenses such as rent, food and credit payments. One third of the respondents (32.4%) had dependants (Q.48, Q.49).

#### Reason for default

All questionnaires were reviewed when coding was completed and, based on the responses to all questions plus additional information given to the interviewer, a determination of the principal reason for non-payment was made in each case. In 10 cases no clear reason was ascertainable from the information given. As shown in Table 28, lack of money was the single most frequent reason for not paying fines and was given by 71.2% of those interviewed.

Table 28. Reason for non-payment

Reason	No.	%
Financial reasons — unemployed	135	61.6
Financial reasons — employed	21	9.6
Refused to pay on principle	16	7.3
Preferred to serve sentence	11	5.0
Unaware of fine	18	8.2
Other	8	3.7
Not known	10	4.6
Total	219	100.0

The main non-financial reasons given were that it was a matter of principle or simply that the person preferred to serve the sentence rather than pay the money. Respondents' comments on non-payment for other than financial reasons are shown in Appendix G. In some cases, financial consideration obviously contributed to the decision not to pay. On the other hand, a number of respondents, for whom lack of money appeared to be the main reason for non-payment, also indicated other contributing reasons such as limited knowledge of enforcement procedures, unaware of having fines until arrested, unable to read or write, moving accommodation frequently, personal and family problems.

Table 29 shows the total amount owed by those who gave financial reasons for not paying their fines. The percentage giving this reason did not increase with the amount of money owed.

Table 29. Amount owed in fines by those giving financial reasons for non-payment

Amount	No.	%
Less than \$100	12	7.7
\$100-\$199	42	27.1
\$200-\$299	37	23.9
\$300-\$399	11	7.1
\$400-\$499	20	12.9
\$500-\$999	20	12.9
\$1000+	13	8.4
Total	155*	100.0

\* Amount not known in 1 case.

Also, the final outcome of the imprisonment was looked at in respect of the reason given for the default (Table 30); of those who gave financial reasons, 27.3% paid the amount owing in full or part to obtain their release. Three persons who said they had refused to pay on principle bought their release from prison.

Table 30. Outcome of imprisonment x reason given

Reason*	Served in full		Full/part paid		Total %
	No.	%	No.	%	
Financial	109	72.7	41	27.3	100.0
Principle	13	81.3	3	18.7	100.0
Preferred prison	8	88.9	1	11.1	100.0
Unaware	12	66.7	6	33.3	100.0
Other	5	62.5	3	37.5	100.0
Total	147	73.1	54	26.9	100.0

\* Reason or outcome not known in 18 cases.

### Attitudes to penalties

Almost half of those interviewed (49.8%) said they thought at the time that the fine they were given was too high for the offence involved and 32.4% thought it about right. Two persons considered the fine was too little. Of those who indicated that they thought the fine reasonable at the time, some had changed their mind at the time of imprisonment and now thought it was unreasonable (Q.40) (Table 31).

Respondents were also asked about the method they would prefer for cutting out fines (Q.50) and the majority said they would prefer something other than prison. Community service was the most favoured alternative (63.0%) followed by attendance centres (26.0%) and periodic detention (24.2%). Prison was preferred by 12.3% of respondents (Table 32).

**Table 31. Attitude to fine**

Attitude	No.	%
<i>(a) When received</i>		
Too much	109	49.8
About right	71	32.4
Too little	2	0.9
Not known	37	16.9
Total	219	100.0
<i>(b) After imprisonment</i>		
Too much	133	60.7
About right	64	29.2
Too little	3	1.4
Not known	19	8.7
Total	219	100.0

**Table 32. Preferred penalty**

Preference	Percentage
Community service order	63.0
Attendance centre	26.0
Periodic detention	24.2
Prison	12.3
Anything other than prison	23.7
Other	16.0

### Summary of findings (B)

1. Almost half of those interviewed (45.8%) had not appeared in court in respect of the fine for which they were imprisoned (Table 20).
2. The majority of these, plus a percentage of those who had appeared in court displayed a limited knowledge of court processes and enforcement procedures (Table 22).
3. The majority of respondents allowed time to pay were given three months or less (77.2%) (Table 21).
4. Over half (53.0%) of fine defaulters interviewed had never been in prison before. Of the remainder, 68.9% had served previous sentences for the non-payment of fines (Table 23).
5. The majority (56.5%) of respondents were unemployed at the time they were fined and remained unemployed until imprisoned for default (Table 25).
6. The main reason for default given by defaulters interviewed in prison was their lack of money to pay (71.2%) (Table 28).
7. The majority of defaulters interviewed (63.0%) would prefer a community service order to prison as the penalty (Table 32).

### C. FINE DEFAULTERS IN POLICE STATION LOCKUPS

Fine defaulters arrested on a warrant of commitment are frequently detained in police station lockups for one or two days before transfer to a prison.<sup>12</sup> The maximum period a prisoner may be detained in a lockup is one month. Notwithstanding this, prisoners are usually transferred to a gaol as soon as possible. In the metropolitan area this would usually be the same day or the next day. In country areas such transfers might take longer to arrange and in areas remote from a gaol, defaulters with only a short period to serve may serve the whole period in a lockup.<sup>13</sup>

Persons who serve part of their sentence in a lockup and are then transferred to a normal prison are included in Department of Corrective Services data. However, data on persons who serve the whole sentence in a lockup or who pay the fine, in full or part, after serving some of the time, are not collated centrally so no statewide figure is available.

Visits were made to 17 country towns to obtain information on persons who served sentence for fine default in police station lockups during the survey period January to June 1982. Centres to be visited were selected on three criteria:

- (a) Their distance from a normal prison was such that transfers for short sentences would be less likely;
- (b) There was a high number of appearances at the Local Court for drink-driving, drug and general offences (fines are the most common outcome for these offences) and thus a potentially high number of fine defaulters;
- (c) The town was classified as an "Aboriginal" town and it was felt police and court procedures with respect to fine defaulters might vary in these towns (there were three Aboriginal towns in the sample).<sup>14</sup>

The majority of towns met two out of the three criteria. Some smaller towns were included in the schedule where time and proximity allowed.

During the six-month period from January to June 1982, 574 persons were imprisoned for fine default in the police lockups at the centres visited (Table 33).

#### Rate of imprisonment in lockups

From the estimated annual number of imprisonments, a rate per 1,000 population (of the Local Government Area in which each town was located) was calculated. Table 33 shows that the highest rates of imprisonment for fine default were in the towns of Bourke, Walgett and Moree which, in addition to being the most distant from a prison of all towns surveyed, have large Aboriginal populations. The average rate for the LGA's in which these three towns were located was 11.7 per 1,000 population, although for Bourke it was as high as 25.3 per 1,000. For all other centres surveyed the average rate was 3.2 per 1,000 population.

The rate of imprisonment of 11.7 per 1,000 population for LGA's with high Aboriginal populations was used to estimate the number of detentions in other areas with high Aboriginal populations. Similarly, the lower rate of 3.2 per 1,000

12. Section 42 of the Prisons Act, 1952.

13. For a discussion of police policy on keeping prisoners in lockups see p.51.

14. Towns in North-Western N.S.W. with a high concentration of Aboriginal people according to census data.

population was used to estimate the number in all other LGA's. These figures were added to give a total estimate of the number of persons serving sentences for fine default in police station lockups statewide. Excluded were those LGA's in which a gaol was located and those close enough to a gaol to expect the majority of prisoners would be transferred.

Overall it was estimated that between 2,500 and 3,500 persons annually serve default sentences in police lockups.<sup>15</sup> It is not possible to calculate a more precise figure as there are other factors involved which are not quantifiable — in particular, the discretion exercised by local police officers in deciding whether a particular defaulter should be transferred to a prison or kept in the lockup.

Interviews with police officers in the towns surveyed revealed various factors influencing the decision of whether to keep fine defaulters in the lockups for the total default period or transfer them to a prison. Persons can be detained for up to one month in a lockup, but it was claimed to be unusual for them to be kept for more than a week. Persons serving less than a week are sometimes transferred and others are sometimes kept for up to four weeks, but the latter are usually locals who prefer to stay and the former non-locals. In general, it appears that juveniles and females are most likely to be transferred as soon as arrangements can be made for them to be escorted to Sydney.

As well as the default period, the length of time that male fine defaulters are kept in the lockup reportedly depends on:

- (a) Whether or not they are locals — locals are more likely to be kept in the lockup for longer periods, although the closer a particular town is to a large prison the less likely they are to be kept; in the "Aboriginal" towns, police feel the people prefer to stay close to their family; in other towns, it is felt the lockup is unsuitable for long stays and that the person is better off in a proper prison;
- (b) The availability of transport to the nearest prison — a prison van visits police stations once or twice a week collecting prisoners for transfer; a person is more likely to be transferred if the van is due than if it is a few days until the next van;
- (c) The amount of lockup accommodation available at the police station and its suitability for longer detentions.

In Table 33, the rate of imprisonment for fine default is compared to the annual rate of persons convicted in the Local Court who received a fine and also with the annual rate of persons resident in the LGA who received a fine. The evidence from the country survey suggested that the majority of persons detained in lockups were residents of the area who were fined at the Local Court and therefore it would be expected that the rate of imprisonment for a given LGA would reflect the rate of fines handed out by the Local Courts in that area and the rate of fines received per 1,000 population resident in that area.

The three Aboriginal towns rated highly on all three measures whereas, for other centres, there was some variation. For example, Taree had one of the highest detention rates yet one of the lowest rates for fines imposed indicating that possibly

15. The Australian Law Reform Commission reported that for the period 1 July 1978 to 30 June 1979, 3,204 persons were detained in lockups for fine default. However, the basis of the countings procedure used is not known and may have included persons later transferred to a prison (ALRC Report No. 15, *Sentencing of Federal offenders*, 1980 p.123).

Table 33. Rates of imprisonment in police lockups

Centre surveyed	Number imprisoned Jan-June 1982	Estimated annual number	Population	Rate of imprisonment	Rate fined at court	Rate fined resident LGA
Bourke*	57	114	4,500	25.3	36.0	36.4
Walgett*	44	88	7,400	11.9	26.2	26.2
Morée*	70	140	17,300	8.1	20.2	16.8
Kempsey	66	132	19,500	6.8	14.9	12.7
Taree	75	150	32,000	4.7	9.7	6.8
Griffith	47	94	21,100	4.5	20.6	16.9
Wellington	20	40	9,100	4.4	13.4	11.0
Narrandera	16	32	7,650	4.2	20.4	13.1
Leeton	17	34	11,350	3.0	10.9	11.8
Wagga Wagga	60	120	48,150	2.5	11.3	8.5
Dubbo	35	70	28,850	2.5	14.5	11.9
Coonamble	7	14	5,950	2.4	8.1	13.4
Tamworth	35	70	32,550	2.2	10.5	6.5
Narrabri/Wee Waa	13	26	16,050	1.6	13.5	12.7
Nyngan	3	6	3,800	1.6	10.5	7.4
Gunnedah	9	18	13,400	1.3	13.0	10.3
Total	574	1,148	278,650			

\* Aboriginal towns.

many of the defaulters imprisoned in Taree were not local residents. Dubbo had a higher than average rate of fines imposed but a fairly low imprisonment rate as many defaulters from Dubbo were transferred to Goulburn Gaol.

### Characteristics

Data on fine defaulters were collected from the returns completed at police stations in respect of each person detained in the lockup for fine default. Persons who were subsequently transferred to a prison were excluded as they would have been counted in the Department of Corrective Services sample. These returns are forwarded to the Clerk of the Local Court where the fine was imposed. Information was collected from the returns on: sex (from name), days served, most serious offence and amount of fine and default period, number of offences and outcome. At some police stations, additional information was obtained from the Charge Book including age and employment status.

Insufficient data was obtained on sex, age and employment status for these variables to be analysed. However, it appeared from discussions with police officers that females and juveniles are usually transferred to established institutions in Sydney even if the period of default to be served is short. Therefore, the majority of fine defaulters serving sentences in police lockups would be adult males.

### Offences and fines

As shown in Table 34, almost half (47.6%) of the defaulters in this sample were cutting out more than one fine compared to only 30% of the persons serving sentences in prisons (Table 6). However the percentage cutting out more than four fines was similar to that in the prison survey (9.9% compared to 9.1%).

With respect to offence there were minor variations only; slightly more were cutting out fines for offensive behaviour (9.3% compared to 2.5% in the prison sample). Overall, as shown in Table 35, the majority (63.3%) were in default of fines for driving offences.

Table 34. Number of fines

Fines	No.	%
One	299	52.4
Two	112	19.6
Three	74	13.0
Four	30	5.2
Five	26	4.5
Six	8	1.4
Seven - ten	17	3.1
More than ten	5	0.9
Total	571*	100.0

\* Not known in 3 cases.

Table 36 shows the amount of fine for the principal offence and the total amount owed. The fines being cut out were for much lower amounts than for those in the prison survey; in fact the majority (73.8%) were cutting out a highest fine of less than \$200. However, this is to be expected as those with higher fines would have longer default periods to serve and would be more likely to be transferred to a prison. The majority of defaulters were required to serve periods of less than one week and only 10.5% had default periods of two weeks or more (Table 37).

Table 35. Offence

Offence group	No.	%
Drink-drive	64	12.4
Serious driving	4	0.8
Serious licence	10	1.9
Other driving	88	17.0
Other licence	51	9.9
Registration/insurance	45	8.7
Parking	20	3.9
Other traffic	45	8.7
Fraud/misappropriation	12	2.3
Stealing	31	6.0
Unlawful possession/receiving	10	1.9
Damage property	14	2.7
Drugs	24	4.7
Offences against persons	19	3.7
Offences against order	21	4.1
Offensive behaviour	48	9.3
Other	10	1.9
Total	516*	100.0

\* Not known in 58 cases.

Table 36. Amount of fines

Amount	Fine for principal offence		Total owed in fines		
	No.	%	No.	%	Cumulative %
Less than \$100	212	36.9	126	24.0	24.0
\$100 to \$199	212	36.9	156	29.7	53.7
\$200 to \$299	72	12.5	89	16.9	70.6
\$300 to \$399	28	4.9	59	11.2	81.8
\$400 to \$499	30	5.2	38	7.2	89.0
\$500 to \$599	11	1.9	22	4.2	93.2
\$600 to \$999	9	1.6	27	5.2	98.4
\$1,000 or more	0	0.0	8	1.5	99.9
Total	574	100.0	525*	100.0	

\* Not known in 49 cases.

Table 37. Default period

Default period (weeks)	No.	%
Less than 1	397	69.4
1 to less than 2	115	20.1
2 to less than 3	45	7.9
3 to less than 4	9	1.6
4 or more	6	1.0
Total	572*	100.0

\* Not known in 2 cases.

### Outcome

As shown in Table 38, defaulters serving their sentence in a lockup were more likely to pay their fine than those in prisons (36.1% compared to 25.3%; see Table 14). Overall, the majority of defaulters in this sample served less than one week for default as shown in Table 39.

Table 38. Outcome of imprisonment

Outcome	No.	%
Served in full	359	63.9
Paid in part or full	203	36.1
Total	562*	100.0

\* Not known in 12 cases.

Table 39. Period served

Served (weeks)	No.	%
Less than 1	372	79.1
1 to less than 2	77	16.4
2 to less than 3	19	4.0
3 to less than 4	1	0.2
4 or more	1	0.2
Total	470*	100.0

\* Not known in 104 cases.

### Summary of findings (C)

1. An estimated 2,500 to 3,500 persons annually serve sentences for fine default in country police station lockups (p.51).
2. The highest rate of detention in police station lockups were in remote country areas with large Aboriginal populations (Table 33).
3. Persons serving default sentences in lockups were similar in most respects to those serving sentences in prisons except the average period of sentence was shorter.

## INTERVIEWS WITH POLICE AND COURT OFFICERS

In addition to collecting data, interviews were conducted at each centre with police officers and court officials in order to determine the policy and practices followed in the issuing and execution of warrants for default. Those interviews revealed the extent of the discretion exercised by both police and court officers in their treatment of offenders.

### Issue of warrants

A "Notice of Penalty" is posted to people who have a fine imposed on them in court in their absence. This is a carbon copy of the fine card kept at the court to record payment. Some Clerks think the notice is inadequate, that it will be confusing to some people and that it does not emphasise the consequences of failure to pay. Those legally represented in court should be told the exact penalty by their solicitor when they leave the court but often the solicitor does not have time to see his client again, particularly those from the Aboriginal Legal Service who have a continuous stream of people to represent at one court sitting.

The policy adopted by Clerks on instalments and time to pay is that they will usually accept regular payments towards a fine beyond the date the total amount is due *but* the person must make an attempt to pay something regularly. Some Clerks actively encourage people to come and see them after the court hearing to discuss the best way for them to pay the fine. This system appears to operate in the smaller towns where the Clerk and his policy is well known to the locals rather than in the larger towns. Two points come up regularly:

- a) The request for extra time to pay off a fine must come from the person — the Clerk will not attempt to contact the person to find out why the fine has not been paid;
- b) Regular payments, no matter how small, must be paid in the manner agreed between the person and the Clerk otherwise he will be dealt with immediately as a fine defaulter.

The Clerk usually takes into account the person's financial circumstances, dependants and employment status when deciding on granting extra time and amount of instalments. No records are kept of the number of applications made for additional time to pay.

Once the date for payment of the fine has passed, the Clerk will issue a warrant if the person has made no attempt to discuss the matter in the intervening period. Clerks do not view with a great deal of sympathy persons who come after the due date requesting additional time as they are not usually granted time unless the circumstances are exceptional. Once a warrant has been issued by the court, it will rarely be withdrawn.

Warrants are issued in batches when the fine cards are checked for default, usually at regular intervals depending on the court. This may be weekly, fortnightly or monthly. At one court, it was only every couple of months.

## Procedures for execution of warrants

Warrants for arrest are issued by the courts after persons default on the payment of fines imposed. These go first to the Central Warrant Index in Sydney, then back to the relevant police station for execution. At most stations this is part of general duties and is undertaken when other work permits. It was found that, before a warrant is executed, the following procedure is usually adopted:

- a) If the person is a local resident, police will contact him/her (e.g. by a visit to the home address, telephone call, casual contact in the street or pub etc.) to advise of the existence of a warrant and to ascertain if and when he/she intends to pay the fine. At this stage, it must be full payment, not part payment.
- b) If the person nominates a time in the near future when payment will be made, this is noted on the warrant which is kept at the station. Defaulters are usually given 2-3 weeks, depending on their present circumstances and past history of paying fines. In most cases, people are given two warnings at least to pay the fine before the warrant is executed. In a few cases, particularly if the person has a history of breaking promises about payment and it is known that there is no possibility of him being able to pay, the warrant will be executed immediately.
- c) If a person asks for longer than 2-3 weeks to pay the fine, the police may delay executing the warrant if he has a reasonable case. Also, they may advise him to go back to the court and make an application for extra time although it is unlikely that a warrant will be withdrawn once issued.
- d) If the person is not a local resident with a permanent address — that is, travellers, visitors, itinerant workers — it is more likely that the warrant will be executed immediately unless full payment is made.

People are usually given the opportunity to obtain the money or arrange to have it paid at another police station although they will be detained in the meantime.

This system of dealing with fine defaulters operated most obviously in the smaller country towns where most of the residents are known. In some towns, the majority of warrants were paid after 2 or 3 warnings had been given; in others (particularly the "Aboriginal" towns), police indicated that most fine defaulters eventually served the sentence. It was also noted that the larger the town and the greater the number of police stationed there, the less flexibility in the procedures followed.

Police were also asked about the policy of doing checks on people picked up on other matters, often driving offences, to see if there were any outstanding warrants out for them. Some police indicated that all persons who come to police attention for other matters are warrant checked as a matter of course. However, as a general rule, it appears that checks are always made on persons brought to the police station and sometimes made on persons booked for traffic infringement if they seem "suspicious". Once the existence of a warrant is confirmed by the Central Warrant Index, the person can be detained unless full payment is made (non-locals without sufficient cash can arrange to have the money paid by someone else at another police station). Obviously locals known to the police are less likely to be checked unless police think it likely they have outstanding warrants from other courts.

**PART III**

**DISCUSSION**

## Part III: DISCUSSION OF RESULTS

The study by the Bureau of Crime Statistics and Research was undertaken to provide information for a government review of existing legislation and of administrative procedures for the enforcement of fines. Data were obtained to determine the rate of imprisonment for default, the characteristics of those imprisoned and their reasons for not paying their fines. The results of this study, as with those of other research studies, clearly indicate that the rate of default imprisonment is affected by both sentencing and enforcement practices as well as the circumstances and background of the offender. The individual results are discussed below.

### The rate of imprisonment for default

From the statistics that were available it was found that the number of fine defaulters being imprisoned is now very high and is increasing. In 1983, almost 5,000 were imprisoned for default, which represented over half of persons under sentence received into N.S.W. prisons.

This is considerably higher than in the United Kingdom where, in 1981, 24% of receptions under sentence were for fine default (Softley, 1983). It is difficult to obtain comparable data for other Australian states, but in the study by the South Australian Department of Corrections (1984) it was estimated that the figure was around 70% in that state, 35% in Western Australia and 10% in Tasmania.

In New South Wales, the number of persons cutting out fines by serving the default penalty is greater than that indicated by simply counting those classified as fine defaulters on entering a prison. The study revealed two major gaps in the official statistics on fine defaulters: there are no data available on the number of persons who cut out fines while in prison on remand or under sentence for other offences and there are no data collected on a state basis on the number of persons who serve sentences for fine default in police lockups. This latter figure was estimated to be between 2,500 and 3,500 per year.

It is likely that a considerable number of people cut out fines while in prison for other reasons. These fines may have been imposed at the same time as a prison sentence for a related offence. Others, having been sent to prison for subsequent offences, may call in warrants issued in respect of outstanding fines imposed for earlier offences. Unless the total number of fines being cut out by imprisonment is known, the rate of default on fines must be underestimated. This is of importance for both sentencing and enforcement issues since the rate of default reflects on the validity of the fine as a sanction as well as the inefficiency of measures to enforce the fine. Therefore, it is recommended that the Department of Corrective Services should identify and maintain statistics on those prisoners not classified as fine defaulters who are also cutting out fines.

The lack of statistical information on persons imprisoned for default in police lockups was a major obstacle to determining the rate of default imprisonment. From a survey of selected country police stations, it was estimated that the number being imprisoned in lockups is at least 50% of the number serving default sentences in prisons. The study also found that the rate of default and the rate of imprisonment in lockups is highest in country centres with large Aboriginal populations and remote from prisons. This would seem to indicate that there are special problems in those areas which require further investigation. As a beginning, it is essential that a state-wide statistical collection be developed of defaulters in police lockups.

The study also attempted to establish the rate of default imprisonment in terms of the number of persons receiving fines each year. For court-imposed fines, this was estimated at 3.7 being imprisoned for each 100 persons fined although the rate did vary considerably according to the offence (see below). For persons fined through a traffic infringement penalty notice, the rate of default appears to be much lower. In the study by Softley (1978), it was found that slightly less than 5% of persons in the sample of persons fined were eventually imprisoned. Challenger (1983) reported that 2% of offenders in his sample were imprisoned. Allowing for differences in the samples for these studies and the Bureau study, the estimate of a default imprisonment rate of 3% to 4% would seem reasonable.

The rate of default imprisonment reflects only the final stage in the fine enforcement process and does not give any indication of the actual rate of default which would include those who pay up at earlier stages of the process or at the last moment to avoid imprisonment. In Softley's study, 23% of offenders had failed to make full payment within 18 months of sentence (including those for whom a warrant of commitment had been issued). Challenger found that 8% of his sample had not paid within 18 months and a further 22% did not actually pay until after a warrant had been issued. If these results are applicable in N.S.W., it could be expected that some kind of enforcement action is being taken against probably at least a quarter of those receiving fines.

#### Fine defaulters

The findings from the Bureau study give a clear picture of who is being imprisoned for default and why. To summarize, defaulters imprisoned in N.S.W. are most often males under the age of 30 who were fined for driving and traffic offences and who owed, on average, \$382 in fines. Many owed much less than this. Most were cutting out one fine only with an average sentence to be served of less than two weeks. Almost half had previously been imprisoned, either for the non-payment of fines and/or for some other reason. Most were unemployed at the time of receiving the fine and remained unemployed until imprisoned. Similar results have been found in other studies although there is no strictly comparable data to be found (Softley, 1978; Challenger, 1983).

It should be emphasized again that this description applies to those defaulters who are imprisoned. Others may default but avoid imprisonment by paying when faced with a warrant of commitment or may simply disappear so that the warrant cannot be executed. It was not possible in this study to obtain information about

these persons and other research studies have not considered them in any detail. As mentioned, Challenger (1983) found that 22% of his sample of persons fined paid when faced with a warrant; he also found that 7% had "disappeared". Certainly, in terms of reducing the imprisonment rate, it would seem important to know whether persons imprisoned for default differed markedly from those who default but avoid imprisonment. Until further research is undertaken on the payment of fines, the factors found to be common to the majority of defaulters imprisoned should not be taken as likely predictors of default.

Morgan and Bowles (1981) identified four distinct groups of defaulters — principled, calculating, negligent and indigent — which was confirmed in this study by the reasons given for the non-payment of fines by fine defaulters interviewed in prison, although it was found that these categories overlapped to some extent. The groups are as follows:

1. *Principled.* Persons who, because of a matter of conscience, wilfully refuse to pay while being able to do so. For example, they are campaigning for a cause or they do not accept their guilt for the offence for which they were fined. There were 16 such persons in the sample of prisoners interviewed (see Appendix G for the particular reasons given in each case). It is doubtful that all of these persons were there solely on principle; some were unemployed and some had previously been imprisoned for default.

2. *Calculating.* Persons who wilfully refuse to pay while being able to do so because they prefer to serve the sentence rather than pay the fine. This reason was given by 11 persons but again other factors may have contributed, for example some were unemployed.

3. *Negligent.* Persons who can afford to pay but simply make no effort to do so. Such persons were more difficult to identify but certainly a poor ability in coping with financial matters, a reluctance to deal with the bureaucracy of the court system and the slowness of the enforcement process were contributing factors to default for several of those interviewed. Some of those 18 persons who claimed to be unaware of owing a fine appeared to fall into this category.

4. *Indigent.* Persons unable to pay in the time allowed. This was the case for the majority of those imprisoned. Most were unemployed and most of those who were employed were earning less than the average weekly wage. However, more than a quarter of these persons did not serve the full default sentence but paid all the outstanding fines or served part of the sentence and paid out the rest. Therefore, it would seem that more could be done to prevent some defaulters from being imprisoned — for example, giving them a longer time to pay, or time to obtain the money from other sources as some obviously did. The study showed that the amount owed in fines was not always a major factor, since the number of persons giving lack of money as the reason for not paying did not increase as the amount owed increased. Some could not afford to pay even relatively small fines.

Morgan and Bowles concluded that much more research was needed on these different groups before effective strategies could be devised for each. However, more importantly, they believe the problem will never be solved until both the fine and length of default imprisonment is related to the individual offender and his means. The findings from this study on the characteristics of defaulters imprisoned and the rate of imprisonment reinforce the importance of the sentencing and enforcement issues discussed by Morgan and Bowles and others which were reviewed in the introduction to this report.

## Sentencing

The main issues in respect of the use of the fine were its appropriateness as a sentencing measure in all circumstances and judicial discretion in fine setting.

1. *Appropriateness.* A number of findings from the study emphasize the importance of alternative non-custodial sentencing options being available. First, the circumstances of the offender. It is evident that many people with limited means due to prolonged unemployment, financial commitments or some other reason, do manage to pay fines. However, it is also evident that most of those being imprisoned for default are not wilful defaulters but are simply unable to pay. Whether this is due partly to mismanagement of their own affairs or to other contributing factors identified in the study is certainly important for determining enforcement strategies. However, the conclusion in respect of sentencing must be that information on an offender's ability to pay a fine must be available to the court prior to the decision on sentencing and that this must be taken into account before a fine is imposed. This should be a statutory requirement. It follows from this that there must also be a wider range of non-custodial sentencing options such as a community service order, probation, suspended sentence etc., as suggested by the Australian Law Reform Commission and others.

Other findings from the study support the need for more sentencing options to be available to the court. For instance, the finding that one third of those imprisoned had served at least one previous sentence for default indicates that it may be inappropriate to impose a further fine, also likely to be unpaid, unless the offender's circumstances have changed. Also, it was found that almost half of those imprisoned were in default of fines imposed for offences not themselves punishable by imprisonment, in particular driving and traffic offences. This reinforces the need for more sentencing options as well as alternative default penalties. Prison is not considered to be an appropriate sentence for minor offences, yet thousands are imprisoned each year because a fine was also an inappropriate sentence or was imposed in a way which was inappropriate.

Many of those imprisoned for default originally received the fine as a statutory penalty and, under this system, a formal means inquiry prior to sentencing is not possible. However, as will be discussed below, other strategies must be developed to give such persons greater opportunities to pay and not default.

2. *Fine setting.* There are three matters to be determined by the court when a fine is given as the penalty — the amount, the time allowed for payment if any, and the method of payment (lump sum or instalments). The study found that, for those eventually imprisoned, all these factors are likely to contribute to the default.

Again, the circumstances of the offender must be considered before the amount of the penalty is set. For an unemployed person with other financial commitments, \$100 may be as difficult to find as \$1,000. Indeed 9% of those imprisoned owed \$100 or less whereas less than 5% owed \$1,000 or more. When this issue has been raised in the literature, the conclusion invariably reached is that equality of justice demands not equal punishment but equal impact of the punishment on the offender.

Evidence from the study indicates that the time given to pay and the manner in which the fine is to be paid may be equally as important as the amount. For those fined in court, the period of time allowed is at the discretion of the court. For persons fined through the penalty notice system, a period of 21 days is granted automatically. Of those defaulters interviewed in prison who had been fined in court, the majority had been given time to pay. The period given ranged from one

week to one year, although for most it was three months or less. A small percentage was not given any time to pay. A statutory provision allowing a minimum period of 21 days to pay for all persons fined in court would bring them into line with those fined through the penalty notice system.

The argument is sometimes put forward that a long period of time to pay only increases the likelihood of default because the impact of the penalty diminishes. For the indigent majority it simply prolongs the period until imprisonment since, for most, default was inevitable from the time of the sentence. However, the results suggest that certainly some of those imprisoned would have been able to pay given a longer period of time or any time at all. As only a small number were allowed instalments by the court, there is no evidence of whether having to pay regularly would act as a constant reminder of the penalty and thus prevent default by negligence. Questions of time to pay and instalments may best be dealt with administratively by the Clerk of the Local Court rather than judicially. The minimum of 21 days to pay is necessary to give those sentenced the opportunity to approach the Local Court to seek additional time or instalments. What is more certain from this and other studies is that once default has occurred, speed of enforcement action and the type of enforcement action taken can help prevent imprisonment.

## Enforcement

As reviewed in Part I of this report, there are three main issues in the discussion on fine enforcement: the exercise of administrative discretion in the treatment of defaulters; the effectiveness of various enforcement measures; and the continued use of imprisonment as the penalty for default. The results of this study indicate that there is great scope for reducing the level of fine default in N.S.W. by the better use of existing fine enforcement procedures and by some legislative and administrative changes. To make a general point first, any enforcement system must take into account the main result of this research, which corroborates that of others, that the majority of defaulters are not wilful defaulters. Despite obvious economic hardship, many of those being imprisoned would attempt to pay fines if enforcement action were effective, fair and taken early enough. The system must be designed for these, but also be able to deal with those who are wilful defaulters.

1. *Administrative discretion.* The present system of fine enforcement is described below. A number of problems associated with the procedures being followed were identified in the study. These procedures are used for those who default on fines imposed on them in court and those who fail to pay statutory fines for minor offences and are then summonsed to court. Some are fined in court in their absence.

### *Step 1 — After sentence*

Persons given statutory fines or fined in court in their absence receive a written notice of penalty; those present in court do not. Some of those interviewed claimed not to have received notices of fines or summonses; others who had been in court had only a vague knowledge of the penalty and the conditions of payment stipulated. It is suggested that the current notice of penalty be revised and issued to all persons fined, including those present in court. The notice should be written in clear language setting out precisely the individual's obligations and rights — that is, information on the amount to be paid, when and

where, plus how to apply to vary the payment conditions or for reduction or remission of the penalty. Also, the action that will be taken if the fine is not paid should be clearly stated. Payment of fines should be able to be made at any Local Court in N.S.W. regardless of which court imposed the fine.

#### *Step 2 — Before default*

Individuals may apply to the Clerk of the Local Court for additional time to pay or to be allowed to pay by instalments. Clerks have the discretion to grant or refuse such requests. Many of those interviewed did not know this or were reluctant to apply because of uncertainty in dealing with the court system. Another difficulty was that the application must be made in person to the court where the fine was imposed, which is not always possible. It is suggested that the discretionary power of Clerks to deal with such applications should be clarified and extended in the following way:

- (a) New guidelines for dealing with such applications should be issued to ensure the discretion allowed to Clerks of the Court is exercised in a similar fashion throughout the state;
- (b) There should be a presumption in favour of granting applications unless exceptional circumstances prevail; these should be clearly set out. Persons given additional time should be required to make regular payments;
- (c) When applications are granted, individuals should be advised in writing of the changed conditions of payment and reminded of the penalty for default;
- (d) Applications for additional time should be able to be made at any court and not only the one at which the fine was imposed.

#### *Step 3 — After default*

Once the due date for payment of the total or an instalment has passed, a warrant of commitment is issued by the court. This occurs when time and resources permit and the speed varies from court to court. Therefore, considerable delay might occur before any enforcement action is taken. At present, the action of issuing a warrant after default has occurred is the first and last enforcement action taken by courts. The Clerk of the Local Court has no power to initiate any contact with a defaulter to determine the reason for the payment not being made. Once default has occurred and the warrant has been issued courts will not accept payment or grant applications for more time. Only in exceptional circumstances can warrants be withdrawn. The results of this study indicate that final default could be prevented in some cases if courts took positive action to enforce payment before taking the irrevocable step of issuing a warrant and transferring the responsibility of dealing with the defaulter to the police.

The following changes to enforcement policy are suggested:

- (a) *Reminder letters.* It is suggested that these be issued by the court after default occurs and before a warrant is issued. The experience in the United Kingdom has shown that about 50% of reminder letters result in some payment (Softley, 1978, p.23). Such letters have recently been introduced in N.S.W. for persons fined for traffic infringements and could be extended to those with court-imposed fines to jog their memories and remind them of the penalty for default. A maximum period to respond should be set and again this time could be used for the person to approach the court and make

arrangements for payment. Anyone given additional time should be required to pay by instalment to prevent the indefinite prolonging of the penalty.

- (b) *Personal contact.* Clerks of the Court should be given the power to contact defaulters regarding their overdue payments. This would be particularly useful in the case of persons who have already approached the court and made an agreement with the Clerk about payment but have not complied with it or for persons who have already paid some of the money owing before defaulting.
- (c) *Withdrawing warrants.* Clerks should have greater power to withdraw warrants if defaulters subsequently attempt to pay the fine at the court or make a late application for additional time (eg. have overlooked the due date, haven't received notice of fine, have been in hospital etc.). This presumes that courts will be allowed to accept payments of fines or applications for extra time after the due date for payment.

#### *Step 4 — After warrant issued*

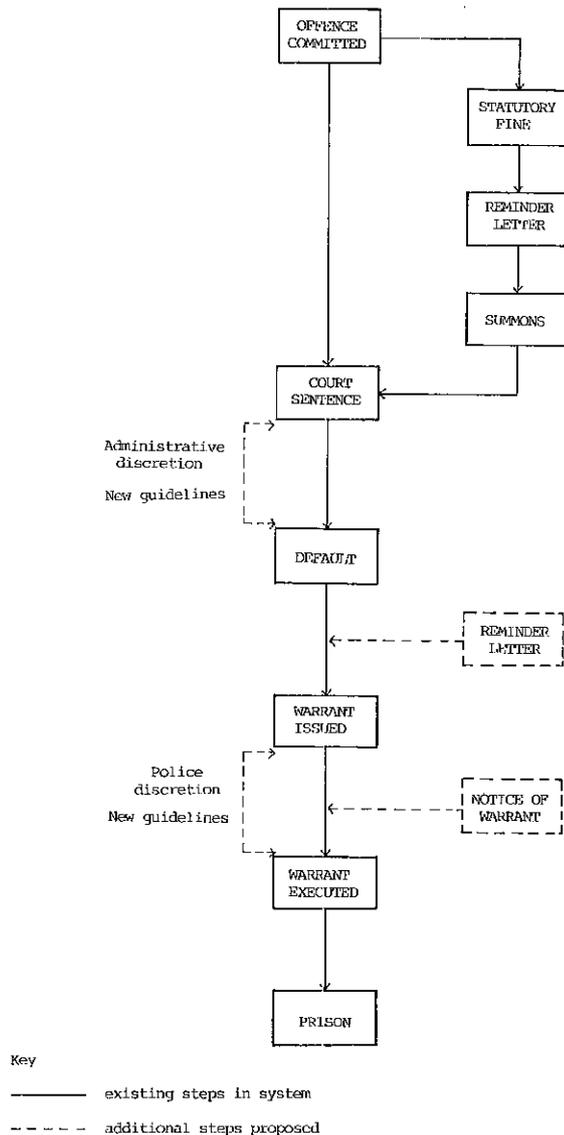
Warrants are executed by police when their time and resources permit and again delays in enforcement action occur. Many warrants are never executed as the defaulter cannot be located. For those who are located, police exercise discretionary power by allowing some extra time to obtain the money and by arresting others immediately. It is recommended that police procedures be changed to allow all persons who are clearly not wilful defaulters time to obtain the money to pay or to approach the court for additional time (subject to a means examination). A maximum of seven days is suggested after which the warrant of commitment will be executed. While some persons located by police may abscond in this period, most will use it to try to obtain the money or to seek additional time from the court. This change would in fact simply formalize a procedure frequently followed by police at present, particularly in country areas.

To summarize, under the present system, the use of administrative discretion by court officers and police officers may operate for or against the defaulter. If the desired objective is to enforce the penalty rather than imprison the defaulter then this discretion must be used to encourage payment. More resources must be made available to courts and police which will enable them to take fast and effective enforcement action that results in payment and not imprisonment. The existing system and the proposed changes to it are shown in Figure 1.

2. *Effectiveness of enforcement measures.* As mentioned, in N.S.W. the only formal enforcement measure is the warrant of commitment which, if executed, must result either in immediate payment or imprisonment. Presumably this is effective in many cases in enforcing the fine, but the increasing number being imprisoned indicates that the warrant serves more often to enforce the default penalty rather than the penalty itself. The effectiveness of the discretionary powers exercised by court officers and police cannot be assessed as there is no adequate statistical information available on how often they are used.

The introduction of new enforcement measures to be used by courts and police as suggested above should be monitored so that the effectiveness of action taken at each stage can be determined. This would involve statistics being kept on persons against whom enforcement action is taken: the number of reminder letters issued

Figure 1. Fine enforcement system: existing and proposed.



and response; the applications for additional time or remission; results of the seven-day period after notice of warrant is given and so on. Statistics should also be kept on persons who approach the court after sentence and before default seeking more time or instalments etc.

In addition to the changes suggested, there are two other measures which have been used in the United Kingdom which appear to be relatively successful in enforcing the payment of fines. These are a formal means inquiry by the court after default and the attachment of fines enforcement officers to courts.

(a) *Means inquiries.* In the United Kingdom, warrants or summonses are first issued to bring defaulters back to court for an inquiry into their circumstances. Tasmania, alone of the Australian states, has such a system. Ideally, if a full inquiry was made into an offender's ability to pay at the time of sentencing, any subsequent inquiry after default would only need to consider whether the offender's circumstances had changed. However, as this does not happen, a means inquiry would serve to prevent defaulters without means from being imprisoned. The options open to the court after such an inquiry would include: allowing additional time to pay, reducing or remitting the fine, imposing a non-custodial default penalty. Only wilful defaulters, that is, those who can but won't pay would then be committed immediately to prison.

There are problems associated with means inquiries. Firstly, the additional burden they might impose on an already overloaded court system. More people might decide to delay payment of fines knowing that they would have a final chance before imprisonment. For this reason, it is important that the present enforcement system is reformed from the beginning along the lines already suggested to ensure that a means hearing would only be necessary in a limited number of cases. There would then be several stages at which the offender's ability to pay could be determined.

Secondly, the experience in the United Kingdom has shown that means inquiry courts do not always operate successfully because of difficulties in obtaining sufficient and accurate information about an offender's means to enable a proper and fair decision to be made. The problem is to provide sufficient resources to the courts to do the job properly.

As an alternative to a means inquiry having to be held in all cases before a defaulter is committed to prison, it is felt that individual defaulters should have the right to request a means inquiry if they consider their circumstances are such that they cannot pay and they have exhausted all other options. The onus would be on the defaulter to produce a minimum amount of information to the court to substantiate the claim. Individual defaulters should have the right to apply for a court means enquiry. Applications would be made to the Clerk of the Court who could refuse leave where no prima facie case of significant alteration to an offender's means is established.

(b) *Fines enforcement officers.* A pilot scheme has recently been completed in Scotland (Millar, 1984) whereby officers with the specific responsibility for fine enforcement were attached to selected courts. The scheme was developed to overcome two problems in the existing fine enforcement system: the lack of contact between the court and the individual after the imposition of the fine and the need for an independent source of information about an offender's social and economic circumstances. The fines enforcement officer entered the system when there had been no response to a reminder letter. It was found that the introduction of these officers was successful in reducing the number of defaulters being imprisoned,

increasing the amount of fines recovered and speeding the identification of defaulters. To quote:

"the importance of these officers lies in ensuring that defaulters are given realistic payment plans in relation to their incomes so that a successful completion of payments on their fines is achieved as originally intended by the court rather than these fines being discharged by imprisonment . . ." (p.37)

It is suggested that a similar scheme be subject to a trial in selected courts in N.S.W. to assess the impact on the level of default and hence imprisonment. In smaller courts, the duties of the fines enforcement officer may be combined with the existing duties of a particular officer; in larger courts an additional person may need to be appointed. The fines enforcement officer would have the responsibility for overseeing the payment of fines. This could involve contacting persons who have defaulted, assisting with applications for additional time or remission, obtaining information on a defaulter's ability to pay, monitoring the response to reminder letters, maintaining statistics on fine enforcement action and so on.

3. *Penalties for default.* The question of whether the penalty for default should be set at the time the fine is imposed or whether it should be set after default occurs and the reason for the default is known was referred to in Part I of this report. The finding that most defaulters imprisoned are those who are too poor to pay fines supports the argument that the reason for default should be known before the penalty is set. However, this would only be possible if defaulters were brought back before the court either for a means inquiry or, as has been suggested, to face a new charge of contempt.

The question of what the default penalty should be is probably of greater concern than when it should be set. The consensus has been that prison should remain as the penalty for wilful defaulters only, although for some it may be appropriate to convert the fine to a civil matter — for example, for those wilful defaulters who seek to martyr themselves by going to prison or those who seek to pay for a large number of small fines with a few days in prison. For the others, those who have exhausted all opportunities open to them to gain additional time or to have their fines reduced or remitted, non-custodial penalties are needed.

The most obvious is a work order whereby the defaulter can pay for his fine while remaining in the community. In N.S.W., a scheme similar to the community service order scheme, in operation for persons who would normally be sentenced to prison, could be developed specifically for fine defaulters. Other options suggested in the literature and used in some countries include fine supervision orders, suspended sentences, attendance centres and periodic detention. The majority of fine defaulters interviewed (63.0%) indicated that they would have preferred a community service order as the default penalty.

Changes are also needed in respect of the current system of dealing with persons in default of multiple fines. A separate warrant is issued in respect of each fine and defaulters committed to prison on one warrant may cut out all fines owed concurrently. The difficulty arises when all the warrants held for one person are not executed at the same time. Some of those interviewed had served several terms for fine default in a short period because all warrants out in their name had not been executed. Once in prison, it is difficult for a defaulter to call in other warrants even if aware of their existence. The actual warrant must be sighted at the prison for it to be considered executed. Therefore, it is recommended that once a person is imprisoned for default, all warrants outstanding at that time for that person should be deemed to have been executed and the sentence served in respect of the highest fine. As details of all warrants are now maintained on computer at the Central

Warrant Index, it should not be necessary for the actual warrant to be produced at the prison. When a person enters a prison for default, a check should be made by the prison administration for any other warrants in that person's name. A similar procedure should be followed for persons detained in police lockups.

Also, persons who believe there are warrants for default out for them should be able to obtain details of all such warrants and the amounts owed. The study showed that many persons in prison have only a vague knowledge of fines outstanding; this is understandable as often quite a long time has elapsed from the date of the fine until imprisonment. Persons having served a sentence for default should be supplied with written confirmation by the court of the warrants that were satisfied.

### Conclusion

A fine is the most common penalty imposed on offenders in N.S.W. and is widely accepted by the judiciary and the community as the best alternative to a prison sentence. Yet for an increasing number of people, a fine is in fact a prison sentence. For a variety of reasons, as many as one quarter of those fined fail to pay. The present procedures for enforcing the payment of fines give little assistance to the individual who would pay but has difficulty or the individual who has no means at all to pay. The discretionary power exercised by court officers and police in the enforcement process disadvantages the poor, the unemployed, the inarticulate and the simply negligent. Only a very small percentage of defaulters could be described as wilful defaulters. This report makes a number of recommendations for administrative and legislative changes that would make the present system more flexible in dealing with the different types of people who default. Further research will be needed to:

- (a) Monitor the effects of any changes made to the fine enforcement system;
- (b) Investigate other enforcement measures such as means inquiries;
- (c) Monitor sentencing policy in respect of fines and investigate other sentencing models such as the day-fine system;
- (d) Extend the range of non-custodial sentencing options available;
- (e) Collect information of fine payment practices for both court-imposed and statutory fines;
- (f) Review the continued use of imprisonment for default and investigate other possible non-custodial default penalties.

**APPENDICES**

## APPENDIX A. LEGISLATION ON FINES AND FINE ENFORCEMENT

### United Kingdom

Developments in relation to the United Kingdom have been traced until the end of the 19th century in Part I of this report.

The next development was the Criminal Justice Administration Act 1914. Section 1 of this Act in effect introduced a presumption in favour of the granting of time to pay by providing that a warrant of commitment could not be issued forthwith unless the court was satisfied that the defendant:

- (a) Had sufficient means to enable him to pay forthwith;
- (b) Did not wish time for payment;
- (c) Had no fixed address; or that
- (d) There were special reasons for not granting time to pay.

The Act also made other minor alterations by providing that a defendant could be searched by order of the court and any money found applied on account of the penalty (s.4(1)). Where time for payment had been allowed the court could grant further time or allow payment by instalments (s.2). Money (as well as goods) could be taken under a warrant of distress (s.4(2)).

In 1935, the Money Payments (Justices Procedure) Act provided that if a court allowed an offender time to pay a fine it could not, at that time, impose an imprisonment default unless it decided some special reason existed. This reason might be related to the gravity of the offence, the character of the offender and other special circumstances. A means inquiry was required to be held before the offender could be committed to prison.

These provisions were continued in the Magistrates' Courts Act 1952. Where a default period was not fixed the offender could not be committed until he was brought back to court and a means inquiry held. The court could decline to grant time to pay where the offender appeared to have the means to pay, did not ask for time to pay or appeared to have no fixed place of abode.

### *Criminal Justice Act, 1967*

Section 44 of the Act further limited the court in immediately committing an offender. The court could only issue a warrant of commitment forthwith where:

- (a) It appeared to the court that the offender had sufficient means to pay forthwith;
- (b) It appeared to the court that the offender was unlikely to remain long enough at a place of abode in the United Kingdom to enable payment to be enforced; or
- (c) The offender was already in gaol for some other reason.

The most significant change was the removal of the "special circumstances" ground. The Act also restricted the court in fixing a default period at the time the fine was imposed to those cases where it could order immediate committal. The effect was that, except in those cases where the offender was committed forthwith, the offender could not be committed to prison without a means inquiry being held.

Section 46 enabled a fine to be enforced by an attachment of earnings order which had not previously been the case. Section 45 enabled a fine to be enforced in the High Court or County Court as a civil judgment. Under section 44(10) the court holding a means inquiry could remit the fine if there had been a change in the circumstances of the offender since conviction.

#### *Changes after 1967*

Section 12 of the Criminal Law Act 1977, introduced a new section 44A into the 1967 Act. Where a fine was imposed and an offender allowed time to pay, the court could, in advance set a date for reappearance if any or all of the fine remained unpaid.

Under the Magistrates' Courts Act 1980, the court may allow time for payment by instalments. A warrant of distress or warrant of commitment may be issued for default. The court has discretion to postpone either.

Section 85 provides that the court may remit the whole, or part of the fine if it appears just to do so. It also has the power to reduce any term of imprisonment which has been fixed.

The Criminal Justice Act 1982, made further provisions relating to fine enforcement, variation of instalments, and means inquiries. The court can vary the instalments of a sum adjudged to be paid. The 1980 Act was amended to widen the circumstances in which the court may fix a day on which an offender must appear in person before the court for a means inquiry or hearing.

Section 69 provides that for equivalent sums the terms of default fixed by the Crown Court cannot now be longer than those fixed by the Magistrates' Courts.

Section 15 of the Criminal Justice Act of 1972 enabled courts to order offenders to perform unpaid work as a community service. The Criminal Justice Act 1982, specified that a community service order can be made for an offender 16 years and over. The court must first consider a social inquiry report regarding the suitability of the offender for the scheme, and must be satisfied that the scheme operates in the area where the offender resides and that there are tasks to be performed.

#### **Australian States**

##### *New South Wales*

The development of legislation in New South Wales was outlined in Part I of this report (see p.11).

##### *Queensland*

The relevant legislation is the Justices Act 1886, which is very similar to the English Summary Jurisdiction Act. Under s.164, the court may allow time for payment,

direct payment by instalments, or allow time for payment by giving security. There is no criterion laid down for granting time to pay and there is no presumption in favour of time to pay.

Under s.161 the court may allow the amount of fine to be recovered by distress or fix a period of imprisonment in default. In those cases where a distress warrant is issued, the defendant may either be detained or released until the return of the warrant. If the return on the goods is insufficient, imprisonment may follow. A warrant of commitment may be issued where it appears that a warrant of distress may be ruinous to the person or his family. On application, the Clerk of the Court where the decision was made may postpone the issue of a warrant until such time and conditions as to him seem just.

The scale of imprisonment was last altered by Act No. 22 of 1973, section 12, and is as follows:

<i>Where the amount:</i>	<i>The imprisonment shall not exceed:</i>
Does not exceed \$20	14 days
Exceeds \$20 but does not exceed \$100	1 month
Exceeds \$100 but does not exceed \$200	2 months
Exceeds \$200 but does not exceed \$500	4 months
Exceeds \$500	6 months

It also provides that in no case shall the default period exceed the maximum period of imprisonment provided for in that case (s.173).

Under section 166A, the Clerk of the Court where the decision was made or a justice authorized by him may, on application in writing made by any party to the proceedings, postpone the issue of the warrant for such time and on such conditions as to him seem just.

##### *South Australia*

The relevant legislation is the Justices Act 1921, with provisions for payment under s.76(1) similar to those for Queensland.

As in Queensland the fine may be recovered by distress, or if insufficient distress, imprisonment; or imprisonment without distress. There is a provision made for wearing apparel and bedding of the defendant and his family and tools of trade to be exempt from execution.

The scale of imprisonment provided for in section 81(2) is one day for each \$25 or part thereof. The maximum period of imprisonment shall not exceed six months.

Upon application, the justice may postpone the issue of a warrant of distress or commitment until conditions appear just.

##### *Western Australia*

The relevant legislation in this state is the Justices Act 1902, with provisions for payment under s.144 similar to those for Queensland and South Australia.

The fine can be recovered by distress or, where insufficient distress, imprisonment. Imprisonment may also be directed in lieu of the issue of a warrant of distress. Upon the issue of a warrant of distress, the defendant may be released or held in custody unless he gives security for his appearance. Clothing, furniture and tools of trade to a certain value are excluded from the distress warrant.

The period of imprisonment is one day for each \$20 or part thereof.

*Victoria*

The relevant legislation in this state is the Magistrates (Summary Proceedings) Act 1975, and the Penalties and Sentences Act 1981. Under s.82 of the 1975 Act, the court may either allow time for payment or direct payment by instalments; otherwise, fines are payable forthwith.

As in other Australian states, the fine may be levied by distress, and in default of distress, imprisonment. Clothes and bedding of the defendant and his family and the tools of trade to the value of \$400 are excluded from the levy under the distress warrant.

The Penalties and Sentences Act 1981, implements a change from "fines" to "penalty units". Rather than an exact dollar amount, penalties are now imposed by a defined number of penalty units (this change is being implemented progressively). Under s.10 of the Act, the rate of imprisonment for default is as follows (one penalty unit = \$100):

<i>Number of penalty units</i>	<i>Maximum default period</i>
Not more than 1	One week
More than 1 but not more than 5	One month
More than 5 but not more than 25	Six months
More than 25 but not more than 50	One year
More than 50	Two years

Another provision of the 1981 Act is for the courts to make a community service order. Under the Community Welfare Services (Attendance Centres Permits) Act 1983, fine defaulters can serve the term by way of attendance at an Attendance Centre.

*Tasmania*

This state is the only state in Australia not to have retained the basic structure of the English Summary Jurisdiction Act. Initially it adopted the later English system of not setting an imprisonment default period until a means inquiry had been held. In 1974 this system was abandoned. The imprisonment default period is now fixed when the fine is imposed.

The period of imprisonment for default is \$5 per day. Where a fine is not paid, a warrant of apprehension is issued. If the warrant is not then paid, the offender is brought back before the court. The court may then proceed with a number of alternatives including: the granting of more time to pay, issuing a warrant of commitment to gaol or making a work order.

Tasmania is the only state in which there has been a presumption in favour of granting time to pay. That is, payment shall not be made until the offender appears to be in reasonable circumstances.

**APPENDIX B. FORMS FOR DATA COLLECTION***Form A. Data from Department of Corrective Services*

1. Receival number
2. Prison (Corrective Services code)
3. Sex: male 1. female 2. unknown 3.
4. Date of birth
5. Aboriginal: yes 1. no 2. unknown 3.
6. Country of birth
7. Marital status
8. Court
9. Date of hearing
10. Principal offence
11. Amount of fine (dollars)
12. Default period (days)
13. Total number of offences (incl. principal offence)
14. Total amount of fines (incl. principal offence)
15. Date of receival into prison
16. Date sentence commenced
17. Date of discharge
18. Discharge mode

*Form B. Interview questions (See Appendix E)**Form C. Data on persons detained in country lockups for fine default*

1. Case number
2. Lockup
3. Court
4. Month of detention/year of detention
5. Sex
6. Number of fines
7. Offence of largest fine
8. Amount of largest fine
9. Default period
10. Number of days served (full or part)
11. Outcome
  1. Served in full
  2. Pro rata payment
  3. Full payment
12. Total amount of fines

## APPENDIX C. DIFFERENCES DUE TO SEX AND ABORIGINAL STATUS

As reported in Part II (Table 4), of the fine defaulters in the survey:

- 6.4% (n=104) were female compared to 3.7% of the general prison population, and
- 8.9% (n=145) were Aboriginals compared to 5.9% of the general prison population.

Differences due to sex and Aboriginality were found for some of the variables and these are commented upon below.

### Sex differences

- (a) *Offence.* As shown in Table C1, the single, largest offence category for females was parking offences (22.1%). Overall, a smaller percentage of females were in default of fines for driving and traffic offences (51.9% compared to 68.2% of males). More females than males were in default of fines for property offences (26.9% compared to 14.1%). Only two females in the survey were in default of more than one fine compared to a third of the males.
- (b) *Amount owed.* The less serious nature of the offences for which females were convicted was reflected in the amounts owed for the fines imposed. As shown in Table C2, females owed considerably less than males; over half (56.4%) owed less than \$150 and only 4 owed \$500 or more. The average highest fine for females was \$180 compared to \$275 for males; the average total owed by females was \$181 compared to \$395 owed by males on average.
- (c) *Enforcement.* For females in the survey, the period from conviction to arrest for default tended to be much longer than for males (Table C3). This may have been due to them being given a longer time to pay by magistrates. However, over 20% were not imprisoned until two years or more after the fine was imposed indicating a different approach by court officers and police officers to the enforcement of fines for female offenders. The survey results also confirmed the policy of the Police Department that females should be transferred immediately to prison; only 4 spent longer than one night in a lock-up.
- (d) *Outcome of imprisonment.* As shown in Table C4, overall females serve less time for default than males. The majority of females (62.4%) served 3 days or less compared to 31.9% of males. This would result partly from the lower amounts in fines owed by females (hence shorter default periods). Also, a greater percentage of females pay their fines in part or full after imprisonment rather than serve the full default period (Table C5).

## Aboriginal

This is as recorded by the Department of Corrective Services and in 180 cases it was not known whether the prisoner was of Aboriginal descent. Of the 145 known Aboriginals in the survey, 10 were female.

- (a) *Offence.* Although, as shown in Table C6, a lower percentage of Aboriginals than non-Aboriginals had been fined for driving and traffic offences, the percentage of Aboriginals fined for drink-drive offences was higher (29.6% compared to 16.9%). There was no significant difference in respect of the number of fines involved.
- (b) *Amount owed.* The average highest fine for Aboriginals in the survey was greater than for non-Aboriginals (\$321 compared to \$267). This was probably due to the greater percentage of Aboriginals convicted of drink-drive offences which attract high fines. In respect of the total amount owed in fines, there was no difference between Aboriginals and non-Aboriginals; \$397 was the average owed by both groups.
- (c) *Enforcement.* Table C8 shows that a slightly greater percentage of Aboriginals than non-Aboriginals were arrested within six months of receiving the fine (58.1% compared to 46.8%). This may indicate they were given less time to pay or that warrants for default were executed more quickly against them because most Aboriginal defaulters were located in country areas.
- (d) *Outcome of imprisonment.* As shown by Table C9, over half of the Aboriginals in the survey (52.3%) served more than one week in prison compared to only 35.2% of non-Aboriginals. The default sentences for Aboriginals were longer overall than for non-Aboriginals because of the higher average fine; also a slightly greater percentage of the Aboriginals (75.9% compared to 71.7%) served the full sentence (Table C10).

Table C1. Principal offence by sex

Offence category	Males		Females	
	No.	%	No.	%
<i>Driving offences</i>				
Drink-drive	283	18.6	7	6.7
Serious driving	37	2.4	1	1.0
Serious licence	81	5.3	2	1.9
Other driving	278	18.3	9	8.7
Other licence	158	10.3	4	3.8
Registration/insurance	85	5.6	3	2.9
Parking	74	4.9	23	22.1
Other traffic	42	2.8	5	4.8
Total driving	1,038	68.2	54	51.9
<i>Property offences</i>				
Fraud	31	2.0	7	6.7
Stealing	123	8.1	15	14.4
Unlawful possession	19	1.2	3	2.9
Damage to property	42	2.8	3	2.9
Total property	215	14.1	28	26.9
<i>Other offences</i>				
Drugs	96	6.3	11	10.6
Against persons	60	3.9	2	1.9
Against order	36	2.4	3	2.9
Offensive behaviour	39	2.6	2	1.9
Other	38	2.5	4	3.8
Total other	269	17.7	22	21.2
Total	1,522*	100.0	104	100.0

\* Offence not known in 5 cases.

Table C2. Total amount owed by sex

Amount	Males		Females	
	No.	%	No.	%
Less than \$100	110	7.3	36	35.0
\$100 to \$199	349	23.1	30	29.2
\$200 to \$299	295	19.5	25	24.3
\$300 to \$399	187	12.4	4	3.9
\$400 to \$499	163	10.8	4	3.9
\$500 to \$999	332	21.9	3	2.9
\$1,000 or more	78	5.2	1	1.0
Total	1,514	100.0	103	100.0

\* Not known in 14 cases.

Table C3. Period to arrest by sex

Period	Males		Females	
	No.	%	No.	%
No time	174	11.5	10	9.6
Less than 3 months	244	16.2	—	—
3-6 months	314	20.8	15	14.4
6-9 months	274	18.2	28	26.9
9-12 months	199	13.2	16	15.4
1-2 years	203	13.5	13	12.5
2-3 years	59	3.9	10	9.6
3 or more years	42	2.8	12	11.5
Total	1,509*	100.0	104	100.0

\* Not known in 18 cases.

Table C4. Arrest to release by sex

Period	Males		Females	
	No.	%	No.	%
Same day	59	3.9	4	3.8
1 day	73	4.8	15	14.4
2 days	181	11.9	31	29.8
3 days	173	11.3	15	14.4
4-5 days	253	16.6	13	12.5
6-7 days	206	13.4	12	11.5
8-13 days	291	19.1	10	9.6
14-20 days	206	13.4	1	1.0
21 +	85	5.6	3	2.9
Total	1,527	100.0	104	100.0

Table C5. Outcome by sex

Outcome	Males		Females	
	No.	%	No.	%
Served in full	1,112	72.9	66	63.5
Full/part fine paid	378	24.8	35	33.6
Other	35	2.3	3	2.9
Total	1,525*	100.0	104	100.0

\* Not known in 2 cases.

Table C6. Principal offence by Aboriginal and non-Aboriginal

Offence category	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
<i>Driving/Traffic</i>				
Drink-drive	43	29.6	220	16.9
Serious driving	4	2.8	29	2.2
Serious licence	9	6.2	62	4.7
Other driving	12	8.3	237	18.1
Other licence	13	9.0	132	10.1
Registration/insurance	2	1.4	79	6.1
Parking	2	1.4	84	6.5
Other traffic	3	2.1	35	2.7
Total driving	88	60.7	878	67.4
<i>Property</i>				
Fraud	3	2.1	32	2.5
Stealing	14	9.7	109	8.3
Unlawful possession	3	2.1	16	1.2
Damage to property	7	4.8	33	2.5
Total property	27	18.6	190	14.6
<i>Other offences</i>				
Drugs	3	2.1	92	7.1
Against persons	14	9.7	40	3.1
Against order	—	—	36	2.8
Offensive behaviour	7	4.8	32	2.5
Other	6	4.1	34	2.6
Total other	30	20.7	234	18.1
Total	145	100.0	1,302*	100.0

\* Not known in 4 cases.

Table C7. Total amount owed by Aboriginal and non-Aboriginal

Offence category	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
Less than \$100	14	9.9	111	8.5
\$100 to \$199	23	16.2	295	22.7
\$200 to \$299	25	17.6	250	19.3
\$300 to \$399	25	17.6	145	11.2
\$400 to \$499	13	9.1	146	11.3
\$500 to \$999	36	25.4	279	21.5
\$1,000 or more	6	4.2	71	5.5
Total	142	100.0	1,297	100.0

\* Not known in 12 cases.

Table C8. Period to arrest by Aboriginal and non-Aboriginal

Period	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
No time	14	9.8	161	12.5
Less than 3 months	36	25.2	193	14.9
3-6 months	33	23.1	250	19.4
6-9 months	26	18.2	237	18.4
9-12 months	12	8.4	167	12.9
1-2 years	10	7.0	188	14.6
2-3 years	8	5.6	52	4.0
3 or more years	4	2.8	43	3.3
Total	143*	100.0	1,291	100.0

\* Not known in 17 cases.

Table C9. Arrest to release by Aboriginal and non-Aboriginal

Period	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
Same day	3	2.1	56	4.3
1 day	6	4.1	76	5.8
2 days	19	13.1	169	12.9
3 days	14	9.7	154	11.8
4-5 days	14	9.7	215	16.4
6-7 days	13	9.0	177	13.5
8-13 days	44	30.3	211	16.2
14-20 days	14	9.6	184	14.1
21 +	18	12.4	64	4.9
Total	145	100.0	1,306	100.0

Table C10. Outcome by Aboriginal and non-Aboriginal

Outcome	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
Served in full	110	75.9	935	71.7
Full/part fine paid	30	20.7	336	25.8
Other	5	3.4	33	2.5
Total	145	100.0	1,304*	100.0

\* Not known in two cases.

## APPENDIX D. OFFENCE TABLES

Table D1. Imprisonment for default by offence

Offence	Number of persons fined during 1981	Number of persons imprisoned for default Jan-June 1982
	(1)	(2)
<i>Driving offences</i>		
PCA/Drive under influence	21,124	279
Aid and abet DUI	150	2
Refuse breath test	381	9
Drive occasioning death/injury	—	2
Dangerous driving	1,934	14
Fail to stop after accident	1,007	22
Drive whilst disqualified etc.	1,532	83
	26,128	411
Negligent driving	(3)	58
Other driving	(3)	229
Drive without licence	(3)	142
Fail to carry licence	(3)	15
Other licence	(3)	5
Registration and insurance	(3)	88
Parking	(3)	97
Roadworthiness	(3)	32
Other traffic	(3)	15
Total driving	—	1,092
<i>Offences against property</i>		
Forge and utter	106	10
Fraud	612	26
Misappropriation	119	2
Break, enter, steal	88	9
Larceny of motor vehicle	240	17
Other stealing	6,027	112
Unlawful possession of property	426	13
Receiving	182	9
Injury to property	1,154	44
Injury to animal	75	1
Total property	9,029	243
<i>Drug offences</i>		
Use/possess drug/poisons	4,022	84
Obtain drug (forge/utter prescriptions)	35	1
Sell drug	130	8
Make drug	586	14
Other	29	—
Total drugs	4,802	107

Table D1. Imprisonment for default by offence (continued)

Offence	Number of persons fined during 1981	Number of persons imprisoned for default Jan-June 1982
	(1)	(2)
<i>Offences against the person</i>		
Major assault	45	4
Minor assault	1,090	54
Other assault	—	3
Sexual assault	7	1
Total against person	1,142	62
<i>Offences against enforcement of order</i>		
Breach recognizance	30	5
Bail	210	6
Escape custody	29	4
Perjury, bribery etc.	88	5
Resist arrest & related	385	9
Trespass & related	452	5
Other	35	5
Total against order	1,229	39
<i>Offensive behaviour &amp; related offences</i>		
Drunkenness/language (railway)	248	2
Expose person	106	1
Offensive behaviour	2,492	38
Other	34	—
Total offensive behaviour	2,880	41
<i>Other offences</i>		
Prostitution & related	90	3
Found with intent	20	3
Fare evasion	2,514	2
Liquor laws	194	4
Environmental	122	2
Betting and gaming	1,355	2
Possession/use firearms etc.	895	12
Other	33	14
Total other	5,223	42

(1) Number of persons for whom this was the principal offence for which they received a fine in a N.S.W. Local Court during 1981.

(2) Number of persons who entered prison during the period January to June 1982 in default of a fine imposed for the offence.

(3) Only the more serious driving and licence offences which can be dealt with summarily are included in this table. Other less serious driving, licence and traffic offences are dealt with via traffic infringement notices.

Table D2. Offences for which prison is not a penalty

Offence	Number imprisoned Jan-June 1982
<i>Driving</i>	
Refuse breath test	9
Other driving	229
Drive without a licence	142
Fail to carry a licence	15
Other licence	5
Roadworthiness of vehicle	32
Transport of goods	1
Registration and insurance	88
Parking	97
Traffic	14
<i>Other</i>	
Injury to property	44
Some offences against order	4
Drunkenness on railway	1
Obscene language etc. railway	1
Offensive behaviour	38
Environmental	2
Betting and gaming	2
Fare evasion	2
Liquor laws	4
Unlawful possession pistols, firearms	10
Total	740

Table D3. Offence and number of fines

Offence	One		Two-four		Over four		Total	
	No.	%	No.	%	No.	%	No.	%
<i>Driving</i>								
Drink-drive	216	74.7	64	22.2	9	3.1	289	100.0
Serious driving	24	63.2	13	34.2	1	2.6	38	100.0
Serious licence	60	73.2	17	20.7	5	6.1	82	100.0
Other driving	186	64.8	53	18.5	48	16.7	287	100.0
Other licence	119	73.5	31	19.1	12	7.4	162	100.0
Registration/insurance	50	56.8	28	31.8	10	11.4	88	100.0
Parking	61	62.9	12	12.4	24	24.7	97	100.0
Traffic	37	78.7	7	14.9	3	6.4	47	100.0
<i>Other</i>								
Fraud	28	73.7	7	18.4	3	7.9	38	100.0
Stealing	108	78.3	22	15.9	8	5.8	138	100.0
Unlawful possession	19	86.4	2	9.1	1	4.5	22	100.0
Damage property	31	68.9	12	26.7	2	4.4	45	100.0
Drugs	71	67.0	25	23.6	10	9.4	106	100.0
Against persons	42	67.7	16	25.8	4	6.5	62	100.0
Against order	29	74.4	8	20.5	2	5.1	39	100.0
Offensive behaviour	36	87.8	2	4.9	3	7.3	41	100.0
Other	34	81.0	5	11.9	3	7.1	42	100.0
Total	1,151	70.9	324	20.0	148	9.1	1,623	100.0

## APPENDIX E. INTERVIEW SCHEDULE AND RESPONSES

NA = not applicable; NK = not known

Question	Response				
		YES	NO	NK	NA
1. Did you receive this fine after a court appearance?	No. %	117 53.4	99 45.2	3 1.4	—
2. In relation to the current fine, were you given time to pay without having to request it?	No. %	116 53.0	46 21.0	57 26.0	—
3. Did you apply for time to pay at the time the fine was set?	No. %	26 11.9	70 32.0	8 3.6	115 52.5
4. Did you know that you could apply for time to pay?	No. %	160 73.1	54 24.7	5 2.2	—
5. How long were you given to pay the fine (in weeks)?			Table 22		
6. Was the fine to be paid in instalments?	No. %	26 11.9	119 54.3	74 33.8	—
7. What was the amount of each instalment (in dollars)?			Table E1		
8. How often were you required to pay an instalment?			Table E1		
9. How many instalments had you paid before you defaulted?			Table E2		
10. If the fine <i>had</i> been payable by instalments, do you think you would have paid?	No. %	104 47.5	78 35.6	9 4.1	28 12.8
11. Did you apply for remission of your fine?	No. %	5 2.3	212 96.8	2 0.9	—
12. Did you know you could apply for remission of your fine?	No. %	28 12.8	191 87.2	—	—
13. Did you apply for additional time to pay the fine?	No. %	42 19.2	175 79.9	2 0.9	—
14. Was it granted?	No. %	24 10.9	18 8.2	1 0.5	176 80.4
15. Did you know you could apply for additional time to pay?	No. %	130 59.4	89 40.6	—	—
16. If you had applied for/did apply for additional time to pay and it had been granted would you have paid?	No. %	120 54.8	81 37.0	7 3.2	11 5.0
17. Are you cutting out any other fines?	No. %	142 64.8	75 34.2	2 0.9	—

Question	Response			
	YES	NO	NK	NA
18. How many?		Table E3		
19. Do you know the total value of these fines (in dollars)?	No. 101 % 46.1	42 19.2	1 0.5	—
20. Have you ever been to prison for not paying fines?	No. 71 % 32.4	148 67.6	—	—
21. How many times?		Table E4		
22. On any of these occasions have you ever cut out more than one fine?	No. 53 % 24.2	17 7.8	1 0.5	148 67.6
23. How many times?		Table E5		
24. Have you ever been to prison for other than non-payment of fines?	No. 65 % 29.7	154 70.3	—	—
25. Have you ever cut out a fine in police cells?	No. 41 % 18.7	175 79.9	1 0.5	2 0.9
26. How many times?		Table E6		
27. In respect of the current fine/s will anyone be paying the fine/s?	No. 24 % 11.0	178 81.3	17 7.7	—
28. Previously, have you ever had your fine paid while cutting it out in prison?	No. 30 % 13.7	40 18.3	—	149 68.0
29. How many times?		Table E7		
30. Previously, have you ever had your fine paid while cutting it out in police cells?	No. 23 % 10.5	18 8.2	—	178 81.3
31. How many times?		Table E8		
32. Were you employed at the time the current fine was set?	No. 94 % 42.9	122 55.7	3 1.4	—
33. Was that employment full time, part time, casual?		Table 25		
34. What was your job?		Table 26		
35. What was your weekly take-home pay (dollars)?		Table E9		
36. Were you receiving any other income or benefits? (not including salary)	No. 121 % 55.2	95 43.4	3 1.4	—
37. What were they?		Table E10		
38. How much in total were you receiving per week net (dollars)?		Table 27		
39. At the time that you were fined did you think that the fine was too much, about right, too little?		Table 31		
40. Do you now think the fine was too much, about right, too little?		Table 31		
41. Did you remain continuously employed until you were imprisoned?	No. 38 % 17.3	58 26.5	3 1.4	120 54.8
42. Will you be returning to a job on your release?	No. 38 % 17.4	161 73.5	20 9.1	—

Question	Response			
	YES	NO	NK	NA
43. Was the termination of your employment related to your imprisonment?	No. 7 % 3.2	57 26.0	9 4.1	146 66.7
44. Were there any changes in your personal/financial situation after the fine was set?	No. 83 % 37.9	132 60.3	1 0.5	3 1.3
45. What were they?	Responses not tabulated			
46. Did you fail to pay this fine because you needed the money you had for other things?	No. 155 % 70.8	63 28.8	1 0.5	—
47. What were they?	Responses not tabulated			
48. At the time of receiving the fine did you have anyone financially dependent on you?	No. 71 % 32.4	148 67.6	—	—
49. How many people?	Table E11			
50. Would you rather cut your fine in:				
(a) Community service?	No. 138 % 63.0	39 17.8	42 19.2	—
(b) Attendance centre?	No. 57 % 26.0	45 20.6	117 53.4	—
(c) Periodic detention?	No. 53 % 24.2	50 22.8	116 53.0	—
(d) Prison?	No. 27 % 12.3	71 32.4	121 55.3	—
(e) Anything except prison?	No. 52 % 23.7	36 16.4	131 59.8	—
(f) Others?	No. 35 % 16.0	55 25.1	129 58.9	—

Table E1. Amount and frequency of instalments (Q.7,8)

Amount	Frequency				Total
	Weekly	Fortnightly	Monthly	Two-monthly	
\$5	—	1	—	—	1
\$10	—	1	—	—	1
\$20	4	—	—	—	4
\$25	3	—	—	—	3
\$40	—	—	1	—	1
\$50	1	2	2	—	5
\$80	—	—	1	—	1
\$100	—	1	3	—	4
\$150	—	—	1	—	1
\$160	—	—	1	—	1
\$245	—	—	1	—	1
\$250	—	—	—	—	1
Total	8	5	10	1	24

Table E2. Amount and number of instalments paid (Q.9)

Amount	Number of instalments paid						Total
	None	Two	Three	Four	Five	More than five*	
\$5	1	—	—	—	—	—	1
\$10	1	—	—	—	—	—	1
\$20	1	1	1	—	—	—	4
\$25	1	—	—	1	—	1(15)	3
\$40	—	—	—	—	—	1(12)	1
\$50	3	1	—	—	1	1(12)	5
\$80	1	—	—	—	—	—	1
\$100	3	—	1	—	—	—	4
\$150	1	—	—	—	—	—	1
\$160	1	—	—	—	—	—	1
\$245	1	—	—	—	—	—	1
\$250	—	—	—	—	—	—	1
Total	14	2	2	1	1	4	24

\* number of instalments paid in brackets

\*\* paid some money

Table E3. Number of fines (Q.18)

Fines	No.	%
One	23	16.2
Two	21	14.8
Three	22	15.5
Four	18	12.7
Five	17	12.0
Six	9	6.3
Seven - eight	10	7.0
Nine - ten	7	4.9
Eleven - twenty	5	3.5
Over twenty	6	4.2
Don't know	4	2.8
Total	142	100.0

Table E4. Prison for fine default (Q.21)

Frequency	No.	%
Once	37	52.1
Twice	18	25.4
Three or more	14	19.7
Not known	2	2.8
Total	71	100.0

Table E5. Multiple fines in prison (Q.23)

Frequency	No.	%
Once	28	51.9
Twice	10	18.5
Three or more	8	14.8
Not known	8	14.8
Total	54	100.0

Table E6. Multiple fines in police cells (Q.26)

Frequency	No.	%
Once	23	54.8
Twice	10	23.8
Three times	6	14.3
Not known	3	7.1
Total	42	100.0

Table E7. Times fine paid by other (prison) (Q.29)

Frequency	No.	%
Once	16	53.3
Twice	6	20.0
Three times	4	13.3
Not known	4	13.3
Total	30	100.0

Table E8. Times fine paid by other (cells) Q.31)

Frequency	No.	%
Once	21	91.3
Twice	—	—
Three times	1	4.3
Not known	1	4.3
Total	23	100.0

Table E9. Employed respondents — weekly income (Q.35)

Amount	No.	%
Less than \$100	5	5.6
\$100 - \$149	7	7.8
\$150 - \$199	22	24.4
\$200 - \$249	21	23.3
\$250 - \$299	14	15.6
\$300 - \$399	11	12.2
\$400 - \$499	4	4.4
\$500 +	6	6.7
Total	90*	100.0

\* Not known in 4 cases.

Table E10. Sources of income (not salary) (Q.37)

Type	No.	%
Unemployment	98	79.0
Sickness benefit	15	12.1
Other pension	1	0.8
Other income	10	8.1
Total	124	100.0

Table E11. Number of dependants (Q.49)

Dependants	No.	%
One	22	31.4
Two	20	28.6
Three	17	24.3
Four	7	10.0
Five	3	4.3
Six	1	1.4
Total	70*	100.0

\* Not known in one case.

## APPENDIX F. COMPARISON OF INTERVIEW RESPONDENTS WITH SURVEY DATA

Table F1. Characteristics

Characteristics	Interview data		Survey data
	No.	%	%
<i>Sex</i>			
Female	15	6.8	6.4
Male	204	93.2	93.6
<i>Age</i>			
Under 20	29	13.2	15.0
20-24	76	34.7	35.4
25-29	41	18.7	18.1
30-34	27	12.3	12.1
35-39	18	8.2	7.0
40-49	19	8.7	6.2
50 +	4	1.8	3.8
Not known	5	2.3	2.5
<i>Marital status</i>			
Never married	135	63.4	67.0
Married/de facto	44	20.1	20.3
Separated	6	2.8	2.2
Widowed	2	0.9	1.5
Divorced	26	11.9	7.7
Not known	6	5.5	1.3
<i>Country of birth</i>			
Australia	165	75.3	81.2
New Zealand	13	5.9	4.6
United Kingdom	18	8.2	5.5
Other Europe	9	4.1	5.8
Other	13	5.9	2.9
Not known	1	0.5	—
Total	219	100.0	100.0

Table F2. Principal offence

Offence	Interview data		Survey data
	No.	%	%
<i>Driving offences</i>			
Drink-drive	32	14.6	17.8
Serious driving	5	2.3	2.3
Serious licence	6	2.7	5.1
Other driving	42	19.2	17.7
Other licence	27	12.3	10.0
Registration/insurance	10	4.6	5.4
Parking	21	9.6	6.0
Other traffic	10	4.6	2.9
Total driving	153	69.9	67.2
<i>Property</i>			
Fraud/misappropriation	4	1.8	2.3
Stealing	20	9.1	8.5
Unlawful possession/receiving	5	2.3	1.3
Damage property	3	1.4	2.8
Total property	32	14.6	14.9
<i>Other offences</i>			
Drugs	13	5.9	6.6
Against persons	4	1.8	3.8
Against order	5	2.3	2.4
Offensive behaviour	5	2.3	2.5
Other	7	3.2	2.6
Total other	34	15.5	17.9
Total	219	100.0	100.0

Table F3. Number of fines

Number	Interview data		Survey data
	No.	%	%
One	175	80.3	70.9
Two	11	5.0	9.9
Three	9	4.1	6.5
Four	7	3.2	3.6
Five	3	1.4	2.4
Six	1	0.5	1.9
Seven - ten	9	4.1	2.9
More than ten	3	1.5	1.9
Total	218*	100.0	100.0

\* Not known in 1 case

Table F4. Amount of fine for principal offence

Amount	Interview data		Survey data
	No.	%	%
Less than \$50	1	0.5	1.5
\$50-\$99	30	13.8	11.9
\$100-\$149	37	17.1	20.5
\$150-\$199	27	12.3	9.5
\$200-\$249	39	18.0	15.0
\$250-\$299	12	5.5	7.7
\$300-\$399	20	9.2	10.1
\$400-\$499	24	11.1	8.6
\$500-\$999	22	10.1	14.1
\$1,000 +	5	2.3	1.1
Total	217*	100.0	100.0

\* Not known in 2 cases.

Table F5. Total amount owed

Amount	Interview data		Survey data
	No.	%	%
Less than \$100	21	9.7	9.0
\$100-\$199	59	27.2	23.4
\$200-\$299	46	21.2	19.8
\$300-\$399	19	8.8	11.8
\$400-\$499	26	12.0	10.3
\$500-\$999	28	12.9	20.7
\$1,000 +	18	8.3	4.9
Total	217*	100.0	100.0

\* Not known in 2 cases.

Table F6. Default periods

Period	Interview data		Survey data
	No.	%	%
Less than 1 week	80	36.5	27.6
1 week to less than 2	86	39.3	35.9
2 weeks to less than 3	31	14.1	18.1
3 weeks to less than 4	10	4.6	3.6
4 weeks or more	12	5.5	4.8
Total	219	100.0	100.0

Table F7. Outcome of imprisonment

Outcome	Interview data		Survey data
	No.	%	%
Served in full	153	69.9	72.2
Full or part fine paid	58	26.5	25.3
Other	8	3.6	2.5
Total	219	100.0	100.0

Table F8. Stages in enforcement

Characteristics	Interview data		Survey data
	No.	%	%
(i) <i>From fine to arrest</i>			
No time	12	5.6	11.4
Less than 3 months	33	15.3	15.1
3-6 months	53	24.5	20.4
6-9 months	33	15.3	18.7
9-12 months	26	12.0	13.3
1 year-less than 2	43	19.9	13.4
2 years-less than 3	8	3.7	4.3
3 years or more	8	3.7	3.3
(ii) <i>From arrest to imprisonment</i>			
Same day	92	42.0	40.2
1 day	101	46.1	39.0
2 days	11	5.0	10.0
3-4 days	10	4.5	6.0
5-8 days	4	1.9	3.9
More than 8	1	0.5	0.9
(iii) <i>From arrest to release</i>			
Same day	3	1.4	4.1
1 day	9	4.1	5.7
2 days	34	15.5	13.0
3 days	27	12.3	11.6
4-5 days	35	16.0	15.8
6-7 days	35	16.0	13.1
8-13 days	40	18.3	17.6
14-20 days	24	11.0	13.6
21 +	12	5.4	5.6
Total	219	100.0	100.0

## APPENDIX G: SUMMARY OF INTERVIEW COMMENTS

**Comments on court procedures***Comments made frequently*

Unaware of court hearing and fined in absence. Had not received summons papers because overseas, interstate, moved address, etc.

Thought all fines had been paid.

Couldn't read or write.

Did not want time to pay — preferred to serve time straight away.

*Other comments*

Sent money in for fine but it arrived late and was sent back.

Thought he wouldn't get arrested until after 12 months, not after missing an instalment.

Claims fine paid at court on day of conviction.

Sent instalment after two weeks. Sent back and he was told to send it into town.

Arrived late and he was arrested.

Applied to Chamber Magistrate for extra time but refused because warrant had been issued.

Was in prison when fine was supposed to be paid — did apply for more time to Chamber Magistrate.

Asked for additional time before due date but told he couldn't have it after time had expired.

In serious car accident two days after court case and in hospital for 3 months.

**Comments on police procedures***Most usual methods of execution of warrant*

Stopped by police for driving or vehicle offence and a warrant check made.

Arrested by police for another offence and warrant check made.

Gave himself up to police after due date.

Arrested by police at home or workplace.

*Other instances*

Picked up as intoxicated person and a warrant check was made.

Was at court on another matter, was asked to wait when case was over and was then told there were warrants out for unpaid fines.

Fined seven years ago. Recently got taxi licence and when he reported an accident outstanding warrant was found.

Picked up while walking on street.

*Other comments on police procedures*

Police came to arrest but was looking after his children so told to report to station by 10 p.m. that night.

Phoned by police and given a fortnight to pay but was starting own business and outlaying large sums of money. When police came to arrest, asked them to wait until he went to bank next day but they would not.

Gave himself up — had been given a couple of weeks to pay by police.

Asked police if he could part pay but told he had to pay whole amount.  
 Asked for extra time at police station but refused.  
 Police called Saturday morning — asked to wait until Monday but refused.

**Reasons given for non-payment of fines other than financial**

*Refused to pay fine on principle*

(N = 16, 7.3% of sample)

Tow truck business owner — trucks keep getting fines as drivers have nowhere to park when they come into office. Refuses to pay as a matter of principle.

Fined for speeding but didn't speed — refused to pay. Better things to do with money.

Didn't pay because he thought charge wasn't justified.

Cut out some fines in 1982 — these were from 1981. Refused to pay parking fines incurred while working as window cleaner — didn't have commercial vehicle.

Had money but felt victimized by police because he has motorbike — stopped frequently.

On principle (no reason given — had been to prison for fines before — may simply prefer not to pay — well paid job).

Fined for smoking dope — doesn't believe it should be criminal offence.

Would not pay because innocent. Someone used his name when picked up for speeding in his car — licence was in glove box. Doesn't remember whom he lent car to.

Original fine for parking was \$10 — increased to \$50 but then put back to \$10. Charged at increased rate — thought amount was unjustified and refused to pay.

Illegal possession of firearm kept as souvenir — no firing pins.

Doesn't think he should have been fined.

Fined for not wearing seatbelt. Came in as matter of principle — shouldn't be forced to wear seat-belt.

Tow-truck driver always getting fined — sick of paying them and will no longer pay hem.

Booked for vehicle defects four years ago — refused to pay because he was not there when booked and didn't know the warrant was outstanding.

On principle (circumstances not specified).

Fine originally \$40 and ended up as \$600. Does not know why this happened but refused to pay such a large amount.

Matter of principle — parked in no standing zone but sign right at other end of street and didn't see it.

*Preferred to serve sentence*

(N = 11, 5.0% of sample)

Easy to work it off.

Couldn't be bothered.

Had money, but didn't like paying fines at time — didn't have money when warrant executed.

Preferred to work off fine in prison.

Rather gaol.

Doesn't believe in paying fines.

Rather cut out.

Had money but spending a lot on hash.

Didn't want to pay.

Thinks paying fines a waste of money.

Waste of money to pay fines.

*Unaware of fine*

(N = 18, 8.2% of sample)

Didn't know about it.

Solicitor told her she had bond but — didn't tell her she also had a fine. Has hearing problem and did not hear sentence.

Thought all fines had been paid — if he had known would have paid them.

Served prison sentence — but didn't know about \$600 compensation that had to be paid also.

In prison when fine due to be paid.

Went to court — told to appear again in six months. Went to Melbourne — found guilty and fined in absence — picked up by police on return.

Didn't know about fine.

Hadn't heard — expecting letter — arrested on street.

Didn't know he had fine for fare evasion — no summons received.

Didn't know he had any fines left — thought all had been paid.

Parking fines — lent car to someone — didn't know about fines.

Thought had paid all fines.

Went to court on different matter and discovered two outstanding parking warrants in his name. Vehicle not owned by him and he had never driven it. Owner claimed vehicle was in his control. Fines issued at his old address — not paid as he never received them.

Didn't get summons.

Given bond — didn't know about fine.

Thought she had paid all fines.

Didn't know he had fine — never received court summons — never been pulled up for PCA — someone else used licence.

*Other*

(N = 8, 3.7% of sample)

In hospital at time.

Too long ago — can't remember much about it. Money problems — wife left with money — seven years ago.

Out of Australia for 4½ months; forgot to pay fine before she left.

In prison for fine default last week — discharged then arrested again for more warrants.

Interstate driver; forgot about fines.

Could have paid in two days (payday) but police refused extra time.

Went to pay but not accepted as two days overdue. When arrested had amount owing in cash on him except for \$26.20. Cut out one day, still owed \$1.20.

Didn't have much money (on sickness benefit) but trying to pay.

Because first payment arrived late it was sent back.

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## BUREAU OF CRIME STATISTICS AND RESEARCH

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